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MEMORANDUM OF AUGUST 17, 1973

[Presidential Determination No. 74-1]

Determination and Authorization of the Grant to the Republic of Turkey of up to $50 Million in Defense Articles and Services in FY 1974

Memorandum for the Secretary of State

THE WHITE HOUSE,
Washington, August 17, 1973.

In accordance with the recommendation in the Acting Secretary's memorandum of July 20, 1973, I hereby:

A. Determine, pursuant to Section 614(a) of the Foreign Assistance Act of 1961, as amended, (22 U.S.C. 2364), that the use of up to $50 million of funds available in FY 1974 for the grant of defense articles and services, including excess defense articles, to Turkey, without regard to the requirement of Section 514 of the act, is important to the security of the United States; and

B. Authorize, pursuant to Section 614(a) of the Act, such use of up to $50 million of funds for the grant of defense articles and services, including excess defense articles, to Turkey, without regard to the requirements of Section 514 of the Act.

This determination shall be published in the FEDERAL REGISTER.

Richard Nixon

[FR Doc.73-19803 Filed 9-13-73;3:11 pm]

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 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 73-EA-61; Amdt. 39-1721]

PART 39—AIRWORTHINESS DIRECTIVES

Fairchild Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Fairchild F-27 and FH-227 type aircraft.

There have been reports of cracked and corroded front and rear horizontal stabilizer spar fittings which, if left uncorrected, present a hazard to air safety. Since this deficiency can occur in aircraft of similar type design, an airworthiness directive is being issued which will require a periodic inspection and replacement, when necessary, of the spar fittings.

Since this deficiency poses a hazard to air safety, expeditious adoption of this amendment is required. Therefore, notice and public procedure hereon are impractical and good cause exists for making the amendment effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 FR 13697) § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new Airworthiness Directive:

FAIRCHILD: Applies to all Fairchild F-27 and FH-227 type aircraft certificated in all categories.

1. Within the next 150 hours in service, unless already accomplished within the last 2,350 hours in service, inspect the front and rear horizontal stabilizer spar fittings, P/Ns 27-213003-11, -12, and 27-213002-11, respectively, with 2,500 hours or more in service in accordance with Section 2 of Fairchild Service Bulletins F27-55-21 and FH-227-55-12 or approved equivalent inspection, and thereafter at intervals of one year or 2,500 hours in service, whichever occurs first.

2. Replace any corroded or cracked parts in accordance with Section 2 of Fairchild Service Bulletins F27-55-21 and FH-227-55-12 before further flight with parts of the same part number or approved equivalent new or reworked parts, except that the aircraft may be flown in accordance with FAR 21.197.

3. Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, may adjust the inspection interval specified in this AD. Equivalent inspections or parts must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(Fairchild Service Bulletins F27-55-21 and FH-227-55-12 pertain to this subject.)

This amendment is effective September 24, 1973.

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

Issued in Jamaica, N.Y., on September 10, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

[FR Doc.73-19635 Filed 9-14-73;8:45 am]

[Airspace Docket No. 73-EA-53]

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

Alteration of Control Zone

On page 19235 of the FEDERAL REGISTER for July 19, 1973, the Federal Aviation Administration published a proposed rule which would alter the Charleston, W. Va., Control Zone (38 FR 363).

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

In view of the foregoing, the proposed regulations are hereby adopted, effective 0901 G.m.t. November 8, 1973.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Jamaica, N.Y., on August 30, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

1. Amend § 71.171 of Part 71 of the Federal Aviation regulations by deleting the description of the Charleston, W. Va., control zone and by substituting the following in lieu thereof:

Within a 5.5-mile radius of the center, 38°22'22" N., 81°35'35" W., of Kanawha Airport, Charleston, W. Va.; within a 6-mile radius of the center of the Kanawha Airport, extending clockwise from a 319° bearing to a 229° bearing from the airport; within 2 miles each side of the extended centerline of Runway 5, extending from the 5.5-mile radius to 6.5 miles northeast of the lift-off end of Runway 5; within 1.5 miles each side of the extended centerline of Runway 14, extending from the 5.5-mile radius to 6.5 miles southeast of the lift-off end of Runway 14; within 2 miles each side of the Charleston VORTAC 081° radial, extending from the 5.5-mile radius to 2 miles east of the VORTAC; within 2 miles each side of the extended centerline of Runway 23, extending west of the lift-off end of Runway 23 and within 2 miles each side of the extended centerline of Runway 32, extending from the 5.5-from the 5.5-mile radius to 6.5 miles southmile radius to 6.5 miles northwest of the lift-off end of Runway 32.

[FR Doc.73-19640 Filed 9-14-73;8:45 am]

[Airspace Docket No. 73-EA-45]

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

Alteration of Control Zone

On page 17249 of the FEDERAL REGISTER for June 29, 1973, the Federal Aviation Administration published a proposed rule which would alter the Teterboro, N.J., Control Zone (38 FR 426).

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

In view of the foregoing, the proposed regulations are hereby adopted, effective 0901 G.m.t. November 8, 1973, except as follows:

1. Amend Item 1 by deleting the phrase "within 3.5 miles each side of the Teterboro VOR 018° radial, extending from the 5-mile-radius zone to 8.5 miles northeast of VOR."

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Jamaica, N.Y., on September 5, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations by deleting the description of the Teterboro, N.J., control zone and by substituting the following in lieu thereof:

Within a 5-mile radius of the center, 40°50'57" N., 74°03'47" W. of Teterboro Airport, Teterboro, N.J.; within 3.5 miles each side of the Teterboro Airport ILS localizer southwest course, extending from the 5-mile-radius zone to 11 miles southwest of the OM; excluding the portion that coincides with the Newark, N.J., control zone.

[FR Doc.73-19637 Filed 9-14-73;8:45 am]

[Airspace Docket No. 73-EA-42]

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

Alteration of Control Zone and Revocation and Alteration of Transition Area

On page 17248 of the FEDERAL REGISTER for June 29, 1973, the Federal Aviation Administration published a proposed rule which would alter the Poughkeepsie, N.Y., Control Zone (38 FR 413) and Transition Area (38 FR 561) and revoke the Millbrook, N.Y., Transition Area (38 FR 534).

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

A subsequent review has, however, indicated a need to make minor adjustments in the description, which are of a minor or less restrictive nature, thereby eliminating a need for notice and public procedure on such changes.

In view of the foregoing, the proposed regulations are hereby adopted, effective 0901 G.m.t. November 8, 1973, except as follows:

(1) Under Item 1 change "231°" to read "230°"

(2) Under Item 2 delete "within 3.5 miles each side of the Kingston, N.Y., VORTAC 323° radial, extending from the VORTAC to 11.5 miles northwest of the VORTAC,"

(3) Add the following item:

3. Amend section 71.181 of Part 71 of the Federal Aviation Regulations so as to revoke the Millbrook, N.Y., Transition Area.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655 (c)).)

Issued in Jamaica, N.Y., on September 5, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations by deleting the description of the Poughkeepsie, N.Y., control zone and by substituting the following in lieu thereof:

Within a 5-mile radius of the center, 41°37'36" N., 73°52'59" W., of Dutchess County Airport, Poughkeepsie, N.Y., within 3.5 miles each side of the Kingston, N.Y., VORTAC 025° radial, extending from the VORTAC to 9.5 miles northeast of the VORTAC; within 2 miles each side of the Kingston, N.Y., VORTAC 230° radial, extending from the 5-mile-radius zone to 10.5 miles southwest of the VORTAC.

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by deleting in the description of the Poughkeepsie, N.Y., transition area, all before "That airspace extending upward from 1,200 feet above the surface" and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the center, 41°37'36" N., 73°52'59" W., of Dutchess County Airport, Poughkeepsie, N.Y.; within a 15.5-mile radius of the center of Dutchess County Airport, extending clockwise from a 040° bearing to a 215° bearing from the airport; within 3.5 miles each side of the Kingston, N.Y., VORTAC 025° radial, extending from the 10-mile-radius area to 10.5 miles northeast of the VORTAC; within 6.5 miles northwest and 4.5 miles southeast of a 231° bearing from a point 41°34'06" N., 73°58'42" W., extending from said point to 11.5 miles southwest; within 5 miles each side of a direct line between a point 41°31'42" N., 74°06'48" W., and a point 41°34'06" N., 73°58'42" W.; within a 5-mile radius of the center, 41°42'30" N., 73°44'00" W., of Sky Acres Airport, Millbrook, N.Y.; within an 8.5-mile radius of the center of Sky Acres Airport extending clockwise from a 011° bearing to a 201° bearing from the airport; within a 6-mile radius of the center 41°34'30" N., 73°44'00" W., of Stormville Airport, Stormville, N.Y.; within a 10.5-mile radius of the center of Stormville Airport, extending clockwise from a 327° bearing to a 077° bearing from the airport; within a 7.5-mile radius of the center of Stormville Airport, extending clockwise from a 077° bearing to a 121° bearing from the airport; within a 10.5-mile radius of the center of Stormville Airport, extending clockwise from a 121° bearing to a 239° bearing from the airport; excluding the portion that coincides with the Newburgh, N.Y. transition area.

3. Amend section 71.181 of Part 71 of the Federal Aviation Regulations so as to revoke the Millbrook, N.Y., Transition Area.

[FR Doc.73-19636 Filed 9-14-73;8:45 am]

[Airspace Docket No. 73-EA-55]

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

Alteration of Control Zone and Transition Area

On page 19235 of the FEDERAL REGISTER for July 19, 1973, the Federal Aviation Administration published a proposed rule which would alter the Lakehurst, N.J., Control Zone (38 FR 392) and Wrightstown, N.J., Transition Area (38 FR 603).

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

In view of the foregoing, the proposed regulations are hereby adopted, effective 0901 G.m.t. November 8, 1973.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655 (c)).)

Issued in Jamaica, N.Y., on August 30, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

1. Amend § 71.171 of Part 71 of the Federal Aviation regulations by deleting the description of the Lakehurst, N.J., control zone and substituting the following in lieu thereof:

Within a 5-mile radius of the center 40°02'00" N., 74°21'00" W. of NAS Lakehurst, Lakehurst, N.J.; within 3 miles each side of the 050° bearing from the Navy Lakehurst UHF RBN, extending from the 5-mile-radius zone to 8.5 miles northeast of the RBN. This control zone is effective from 0700 to 2300 hours, local time, daily.

2. Amend § 71.181 of Part 71 of the Federal Aviation regulations so as to amend the description of the Wrightstown, N.J. transition area by deleting the following: "within a 12-mile radius of NAS Lakehurst (West Field) (Latitude 40°02'05" N. Longitude 74°21'05" W.)" and by substituting the following in lieu thereof:

* * * within a 9.5-mile radius of the center, 40°02'00" N., 74°21'00", W. of NAS Lakehurst, Lakehurst, N.J.; within a 13-mile radius of the Navy Lakehurst TACAN, extending clockwise from the Navy Lakehurst TACAN 310° radial to the 148° radial; within 5 miles each side of the Coyle VORTAC 03° radial, extending from the Coyle VORTAC to 13 miles northeast; within 5 miles each side of the Robbinsville VORTAC 148° radial, extending from the Robbinsville VORTAC to 18.5 miles southeast; within 3 miles southwest and five miles northeast of the Navy Lakehurst TACAN 148° radial, extending from the TACAN to 14 miles southeast; within 3.5 miles each side of the 050° bearing from the Navy Lakehurst UHF RBN, extending from the RBN to 11.5 miles northeast.

[FR Doc.73-19642 Filed 9-14-73;8:45 am]

[Airspace Docket No. 73-EA-54]

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

Alteration of Transition Area

On page 19235 of the FEDERAL REGISTER for July 19, 1973, the Federal Aviation Administration published a proposed rule which would alter the Coatesville, Pa., Transition Area (38 FR 464).

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

In view of the foregoing, the proposed regulations are herby adopted, effective 0901 G.m.t. November 8, 1973.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Jamaica, N.Y., on August 30, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

1. Amend § 71.181 of Part 71 of the Federal Aviation regulations by deleting the description of the Coatesville, Pa., transition area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center 39°58'40" N., 75°51'44" W., of Chester County G. O. Carlson Airport,

Coatesville, Pa., extending clockwise from a 024° bearing to a 231° bearing from the airport; within a 6-mile radius of the center of the airport, extending clockwise from a 231° bearing to a 024° bearing from the airport; within 3.5 miles each side of a 283° bearing from the Coatesville RBN (39°59'-32" N., 75°56'32" W.), extending from the 6-mile radius arc to 11.5 miles west of the RBN; within 4.5 miles south and 6.5 miles north of the Modena VORTAC 095° and 275° radials, extending from 11.5 miles east to 5.5 miles west of the VORTAC; within 5 miles each side of the Modena VORTAC 293° radial extending from the VORTAC to 11 miles northwest of the VORTAC, excluding the portion that coincides with the Toughkenamon, Pa., transition area.

[FR. Doc.73-19641 Filed 9-14-73;8:45 am]

[Airspace Docket No. 73-EA-62]

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

Designation of Transition Area

On page 20097 of the FEDERAL REGISTER for July 27, 1973, the Federal Aviation Administration published a proposed rule which would designate a Chesterfield, Va., Transition Area.

Interested parties were given 20 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 G.m.t. November 8, 1973.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Jamaica, N.Y., on August 30, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by designating a Chesterfield, Va., transition area as follows:

CHESTERFIELD, VA.

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the center 37°24'25" N., 77°31'18" W. of Chesterfield County Airport, Chesterfield, Va., and within 2.5 miles each side of the Flat Rock, Va., VORTAC 117° radial, extending from the 5.5-mile-radius area to 12.5 miles southeast of the VORTAC.

[FR Doc.73-19643 Filed 9-14-73;8:45 am]

[Airspace Docket No. 73-EA-51]

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

Withdrawal of Airspace Docket

The Federal Aviation Administration is withdrawing Airspace Docket 73-EA-51, which was to become effective on September 13, 1973. Because of a change in planning, it is represented that the Weatherly RBN will not be deactivated.

In view of the foregoing, Air space Docket 73-EA-51 is hereby withdrawn, effective September 17, 1973.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749 (49 U.S.C. 1348), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c).)

Issued in Jamaica, N.Y., on September 4, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

[FR Doc.73-19638 Filed 9-14-73;8:45 am]

[Airspace Docket No. 73-SW-36]

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

Alteration and Revocation of VOR Federal Airways

Correction

In FR Doc. 73-18697, appearing on page 23941, in the issue for Wednesday, September 5, 1973, in the paragraph numbered "4" the reference to "V-164" should read "V-163".

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Office of Emergency Preparedness

Section 213.3326 is amended to show that one position of Director of Liaison is no longer excepted under Schedule C.

Effective on September 17, 1973, § 213.3326(f)(1) is revoked.

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

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

[FR Doc.73-19659 Filed 9-14-73;8:45 am]

Title 7—Agriculture

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

COUNTIES DESIGNATED FOR BARLEY CROP INSURANCE

Pursuant to authority contained in § 401.101 of the above-identified regulations, as amended, the following counties are hereby added to the list of counties published January 18, 1973 (38 FR 1726), which were designated for barley crop insurance for the 1974 crop year.

MINNESOTA

BIG STONE

DOUGLAS

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

[SEAL] M. R. PETERSON,
Manager,
Federal Crop Insurance Corporation.

[FR Doc.73-19677 Filed 9-14-73;8:45 am]

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

[Valencia Orange Regulation 448, Amendment 1]

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

Limitation of Handling

This regulation increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh markets during the weekly regulation period September 7-13, 1973. The quantity that may be shipped is increased due to improved market conditions for California-Arizona Valencia oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908.

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

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Valencia Orange Regulation 448 (38 FR 24215). The marketing picture now indicates that there is a greater demand for Valencia oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Valencia oranges to fill the current demand thereby making a

greater quantity of Valencia oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions is paragraph (b)(1)(ii) of § 908.748 (Valencia Orange Regulation 448 (38 FR 24215)) are hereby amended to read as follows:

§ 908.748 Valencia Orange Regulation 448.

* * * * *

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

"(ii) District 2: 525,000 cartons."

* * * * *

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

Dated September 12, 1973.

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

[FR Doc.73-19720 Filed 9-14-73; 8:45 am]

[Lemon Regulation 604]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period September 16–22, 1973. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.904 Lemon Regulation 604.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended 7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons is easier, generally, because of cooling temperatures. Sales this week are expected to increase 10 percent because of a 5 day week, compared with 4 days last week, and f.o.b. price is estimated to decrease about 25 cents per carton. Average f.o.b. price was $8.30 per carton the week ended September 8, 1973, compared to $7.83 per carton the previous week. Track and rolling supplies at 137 cars were up 18 cars from last week.

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

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on September 11, 1973.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period September 16, 1973, through September 22, 1973, is hereby fixed at 225,000 cartons.

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

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

Dated: September 13, 1973.

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

[FR Doc.73-19797 Filed 9-13-73;2:47 pm]

Title 15—Commerce and Foreign Trade

Subtitle B—Regulations Relating to Commerce and Foreign Trade

CHAPTER II—NATIONAL BUREAU OF STANDARDS, DEPARTMENT OF COMMERCE

PART 256—RESEARCH ASSOCIATE PROGRAM

Availability of Information

Because of a change in the name of the office administering the Research Associate Program, § 256.6 is revised to read as follows:

§ 256.6 Information concerning the Research Associate Program.

Information concerning the Research Associate Program may be obtained from the Office of Professional and Academic Liaison, National Bureau of Standards, Washington, D.C. 20234.

(27 Stat. 395, 31 Stat. 1039; 20 U.S.C. 91.)

Effective date.—This revision shall become effective on September 17, 1973.

Dated September 12, 1973.

RICHARD W. ROBERTS,
Director.

[FR Doc.73-19727 Filed 9-14-73;8:45 am]

CHAPTER X—OFFICE OF FOREIGN DIRECT INVESTMENTS, DEPARTMENT OF COMMERCE

PART 1000—FOREIGN DIRECT INVESTMENT REGULATIONS

Interpretative Analyses and Statements

Notice is hereby given that the Office of Foreign Direct Investments (OFDI) has issued a 1973 General Bulletin (the 1973 Bulletin or the Bulletin), interpreting and analyzing the Foreign Direct Investment Program (the program) for calendar year 1973.

The purpose of the Bulletin is to interpret, explain, and amplify, by text and illustrative examples, principal provisions of the current regulations. Statements in the Bulletin may have the effect of qualifying or modifying provisions of the regulations, the instructions applicable to reporting forms, or other official OFDI publications. Unless subsequently modified or rescinded by public notice, statements contained in this Bulletin shall represent the official position of OFDI.

General Bulletin No. 1 and General Bulletin No. 2, dated October 10 and 25, 1968 (33 FR 15158 and 15834), were issued by OFDI as general interpretative guidelines for the regulations applicable to the program in effect during 1968. The 1969 General Bulletin (the 1969 Bulletin), issued November 5, 1969 (34 FR 17806), interpreted the regulations as in effect during 1969. The 1970 Bulletin, issued October 7, 1970 (35 FR 15671), interpreted the regulations as in effect during 1970, and, with Supplement No. 1, issued May 26, 1971 (36 FR 9502), was also applicable to the regulations as in effect during 1971. The 1972 General Bulletin (the 1972 Bulletin), issued September 9, 1972 (37 FR 18294), interpreted the regulations as in effect during 1972. General Bulletins Nos. 1 and 2, the 1969 Bulletin, the 1970 Bulletin and Supplement No. 1 thereto and the 1972 Bulletin are hereby superseded insofar as concerns compliance with the regulations in effect for 1973, and extreme care should be exercised in basing substantive decisions upon the material in the earlier Bulletins and Supplement. In case of doubt concerning relevance of any such material, OFDI should be consulted.

Since the 1973 Bulletin is principally interpretative, it is not published in proposed form for comment.

Effective date.—The 1973 Bulletin shall be effective on September 17, 1973 and unless otherwise indicated, shall be applicable to all transactions occurring on or after January 1, 1973.

(Sec. 5, Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 FR 47.)

ROBERT H. ENSLOW,
Director, Office of Foreign Direct Investments.

AUGUST 29, 1973.

EDITORIAL NOTE.—The Foreign Direct Investment Regulations are published in Title 15, Chapter X, Part 1000 of the Code of Federal Regulations (CFR). All sections of the regulations contained in CFR are preceded by the designation "1000" (e.g. § 1000.201). The "1000" designation has, for convenience, been eliminated from section references contained in this 1972 Bulletin. Sections of the Bulletin correspond to section numbers of the regulations, but are distinguished by use of the prefix "B" and a hyphenated numeral suffix indicating major topical divisions of the analytical discussion (e.g., § B201–1). The abbreviations "DI", "AFN" and "OFS" are used to refer to "direct investor", "affiliated foreign national" and "overseas finance subsidiary", respectively.

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INTRODUCTION

General.—The 1973 Bulletin is designed to provide a reliable and authoritative source of information concerning interpretation and application of the regulations as in effect for 1973. In connection with questions arising under the regulations as in effect during prior years, DIs should refer to General Bulletins Nos. 1 and 2 (33 FR 15158 and 15834) (1968), the 1969 Bulletin (34 FR 17806), the 1970 Bulletin (35 FR 15671), Supplement No. 1 (36 FR 9502) (1971), and the 1972 Bulletin (37 FR 18294) (1972). Examples in the 1973 Bulletin illustrating transactions occurring during prior years are dispositive of the same transaction under the 1973 regulations, unless it is expressly indicated that an example involves the regulations only as in effect during a prior year or years.

The 1973 program.—The following are the major changes made in the program for 1973:

(i) *Allowables.*—The alternative minimum allowables of §§ 503 and 507 have been consolidated for 1973 by increasing the annual amount of positive direct investment that a DI may make in 1973 under the § 503 worldwide minimum allowable from $2 million to $6 million. There is, therefore, no need to retain the schedular complexity of the § 507 alternative minimum and Schedule A supplemental allowable, and that section has been revoked. The historical and earnings allowables under § 504 are the same for 1973 as they were for 1972. The manner in which the § 506 incremental earnings allowable is computed has been changed for 1973, because the increase in the § 503 allowable could have operated to decrease the amount of incremental earnings allowable for some DIs. As a result, § 506 (a)(4) no longer refers to the § 503 minimum allowable but to a $2 million figure.

(ii) *Export credit exemption.*—An export credit exemption system is available to DIs for 1973 and subsequent years. Under this system, a DI using the exemption will not recognize a positive transfer of capital under § 312(a) upon acquiring a qualified export obligation of an AFN or making a qualified export lease to an AFN, until the arm's-length term applicable to the transaction has passed without payment being made by the AFN. No negative transfer of capital will be recognized under § 312(b) (or the provisions of § 312(c)(4) and (12)) upon satisfaction of a qualified export obligation (or upon the return of property that was the subject of a qualified export lease) unless the DI recognized a positive transfer of capital with respect to the qualified export obligation on or after January 1, 1973. Similar rules set forth in § 313(b) have been developed for unincorporated AFNs. (The export credit exemption system is discussed extensively in § B312-22.)

(iii) *Two-month extension.*—The two-month allocation provision that applied to the 1971 and 1972 compliance years has been retained in substantially the same form for the 1973 compliance year in § 306(e)(1). Under § 306(e)(1) a DI is permitted to deduct from positive direct investment made during 1973 an amount equal to any available proceeds of long-term foreign borrowing (or proceeds borrowing from its OFS) made on or before February 28, 1974. It should be noted, however, that the two-month extension with regard to negative transfers of capital that applied to the 1971 and 1972 compliance years has not been retained for 1973.

(iv) *Allocation of proceeds expended during 1965, 1966 or 1967.*—Section 203 (d)(2) has been revised to permit a DI that expended proceeds of long-term foreign borrowing (made in 1965 or any subsequent year) in making transfers of capital to AFNs and deducted the amount of such proceeds in computing the net transfer of capital in 1965, 1966 or 1967, to allocate such proceeds to positive direct investment in another scheduled area during 1973 or subsequent years. A transfer of capital in the amount of such allocation must be recognized by the DI in the scheduled area from which the proceeds are being allocated.

(v) *Acquisition by a DI of an equity interest in, or debt obligation of, an AFN from a person within the United States.*—Under amended § 312(c)(1)(i), an acquisition by a DI of an equity interest in or debt obligation of an AFN from a person within the United States, whether or not such person is a DI, does not involve a transfer of capital.

(vi) *Combination of DIs or of a DI and a person within the United States.*—Section 312(c)(1)(ii) has been clarified in the following respects: (a) An acquistion by a DI (from a person within the United States) of another DI which thereby becomes an affiliate as defined in § 903 (a), is a combination of DIs for purposes of this subparagraph. (b) The acquisition of a DI by a person within the United States which prior to such acquisition was not a DI, is also a combination for purposes of this subparagraph. (c) The surviving DI is in compliance with the liquid foreign balance limitations, for the months prior to the combination in the year of combination, if each combining DI was in compliance with those limitations during such months.

In addition, major changes in specific authorization policy relating to the extention of export credit by DIs to their AFNs and foreign equity financing were announced by OFDI on May 24, 1973. DIs are referred to the Revised Instructions for Submitting Applications for Specific Authorizations, Specific Exemptions, or Interpretations, dated May 24, 1973.

Summary of the regulations.

The regulations contain the operative rules of the program, the principal features of which are discussed in general terms below.

(i) *Applicability.*—The regulations apply to "direct investors." A DI is any person (whether an individual or a business entity) within the United States that owns or holds a 10 percent or greater interest in an incorporated or unincorporated foreign entity (§ 305). A foreign entity in which such interest is owned or held is referred to as an "affiliated foreign national" ("AFN") (§ 304). Interest in an AFN is measured by voting power in the case of a corporation and by the right to a share of profits in the case of an unincorporated enterprise (§ 304(b)(2)). Persons may be DIs either in their individual capacity or by virtue of their relationships with other U.S. persons (§§ 903–906). The regulations specifically do not apply to banks or other financial institutions subject to the Voluntary Foreign Credit Restraint Program administered by the Board of Governors of the Federal Reserve System (§ 201(b)(2)).

(ii) *Requirements and restrictions.*—Three fundamental requirements are imposed on all DIs:

The amount of annual direct investment in AFNs must not exceed the level authorized under the general allowables provided for in the regulations or the amount specifically authorized by OFDI;

The amount of certain foreign balances or other forms of foreign property must be restricted as specified in the regulations; and

Reports reflecting allowables and transactions pertinent to foreign direct investment activities must be filed with OFDI.

DIs may seek relief from a particular restraint imposed by the regulations through application to OFDI for specific authorizations or exemptions (§ 801).

A DI making foreign direct investment in excess of that authorized either generally under the regulations or specifically by OFDI, or otherwise violating the program restrictions, is subject to enforcement proceedings. Noncompliance with the requirements of the regulations may give rise to imposition of sanctions, either criminal or administrative (§§ 201(d) and 701). Rules and procedures concerning the enforcement function of OFDI (including investigations and administrative remedies) are contained in 15 CFR Parts 1020–1050.

(iii) *Calculation of direct investments.*—Direct investment by a DI is calculated on a calendar year basis by adding the DI's net transfer of capital to AFNs and the DI's share of earnings reinvested by incorporated AFNs (§ 306 (a)).

"Net transfer of capital" means (a) aggregate transfers of capital by a DI to incorporated AFNs during the year, less (b) aggregate transfers of capital by incorporated AFNs to the DI during the same period, plus (c) the DI's share of net increase or decrease in net assets of unincorporated AFNs (§ 313). A transfer of funds or other property that increases a DI's equity or debt investment in an AFN is generally a transfer of capital by the DI to the AFN (§ 312(a)). A transfer of funds or other property that decreases a DI's investment in an AFN is generally a transfer of capital by the AFN to the DI (§ 312(b)). In computing a DI's transfers of capital and net transfer of capital, special rules apply to transactions between a DI's AFNs that are located in different scheduled areas (§ 505).

"Reinvested earnings" means (a) total earnings (defined in § 306(c)) of incorporated AFNs, less (b) dividends paid by incorporated AFNs to the DI and certain other AFNs, plus (c) dividends and remittances received by incorporated AFNs from certain other AFNs (§ 306 (b)).

For purposes of the regulations, each of the countries of the world is assigned to one of three "scheduled areas" (A, B, and C (§ 319). Direct investment of a DI is generally calculated on the basis of these scheduled areas, reflecting aggregate transactions involving all AFNs located in each such area (§§ 306 and 313). Schedule A generally comprises the less-developed countries; Schedule B, certain specified developed countries; and Schedule C, the remaining countries. For certain purposes, however, direct investment allowables may be use on a worldwide rather than a schedular basis (§§ 503 and 506; see also Subpart M).

(iv) *Authorized direct investments.*—Positive direct investment in AFNs is prohibited except to the extent that it is authorized either generally under the regulations or individually by specific authorization (§§ 201(a) and 801). Subpart E (§§ 501–506) provides three direct investment allowables, one of which a DI must elect for each year (§ 502):

A worldwide minimum allowable of $6 million (§ 503);

An historical allowable for each scheduled area based on direct investment in each such area by the DI during 1965–66 (§ 504(a));

An earnings allowable for each scheduled area based on the DI's share of AFN earnings in each such area during the preceding year (§ 504(b)).

In general, the unused portion of an allowable (other than the § 503 allowable) may be carried forward to succeeding years (§§ 504 (d) and (f) and 506(d)).

Historical allowables in Schedule C or B are increased by a limited "upstream" redistribution (§ 504(c)).[1] The historical or the earnings allowables provided in § 504 may be used "downstream" (§ 504 (d)).

Commencing in 1970, DIs are eligible for a worldwide "incremental earnings" allowable (in addition to one of the foregoing allowables) based on the amount by which aggregate AFN earnings in a calendar year exceed the average of such earnings during 1966–67 (§ 506).

Because of considerations unique to the airlines industry, special rules for computing authorized direct investment for U.S.-flag air carriers are provided in Subpart M.

Although Canada is assigned to Schedule B, the regulations do not restrict direct investment made or liquid foreign balances held in that country (Subpart K).

(v) *Long-term foreign borrowing.*—Direct investment in AFNs that is offset by proceeds of long-term foreign borrowing (defined in § 324) will not involve use of the DI's allowables until the borrowing is repaid: "Available proceeds" of long-term foreign borrowing (defined in § 324(d)) may be used to offset positive direct investment if "allocated" in accordance with certain prescribed conditions (§ 306(e)). Prior to July 1, 1972, available proceeds were used as a deduction against a DI's net transfer of capital if expended in making transfers of capital (§ 313(d)(1), revoked July 1, 1972). Proceeds that have been expended in making transfers of capital prior to July 1, 1972 may subsequently be allocated, and allocated proceeds may later be reallocated, as an offset to positive direct investment in a different scheduled area (§ 203(d) (2) and (3)).

Repayment of long-term foreign borrowing is generally authorized by § 1002 if the DI satisfies the applicable certification, recordkeeping, and reporting requirements (Subpart J).

Subpart N (§§ 1401–1407) provides rules for the treatment of borrowings by an AFN that qualifies as an OFS. Funds received by an OFS from "overseas borrowing" may be transferred to other AFNs of the DI without recognition of any transfers of capital under § 505, or may be lent by the OFS to the DI and thereafter treated as available proceeds of long-term foreign borrowing. In addition, such borrowing by the DI from its OFS may be substituted for borrowing by the DI from unaffiliated foreign nationals, and vice versa. Special provision is made for the assumption by a DI of overseas borrowing by its OFS.

(vi) *Foreign balance restrictions.*—The regulations restrict the amount of assets that a DI may hold in liquid form in a foreign country other than Canada. Such balances may not exceed the sum of the amount of available proceeds of long-term foreign borrowing by the DI, plus the greater of $100,000 or the average of monthend liquid foreign balances held by the DI during 1965–66 (§ 203 (c)).

(vii) *Reporting requirements.*—DIs are required to keep records and to submit certain reports to OFDI (§§ 203(b), 601, 602 and 1402(b)). If the DI's interest in all AFNs is $100,000 or more, or if the DI's share in the annual earnings of its AFNs is $50,000 or more in any year, a Base Period Report (Form FDI–101) of direct investment by scheduled area during 1965–67 (and 1964 earnings for Schedule C) must be submitted. The DI may, in addition, be subject to annual and cumulative quarterly reporting requirements. To determine whether such reporting requirements are applicable, DIs should consult the instructions to Form FDI–102/102F.

Special rules apply to reporting by DIs that are members of an affiliated, family, or associated group or are owners of other DIs (§ 907).

Additional comments.

As used in this Bulletin, the terms "OFDI" and the "Office" refer generally to the Office of Foreign Direct Investments but may also be used, for the sake of convenience, to include the Secretary of Commerce and all other persons to whom any function, duty, or authority referred to in Executive Order 11387 or in the regulations has been delegated pursuant to Department Order 184–A (issued on Jan. 1, 1968), Department Order 184–B (as amended) or § 806 of the regulations.

Examples in this Bulletin involving transactions in years subsequent to 1973 are intended for illustrative purposes only, and no inference should be drawn concerning the actual amount of Subparts E and M allowables that will be available in such years. Accordingly, in submitting certificates described in § 1002(b), a DI must assume that the

[1] "Upstream" and "downstream" refer to the relationship of one schedule area to another. The upstream sequence is Schedule A, Schedule B, and Schedule C. The downstream sequence is Schedule C, Schedule B, and Schedule A.

regulations will be in effect for at least 7 years after the date the certificate is filed and that general allowables during each year of such 7-year period will not be more than the amounts applicable for the year in which the certificate is filed.

B201—Prohibited Direct Investment

§ B201–1 Introduction.

Section 201 sets forth the basic prohibitions on direct investment and the regulatory authority of OFDI, as derived from Executive Order 11387 of January 1, 1968. The section covers: General prohibition of positive direct investment (§ 201(a)); exclusion of financial institutions subject to the Voluntary Foreign Credit Restraint Program administered by the Board of Governors of the Federal Reserve System (§ 201(b)(2)); exclusion of transactions arising from a foreign national's interest in a U.S. business § 201(c)); and discretionary conditions or sanctions (§ 201(d)).

§ B201–2 General prohibition.

Section 201(a) prohibits a DI from making positive direct investment in AFNs during any year, beginning with the effective date of the regulations (Jan. 1, 1968), subject to express authorization for certain kinds and amounts of positive direct investment set forth in Subpart E (general allowables), Subpart J (repayment of borrowings), Subpart K (direct investment in Canada), and Subpart M (U.S.-flag air carriers). In addition, OFDI may permit other transactions by means of specific authorizations or exemptions, as provided in § 801.

The prohibition of § 201(a) is addressed to "positive direct investment (a technical term defined in § 306(a)(3)) during any year." This does not mean that specific transactions between a DI and an AFN are prohibited; rather, the focus is on the net effect of all transactions during a year, measured at yearend.

The term "year" normally means a calendar year. However, in certain circumstances, a DI may be specifically authorized to measure compliance with § 201(a) on the basis of a fiscal year. (See § 321.)

Example 1. DI has a wholly owned incorporated AFN (C) in Germany. During 1969, DI loans $1,200,000 to C. The loan does not violate § 201(a) at the time it is made, although the transaction constitutes a transfer of capital under § 312(a) and will be taken into account in determining the amount of direct investment made by DI in all AFNs in Schedule C for the entire year.

Example 2. DI is authorized by § 504 (a) and (c), to make positive direct investment of $1,500,000 in Schedule A during 1969. Between January 1, and December 31, 1969, DI's positive direct investment in that scheduled area is $1,700,000. DI is out of compliance (i.e., has violated § 201(a)) in the amount of $200,000.

§ B201–3 Exclusions.

(i) *Financial institutions.*—Under the terms of Executive Order 11387, and as provided in § 201(b)(2), banks and nonbank financial institutions are exempt from the regulations if they are subject to the Voluntary Foreign Credit Restraint Program administered by the Board of Governors of the Federal Reserve System. Included in this category are commercial banks, bank holding companies, savings banks, trust companies and trust departments of banks, insurance companies, mutual funds, finance companies, investment bankers and brokers, pension funds, foundations and other nonprofit institutions, "Edge Act" and "Agreement" subsidiaries of commerical banks, and U.S. branches of foreign banks or nonbank financial institutions. The Federal Reserve Program calls upon such institutions to refrain from making loans or extending credit to borrowers that would "directly or indirectly" permit an outflow of funds inconsistent with the provisions and intent of the OFDI Program or making loans to U.S. subsidiaries or branches of foreign companies that otherwise would have been made to the foreign parent or that would substitute for credit that might otherwise have been obtained abroad.

U.S. investment companies owning or establishing offshore mutual funds are subject to the Federal Reserve Program, whereas U.S. individuals owning or establishing foreign banks or nonbank financial institutions are subject to OFDI. Also, independent leasing companies and leasing affiliates of manufacturing companies are generally not included as nonbank financial institutions subject to the Federal Reserve Program.

If a U.S. financial institution that is subject to the Federal Reserve Program acquires a nonfinancial enterprise which is a DI, OFDI will continue to regulate the direct investment activities of the acquired company and separate reporting requirements for parent and subsidiary will be maintained.

(ii) *Transfers of capital to foreign owners.*—The regulations do not restrict bona fide transfers of capital or distribution of earnings to a foreign national arising from the foreign national's ownership interest in a U.S. entity.

Example 3. A U.S. corporation (X) is 50 percent owned by an Italian corporation (Y). Y is publicly owned by foreign nationals. During 1969, X repays a borrowing from Y of $1 million and pays Y a dividend of $100,000. During 1970, X is liquidated and a liquidating dividend is paid to Y. The transactions are not subject to the regulations.

§ B201–4 Reduction of authorized direct investment or of period for measuring compliance.

Section 201(d) authorizes OFDI to impose conditions on, or to reduce the amount of, authorized direct investment by a DI. Although direct investment is generally measured on an annual basis, § 201(d) gives OFDI the right to impose a shorter period for compliance purposes with respect to any DI.

Section 201(d) provides authority for administrative action by OFDI where large outflows early in a year indicate that serious violations could occur unless remedial steps are taken. The section also contains authority for appropriate sanctions in flagrant instances of disregard for the objectives of the program, such as in the case of a company that temporarily makes a large reduction in foreign investments at the very end of a year (thereby producing literal compliance with the regulations for that year) and then offsets the reduction with a major reinvestment abroad in the beginning of the following year.

B203—Liquid Foreign Balances

§ B203–1 Introduction.

Section 203 limits the amounts of funds or other liquid assets that a DI may hold abroad as of the end of each month. Commencing July 1, 1972, § 203 (c) requires a DI to repatriate to the United States "liquid foreign balances" (defined in § 203(a)(2)) in excess of the sum of available proceeds of long-term foreign borrowing by the DI plus specified historical levels of such holdings or $100,000, whichever is greater. An exception from the repatriation requirement is made for liquid foreign balances held in Canada (§ 1105(b)).

While § 203(c) refers to monthend holdings for purposes of the limitation on liquid foreign balances, it is intended that DIs should not exceed the permissible level throughout the month.

The provisions of § 203 also apply to foreign balances and available overseas proceeds held by an overseas finance subsidiary (OFS). See § 1403(b).

§ B203–2 Summary.

Section 203(a) defines the terms "foreign balances" and liquid foreign balances" and provides that under certain circumstances foreign balances held by another person will be deemed held by a DI.

Section 203(b) requires a DI to keep books and records identifying proceeds of long-term foreign borrowing and the uses to which the proceeds of each such borrowing have been put.

Section 203(c) limits the amount of liquid foreign balances (other than Canadian balances) a DI may hold at the end of any month, commencing July 1, 1972, to the sum of the amount of available proceeds of long-term foreign borrowing by the DI at the end of such month, plus the greater of the average end-of-month liquid foreign balances (other than Canadian balances and available proceeds in the form of such balances) held by the DI during 1965 and 1966 or $100,000.

Commencing January 1973, section 203 (d)(2) permits proceeds of long-term foreign borrowing (made during 1965 or any succeeding year) that have been expended prior to July 1, 1972, and deducted from net transfer of capital pursuant to § 313(d)(1) to be "allocated" to positive direct investment in another scheduled area. When expended proceeds are subsequently allocated, the DI must recognize a positive transfer of capital to the scheduled area in which the § 313(d)(1) deduction was previously taken; further allocation will likewise result in a transfer of capital to the scheduled area to

which the proceeds were last allocated. (For a more detailed analysis of § 203(d)(2), see § B324–10.)

Section 203(d)(3) permits a DI to reallocate proceeds of long-term foreign borrowing to offset positive direct investment in a scheduled area other than that in which such proceeds were originally allocated. In such event, a transfer of capital is charged to the scheduled area to which the immediately preceding allocation was made. (For a more detailed analysis of § 203(d)(3), see § B324–10.)

§ B203–3 Definition of foreign balances.

The term "foreign balances" is defined in § 203(a)(1) to mean money on deposit in a foreign bank (including demand, time and fixed interest deposits and certificates of deposit); negotiable instruments, nonnegotiable instruments acquired after June 30, 1968, and commercial paper issued by unaffiliated foreign nationals (other than such instruments or paper acquired as a result of a DI's export of goods and services from the United States); and securities issued or guaranteed by a foreign country.

The term "money on deposit in a foreign bank" includes all bank deposits, whether interest-bearing or not, maintained with a "foreign bank" as defined in § 317(b).

The terms "negotiable instruments," "nonnegotiable instruments," "commercial paper," and "securities" include notes, bonds, debentures, drafts, bills of exchange, or other evidences of indebtedness. The physical location of such evidences of indebtedness is immaterial.

The term "securities issued or guaranteed by a foreign country" includes debt securities issued or guaranteed by any governmental unit of a foreign country, i.e., the national government, states, cities, municipalities, counties, cantons, provinces, and the like. The physical location of such securities is immaterial.

Equity interests do not constitute foreign balances. Furthermore, items such as accounts receivable not evidenced by any note or security, precious metals, jewels, jewelry, commodities futures contracts and currency futures contracts do not constitute foreign balances.

§ B203–4 Definition of liquid foreign balances.

As defined in § 203(a)(2), "liquid foreign balances" do not include:

Negotiable instruments, nonnegotiable instruments, commercial paper and securities issued or guaranteed by a foreign country acquired on or before June 30, 1968 that are not redeemable at the option of the DI and are not transferable and readily marketable;

Bank deposits, negotiable instruments, nonnegotiable instruments, commercial paper and securities issued or guaranteed by a foreign government that have a period of more than 1 year remaining to maturity when acquired by the DI and are not redeemable in full at the option of the DI within a period of 1 year after such acquisition;

Foreign balances subject to restrictions on liquidation and transfer imposed by a foreign country (i.e., exchange controls or similar restrictions); and

Foreign balances pledged or hypothecated by the DI in connection with a borrowing by the DI or by an AFN or foreign balances transferred by a DI to the extent of any transfer of capital recognized under § 312(a)(9).

For purposes of § 203(a)(2)(iv), foreign balances are deemed pledged or hypothecated if, pursuant to an express or implied agreement, the DI may not withdraw such balances while the borrowing involved remains outstanding.

The exclusion under § 203(a)(2)(iv) does not apply to any amount pledged or hypothecated in excess of the amount of the related borrowing by the DI or by an AFN.

Example 1. DI obtains a 3-year loan of $200,000 from a foreign bank and immediately expends the proceeds in an AFN. As a condition of obtaining the loan, DI is required to keep $40,000 on deposit with the foreign bank during the 3-year term. Assuming the loan constitutes a long-term foreign borrowing (as defined in § 324), this arrangement involves a $40,000 transfer of capital to the AFN in addition to the $200,000 transfer of capital resulting from investment of the loan proceeds. (See § 312(a)(9) and § B312–13.) Consequently the $40,000 deposit is not a liquid foreign balance.

Example 2. DI enters into an arrangement with a foreign bank pursuant to which DI deposits $100,000 with the bank and the bank immediately lends $100,000 to an AFN. This arrangement involves a $100,000 transfer of capital to the AFN. (See § 312(a)(9) and § B312–13.) The $100,000 deposited by DI is not a liquid foreign balance.

Example 3. DI has a 25 percent interest in a Swiss bank. In July 1970, DI deposits $100,000 with the bank to provide it with additional working capital. The deposit will not be considered a liquid foreign balance under § 203(c), but will constitute a transfer of capital under § 312(a)(2).

§ B203–5 Foreign balances deemed held by a DI.

Section 203(c) comes into effect if liquid foreign balances are "held" by a DI. A DI holds foreign balances if it has title to the securities, instruments or rights that are included within the meaning of the term, as defined in § 203(a)(1).

In addition, § 203(a)(4) establishes circumstances in which a DI is deemed to hold foreign balances even though title is vested in another person. Subparagraph (i) imputes foreign balances to a DI if they are held by any person (including an AFN) "principally formed or availed of by the DI for the purpose of holding title to such balance"; i.e., a DI having the real beneficial interest in foreign balances will be deemed to hold such balances notwithstanding that another person has nominal legal title.

Example 4. DI forms an incorporated AFN and transfers liquid foreign balances to it. The AFN does not engage in any business other than holding liquid foreign balances. Such balances are deemed to be held by DI under § 203(a)(4)(i). (Note that the transfer also constitutes a transfer of capital from DI to the AFN, pursuant to § 312(a)(2).)

Example 5. DI enters into an arrangement with an unaffiliated foreign national whereby the latter will hold title to DI's liquid foreign balances but will not use the funds itself. The liquid foreign balances are deemed to be held by DI under § 203(a)(4)(i).

Subparagraph (ii) of § 203(a)(4) imputes foreign balances to a DI even though title is held by another person (including an AFN), if the balances (or cash equivalent) are returnable to the DI on demand without material conditions and they are not reasonably related to the business needs of the holder. Foreign balances are not deemed returnable to a DI upon demand without material conditions merely because, by virtue of stock ownership, the DI controls the person holding title.

Example 6. DI has an incorporated AFN (A) engaged in manufacturing operations. From 1960 through 1968, A earned $10 million and on June 30, 1969 has $8 million invested in 6-month certificates of deposit of foreign banks. No part of these funds is needed by A to meet business requirements. Nevertheless, the foreign balances are not deemed to be held by DI, since they are not considered to be returnable to DI upon demand without material conditions.

On the other hand, assume that on June 1, 1969, A declared a $500,000 dividend in favor of DI and such dividend became payable on demand on June 15, 1969. In this event, $500,000 of the $8 million are deemed liquid foreign balances held by DI as of June 30, 1969. Note also that, since the dividend was not paid when due, a debt obligation is deemed to have been created in favor of DI resulting in a $500,000 transfer of capital by DI to A under § 312(a)(1). Accordingly, payment of the past due dividend will constitute a transfer of capital from A to DI pursuant to § 312(b)(3).

Example 7. DI has a 50 percent interest in a German company (C). In June 1969, DI lends $100,000 to C, repayable on demand. The $100,000 is invested by C in a 6-month certificate of deposit of a foreign bank. C does not need any part of the $100,000 to meet business requirements. The certificate of deposit is deemed to be held by DI. (Note also that the loan would constitute a transfer of capital from DI to C pursuant to § 312(a)(1).)

Determining whether liquid foreign balances held by an AFN are "unrelated to the business needs" of the AFN requires analysis of all facts and circumstances of the particular case. The nature of the AFN's business and customary holdings of liquid funds are relevant factors. As a general rule, liquid foreign balances held by an AFN will not be considered unrelated to its business needs if required to pay current operating expenses (including tax, royalty, interest, and similar obligations), to pay for reasonably current or planned capital improvements or additions, or as standby contingency reserves.

Example 8. DI has a wholly owned subsidiary in Mexico (a) engaged in manufacturing operations. A holds $1 million in liquid foreign balances as of June 30, 1969, of which only $250,000 may reasonably be required for working capital purposes. However, A has entered into a contract for expansion of facilities and plans to expand the remaining $750,000 in 1969 and 1970 for this purpose. The liquid foreign balances held by A are, therefore, related to business needs and are not treated as liquid foreign balances of DI under § 203(a)(4) even if returnable to DI upon demand without material conditions.

Example 9. DI has a wholly owned subsidiary (C) in Germany engaged in manufacturing operations. As of June 30, 1969, C holds liquid foreign balances of $1 million. C requires only $250,000 of this amount for working capital purposes, and intends to lend the remaining $750,000 from time to time to other AFNs on a short-term basis. Accordingly, $750,000 of the liquid foreign balances held by C are unrelated to its business needs and will be treated as liquid foreign balances of DI under § 203(a)(4)(ii) if they are returnable to DI upon demand without material conditions.

Although a DI may have nominal title to foreign balances used by an unincorporated AFN for its ordinary business operations, the DI will be deemed to hold such balances only if the conditions of § 203(a)(4) are met.

Example 10. DI has a branch in the United Kingdom (B) engaged in manufacturing operations. For many years, B has maintained an acccount averaging $500,000 with a local bank. As of June 30, 1969, B's account with the local bank has a balance of $500,000, related to its business needs. Thus, although the $500,000 is deemed returnable to DI upon demand without material conditions because B is a branch, the liquid foreign balances are not attributable to DI under § 203(a)(4).

Example 11. DI has a branch in the United Kingdom (B) engaged in manufacturing operations. For many years, B has maintained an account averaging $500,000 with a local bank. However, as of June 30, 1969, B's balance in the account is $1 million. B has recently been expanding business at a rapid pace and estimates that, for the remainder of 1969 and thereafter, it will have to maintain cash balances of at least $1 million in order to meet increased operating commitments. The liquid foreign balances held by B are related to business needs and, therefore, are not treated as liquid foreign balances of DI under § 203(a)(4), even though returnable to DI upon demand without material conditions.

Example 12. An individual (X) who is a "person within the United States" owns a substantial apartment house complex in France. As a result, X is a DI and the apartment house complex is his AFN. X also owns a chalet in France purchased principally for his own personal use, although he and his family reside there only from June through August each year. During the remainder of the year, X and his family reside in the United States and the chalet is rented on a month-to-month basis to others. The chalet is not an AFN of X.

X maintains two demand accounts with French banks. The funds in one account (account No. 1), consisting principally of the income earned from the apartment house complex, are needed and utilized to pay the operating expenses of the apartment house complex and for repairs and improvements to this property. Operating expenses of the chalet and the cost of repairs and improvements to this property are paid out of the second account (account No. 2), but the principal use of this account is for X's personal expenses when he resides in France. The funds in account No. 1 are not liquid foreign balances of X, as they are related to the business needs of X's AFN (i.e., the apartment house complex); the funds in account No. 2 are liquid foreign balances of X, since their principal use is not for business needs.

Foreign balances held in liquid form by an OFS are to be included in the computation of liquid foreign balances held by a DI for purposes of § 203(c). See § 1403(b).

§ B203–6 Valuation of foreign balances.

Negotiable instruments, nonnegotiable instruments, commercial paper and securities constituting foreign balances shall be valued, for purposes of § 203, at fair market value, or, if fair market value is not readily determinable, at the cost of acquisition. In the case of items the prices of which are quoted on a daily basis, the final bid price (or the closing sale price, if available) on the relevant date will be considered the fair market value on such date.

Foreign balances in the form of bank deposits or other claims denominated in a foreign currency are valued at the current exchange rate in terms of U.S. dollars.

§ B203–7 Limitation on amount of liquid foreign balances.

Section 203(c) provides that a DI must limit the amount of non-Canadian liquid foreign balances held at the end of any month to an amount determined by adding together (1) the amount of the DI's available proceeds of long-term foreign borrowing, calculated at the end of such month under § 324, plus (2) a minimum amount of $100,000 or, if greater, the average end-of-month amount of non-Canadian liquid foreign balances (excluding available proceeds) that were held by the direct investor during 1965 and 1966.

As provided by §§ 203(c) and 1105(b), Canadian foreign balances are not subject to the limitations of §203(c) and can be held by a DI (or an AFN) without restriction on amount.

Section 1105(b) excludes Canadian balances from the calculation of total liquid foreign balances for purposes of § 203(c). The parenthetical reference to "direct investment liquid foreign balances" in § 1105(b) is intended merely to reflect the exclusion of available proceeds of long-term foreign borrowing (as defined in § 324(d)) from the restrictions of § 203(c). It is not the intention or § 1105(b) to authorize inclusion of available proceeds held in Canada during 1965 and 1966 for purposes of calculating average end-of-month liquid foreign balances under § 203(c).

Calculations under § 203(c) are to be made on a worldwide rather than on a schedule basis. Accordingly, a DI may transfer liquid foreign balances from one foreign country to another, but the aggregate amount held abroad at the end of any month may not exceed the amount permitted by § 203(c).

Example 13. DI held liquid foreign balances (other than Canadian foreign balances and available proceeds of long-term foreign borrowing) of $800,000 on March 31, 1965, $800,000 on April 30, 1965, $400,000 on May 31, 1965, $1.6 million on April 30, 1966, and $1.2 million on May 31, 1966. DI held no liquid foreign balances of any kind as of the end of any other month during 1965 or 1966. Therefore, DI may hold $200,000 of liquid foreign balances (other than Canadian liquid foreign balances) plus the amount of its available proceeds as of the end of any month commencing July 31, 1972 (i.e., the sum of monthend balances, $4,800,000, divided by 24).

Example 14. DI did not hold any liquid foreign balances during 1965 or 1966. Nevertheless, DI may hold up to $100,000 in liquid foreign balances (other than Canadian liquid foreign balances) plus the amount of its available proceeds as of the end of any month commencing July 31, 1972.

Example 15. DI held liquid foreign balances during 1965 and 1966, but all were Canadian foreign balances. DI may not hold more than $100,000 of liquid foreign balances (other than Canadian liquid foreign balances) plus the amount of its available proceeds as of the end of any month commencing July 31, 1972.

When available proceeds are allocated to offset positive direct investment pursuant to § 306(e), the amount of liquid foreign balances that may be held under § 203(c) is correspondingly reduced. Moreover, § 306(e) provides that available proceeds allocated to positive direct investment may not be held in the form of foreign balances or foreign property, liquid or otherwise, except that such proceeds may be expended in making transfers of capital of AFNs (without any reduction in net transfer of capital for the use of proceeds). It should be noted that while the expenditure of available proceeds in making transfers of capital prior to July 1, 1972 reduced the amount of such proceeds that might be held in the form of liquid foreign balances, such expenditure on or after that date does not reduce the amount of the net transfer of capital and correspondingly does not reduce the amount of available proceeds or the amount of liquid foreign balances that may be held under § 203(c).

Although compliance with § 203(c) is measured at the end of each month during any reporting period, all DIs should be aware that it is the intent of the limitation imposed by § 203(c) that the volume of liquid foreign balances held by any DI should not significantly exceed during the course of any month the amount that may be held under § 203(c) at monthend.

It should be noted that if a borrowing that was treated as long-term foreign borrowing is retroactively disqualified by reason of repayment within 12 months, the amount of liquid foreign balances that may be held under § 203(c) will retdoactively be reduced by the amount of borrowing that was disqualified. Such reduction should be reported on the amended or subsequent reports on Form FDI–102/102F required to be filed after the disqualification of the borrowing (see § B324–4).

Example 16. On May 1, 1972, DI negotiated a $1 million long-term foreign borrowing, the proceeds of which were placed in a demand deposit with a London bank. On June 1, 1972, DI withdraws $200,000 from the London bank and loans the funds to a French AFN (C) on a 60-day note. On July 1, 1972, DI withdraws $300,000 from the London bank and loans the funds to a German AFN (D) on a 60-day note. C repays the $200,000 loan in July and D repays the $300,000 loan in August 1972. On December 31, 1972, DI allocates $800,000 to offset postive direct investment pursuant to § 306(e). Under the regulations as in effect prior to July 1, 1972, DI held $1 million of available proceeds in the form of liquid foreign balances outside the limitations of § 203(c) on

May 31, 1972, and $800,000 of such proceeds outside the limitations of § 203(c) on June 30, 1972 ($1 million less $200,000 expended in making a transfer of capital and deducted under § 313(d)(1)). Thereafter, DI is permitted to hold liquid foreign balances in the amount of $800,000 (in addition to the historical or minimum amount) at the end of each month until December 1972, since neither the expenditure of available proceeds on or after July 1, 1972, nor the repayment of a loan made with available proceeds affects the amount of available proceeds or the exemption in such amount from the § 203(c) limitation. The allocation on December 31, 1972 reduces the amount of available proceeds to zero and, as a result, wipes out the DI's available proceeds authorization under § 203(c). In addition, the DI is required by § 306(e) to repatriate the available proceeds that were allocated.

Example 17. In July 1972, DI issues $30 million of debentures convertible into the stock of DI. The borrowing qualifies as long-term foreign borrowing under § 324 and DI receives $29 million, after payment of underwriting and legal expenses. Since DI has $30 million of available proceeds, DI may hold that amount of liquid foreign balances at month-end, until it allocates a portion or all of the borrowing, at which point the amount of liquid foreign balances that may be held is correspondingly reduced.

§ B203–8 Available proceeds of long-term foreign borrowing: Effect on positive net transfer of capital. [Revoked]

B304—Affiliated Foreign Nationals

§ B304–1 Introduction.

Only persons within the United States who are or who become DIs by virtue of their interests in affiliated foreign nationals (AFNs) are subject to the program.

As a general rule, a transaction between a person within the United States and a foreign national (as defined in § 302) that does not affect the U.S. person's equity or debt investment in an AFN, or does not result in a foreign national becoming an AFN, is not subject to the direct investment prohibitions imposed by § 201(a) of the regulations.

§ B304–2 Summary.

Restrictions on foreign direct investment under the programs are applicable only to persons within the United States having or acquiring, directly or indirectly, a 10 percent or greater interest in an affiliated foreign national. A "foreign national" is defined in § 302(a) as—

> * * * any person which is not a person within the United States * * *, including a corporation or partnership organized under the laws of a foreign country * * *, a business venture conducted within a foreign country * * *, and a foreign bank * * *.

The interest in a foreign national required to make it an AFN for purposes of the regulations is, in general, determined by the U.S. investor's voting rights if the foreign national is a corporation, or by the share of profits to which the investor is entitled if an unincorporated foreign business activity is involved.

Nonprofit foreign nationals, such as charitable, educational, religious, scientific, literary, or similar organizations, are not treated as AFNs.

Business ventures in which an AFN has an interest may themselves be AFNs if located in a scheduled area other than that of the parent. Canadian business ventures of AFNs located in Schedule B and non-Canadian, Schedule B business ventures of Canadian AFNs are treated as separate AFNs, even though such relationships within the same scheduled area would ordinarily result in a single AFN.

§ B304–3 Requisite financial interest.

The interest that will give rise to a DI–AFN relationship is, generally, a 10 percent or greater voting interest in a foreign corporation or a 10 percent or greater interest in the profits of a foreign partnership or business venture (See §§ 304(b)(2), 901 and 902). However, § 304(b)(4) provides that a DI–AFN relationship may be deemed to exist notwithstanding this general rule. Under present OFDI policy, this caveat applies principally to cases where the U.S. investor actually participates in and exercises a controlling interest over the affairs of the foreign national, and has transferred funds or other property in excess of $200,000 to the enterprise during any year commencing with 1968.

A relationship which is solely that of debtor and creditor is not subject to the 10-percent interest test (whether or not the loan is secured), even though principal and/or interest payments by the foreign borrower may result in the U.S. creditor receiving all or a substantial portion of the foreign enterprise's revenues.

§ B304–4 Foreign nationals.

(i) *Corporations.*—A foreign corporation includes any organization incorporated under the laws of a foreign country, or having all or a substantial part of the legal characteristics commonly attributed to corporations under the laws of the United States (§ 307(b)). Thus, an organization that is not formally incorporated under foreign law but (a) has transferable interests, (b) is organized so that holders of interests are not liable for its obligations except to the extent of their contributions or subscriptions, and (c) has perpetual duration (or for a substantial fixed period), would be considered a foreign corporation.

Pursuant to § 304(b)(1), an incorporated AFN is generally assigned to the scheduled area where organized, regardless of the situs of operations. However, if the AFN conducts no operations in the scheduled area of incorporation but merely maintains a required statutory office there, it may be assigned to a different scheduled area for purposes of the regulations (§ 304(b)(4)).

(ii) *Partnerships.*—A foreign partnership includes formally structured noncorporate organizations created under a partnership law or similar statute of a foreign country. A foreign joint venture will ordinarily be treated as a "business venture" (see below), rather than as a partnership, if it is formed to engage in a specific transaction or series of related transactions and is to be liquidated when the transaction or transactions have been completed.

A foreign partnership is assigned to the scheduled area where it is organized (§ 304(b)(1)).

(iii) *Business ventures.*—A foreign business venture encompasses business activities in a foreign country (a) by a DI, (b) by employees or partners of a DI on behalf of the DI, or (c) by employees or partners of an AFN on behalf of such AFN (§ 304(a)(2) and (3), as limited by § 304(c) and (d)). Some types of facilities abroad, such as storage areas and display offices owned or physically controlled by the DI, may be treated as business ventures for purposes of the regulations even though frequently not considered "permanent establishments" for other legal purposes.

The term "employee" as used in § 304 is not necessarily synonymous with its meaning for Federal tax purposes. For example, an agent working substantially full-time for a U.S. principal and having a stock of goods from which orders are filled, or having authority to accept orders or otherwise execute contracts on behalf of his principal, may be considered an employee for purposes of this section. Furthermore, the agent's lack of authority to conclude contracts may be immaterial if acceptance by the DI is, in actual practice, merely a ministerial act.

Ownership interests in real property abroad (excluding mortgages secured by real property) will constitute business ventures if held primarily for business purposes (including real property held for appreciation). Therefore, crop or grazing acreage, apartment houses, and land held for subdivision, are considered business ventures. On the other hand, real property such as a house in a foreign country purchased by a U.S. resident principally for personal use will not be considered held for business purposes even though rented to others for a portion of the year.

Contract construction, engineering, oil exploration, and similar operations involving a jobsite or project office in a foreign country are also business ventures. Drilling operations on the U.S. Continental Shelf or geological drilling in the deep ocean over which no nation asserts jurisdiction are deemed to be conducted within the United States for purposes of the regulations, while drilling operations conducted on the Continental Shelf adjacent to a foreign country are deemed to be conducted in that country.

A vessel owned directly by a DI is not a foreign national for the purposes of the regulations, whether or not such vessel is registered in the United States. The transfer of title to a vessel or of rights under a contract for the construction of a vessel by a DI to its incorporated AFN is a transfer of capital under § 312(a) in the amount of the market value of the vessel or of progress payments already made for the construction of the vessel, respectively. Earnings or losses from the operation of a vessel that is owned or chartered by an incorporated AFN are treated as earnings or losses of such AFN.

A vessel, support vessel, or drilling barge, that is owned directly by a DI but operated by a business venture AFN shall be assigned a value of zero (and related liabilities or depreciation charges shall be excluded) in computing aggregate net assets of such business venture.

Under § 304(a)(2), a DI's overseas branch is a business venture, whether or not the DI customarily maintains separate books and records reflecting the assets, liabilities, earnings, and expenses, etc. attributable or allocable to the branch. Similarly, a branch of an incorporated AFN is a foreign business venture, unless located in the same scheduled area as the parent AFN. In such case the parent and its business venture are grouped as a single AFN for purposes of the regulations, provided neither is Canadian (§ 304(a)(1), as qualified by § 304(a)(3)). If the parent AFN and its business venture are in different scheduled areas, or if in the same scheduled area and one is Canadian, two AFNs would be attributed to the DI (§ 304(a)(3)).

Under § 304(b)(1), certain nonpermanent or transient business ventures conducted in more than one scheduled area during any year are assigned to the scheduled area in which the business venture is conducted for the greatest period of time during such year. Thus, for example, a traveling circus performing for short periods of time during a given year in a number of countries in different scheduled areas, but primarily in Schedule C countries, will be treated as a Schedule C AFN for that year.

§ B304–5 Specific exceptions.

Section 304 (c) and (d) enumerate certain categories of foreign business activities that are not treated as AFNs regardless of the interest that a person within the United States may have or may acquire. Excepted are foreign enterprises solely of a charitable, educational, religious, scientific, literary, or similar nature not engaged in for profit. Also excepted from treatment as AFNs during a given year are business ventures that (a) do not have or involve, at any time during the year, gross assets of more than $50,000 valued at the greatest of cost, book, replacement, or market (§ 304(d)(1)); (b) are commenced during the year and are not reasonably expected to be conducted for more than 12 consecutive months (§ 304(d)(ii)); or (c) are terminated within the year and were not, in fact, conducted for more than 12 consecutive months (§ 304(d)(iii)).

The test under § 304(d)(1) relates to gross assets determined in accordance with accounting principles generally accepted in the United States. If, at any time during the year, the business venture has gross assets of more than $50,000, it is deemed an AFN for the entire year.

The determination whether a business venture in a foreign country is reasonably expected to be conducted, or is in fact conducted, for a period of 12 consecutive months, under § 304(d)(ii) and (iii), is governed by the primary activity of the enterprise during such period. Continuous physical presence is not required. If, for example, a traveling circus spent substantially all of the requisite 12-month period abroad, but returned to the United States occasionally for appearances, the business venture would nevertheless be considered to have been conducted within one or more foreign countries for more than 12 consecutive months.

With specific reference to contract construction, engineering, and similar operations conducted directly by U.S. companies involving opening of a job site and/or project office in a foreign country (or in waters under the jurisdiction of a foreign country), the following rules will generally be applied under § 304(d)(ii) and (iii):

The commencement date of the business venture is the date on which the first materials or equipment arrive at the job site, or the date the project office is opened, whichever is earlier, and

The termination date of the business venture is the date when all transfers of capital and earnings attributable to the relevant contract (except for guaranty retentions of a reasonable amount) are charged off the job's books and repatriated to the United States. (Payments under guaranty retentions should be charged off and the balance repatriated to the United States as soon as practicable.)

A determination under § 304(d)(ii) whether an overseas business venture is reasonably expected to be conducted for more than 12 consecutive months should be based on the facts and circumstances existing when the venture is commenced. Determinations need not anticipate delays or interruptions that are not foreseeable when the venture is commenced, such as delays or interruptions due to unanticipated labor strikes or slowdowns or unusual weather conditions.

The rule with respect to termination of a business enterprise during any year under § 304(d)(iii) is not intended to be applied inflexibly. If, due to unforeseeable delays or interruptions, a business venture cannot be terminated within the required 12-month period, but is in fact terminated with reasonable dispatch in view of the unanticipated difficulties, a specific exemption from application of the regulations may be granted (see § 301).

If an exemption under § 304(d) is applicable to a business venture owned directly by a DI (e.g., a branch of the DI), the venture is not considered to be an AFN of the DI. Therefore, transfers of capital between the DI and the venture have no effect under the regulations, nor do profits (or losses) of the venture. The result is different, however, if an exemption under § 304(d) applies to an AFN's business venture that is located in a different scheduled area from the AFN. Section 304(d) then merely serves to exclude the venture as an AFN of the DI, not to remove it from the reach of the regulations altogether. Ventures of this nature are deemed a part of the parent AFN (as are an AFN's business ventures in the same scheduled area). Accordingly, profits (or losses) of an incorporated AFN's ventures of this nature would be deemed earnings of the parent AFN, transfers of capital to the venture would be deemed transfers to the parent AFN, and any net change in the net assets of the venture would not be reflected in calculating the DI's net transfer of capital to unincorporated AFNs for purposes of § 313(b).

§ B304–6 Application of § 304.

The operation and effect of § 304 are illustrated by the following examples:

Example 1. (General.) A U.S. corporation (X) owns 10 percent of the outstanding voting stock of a corporation organized under the laws of France. The foreign company is an incorporated AFN in Schedule C (see § 304(a)(1) and (b)(1)). If the company were incorporated under the laws of Brazil, it would be an incorporated AFN located in Schedule A. If it were incorporated under the laws of the United Kingdom, it would be an incorporated AFN located in Schedule B.

If the French AFN has a branch in Italy, or if the AFN of the United Kingdom has a branch in Japan, the branch operations would be subsumed under the parent company for purposes of the regulations, since both parent and branch would be in the same scheduled area (§ 304(a)(1)). An exception to this rule applies where either the parent AFN or its branch is located in Canada, in which case both would be AFNs (§ 304(a)(3)).

By the same token, if the French corporation has a branch in Germany and a wholly owned corporate subsidiary in Australia, and the latter has a branch in Canada, DI would have only three AFNs: (a) The French corporate subsidiary, (b) the French corporation's Australian subsidiary, and (c) the latter's Canadian branch. The French AFN's branch in Germany would not be a separate AFN, since Germany and France are in the same scheduled area. The Canadian branch would be a separate AFN since, for purposes of § 304(a)(3), Canada is not deemed to be a Schedule B country.

Example 2. (Voting interest test.) A U.S. corporation owns 95 percent of the outstanding voting stock of a company in France, the remainder being owned by unaffiliated foreign nationals. The French company has a 10 percent direct interest in a corporation in Japan. Only the French company is an AFN, since X's indirect interest in the Japanese company is only 9.5 percent, i.e., 95 percent × 10 percent (see §§ 901, 902).

Example 3. (Profit interest test.) An individual (X) who is a person within the United States is a partner in a partnership (C) organized under the laws of Germany, although he is not actively engaged in C's business. Under the partnership agreement, X is entitled to receive 15 percent of the profits of C. C is an unincorporated AFN of X (see § 304(a)(1) and (b)(1)).

Example 4. (Indirect profit interest through non-AFN parent.) A French corporation (C) has 200,000 shares of stock outstanding, 100,000 of which are voting and 100,000 of which are nonvoting fixed-dividend preferred. C has numerous branches in Schedules A and B. For many years, substantially all of C's profits (including branch profits) have been distributed as dividends to holders of the preferred stock and no dividends have been paid on the common stock. A corporation in the United States (X) owns 8,000 shares of C's voting stock (8 percent) and 70,000 shares of the preferred stock (70 percent); however, this investment has not been accompanied by active participation in or control over C's business affairs. C is not an AFN of X. Moreover, although X has for

many years received more than 10 percent of the profits of C's Schedule A and B branches, in the form of preferred stock dividends from C. OFDI would not consider the branches to be AFNs. A foreign business venture owned directly by a foreign corporation or partnership is not treated as an AFN of a U.S. person unless the parent is also an AFN of the U.S. person.

Example 5. (*Exception to the 10 percent interest test.*) A U.S. corporation (X) owns 9 percent of the outstanding voting stock of a French corporation (C). X also owns a current option to acquire additional voting stock of C that, if exercised, would give X ownership of 35 percent of C's outstanding voting stock. Moreover, a majority of C's directors are designees of X and, for a number of years, X has actively participated in and exercised a controlling influence over the affairs of C. Under § 304(b)(4), OFDI could deem C to be an AFN notwithstanding X's present 9-percent interest. As a matter of policy, however, such discretion would not normally be exercised unless X transfers more than $200,000 in funds or other property to C during any year commencing with the year 1968.

Example 6. (*Second-tier AFNs.*) A U.S. corporation (X) owns 10 percent of the outstanding voting stock of a French corporation (C). C owns a factory in Argentina, a sales office in Brazil, a sales office in Japan, a sales office in the United Kingdom and numerous factories and sales offices in continental Europe. The Japanese sales office has gross assets of less than $50,000 and, therefore, cannot be an AFN because of the exemption in § 304(d)(1). Accordingly, C is an incorporated AFN located in Schedule C, embracing also the factories and sales offices in continental Europe and in Japan. Assuming the inapplicability of the exemptions set forth in § 304(d), the factory in Argentina, the sales office in Brazil, and the sales office in the United Kingdom are separate unincorporated AFNs of X (§ 304 (a)(3) and (b)(1)).

Example 7. (*Bank or brokerage account.*) An individual within the United States maintains a number of bank accounts with foreign banks and also maintains an account with a German stock brokenage firm. Neither the bank accounts nor the brokerage account are AFNs.

Example 8. (*Investment real estate.*) An individual within the United States purchased a parcel of 1,000 acres of undeveloped real estate in Brazil for $75,000 in 1967. The land is being held for investment. The real estate is an unincorporated AFN (see § 304 (a)(2) and (b)(1).

Example 9. (*Commission salesmen*). A U.S. corporation (X) enters into a contract with an individual citizens of Argentina (A) pursuant to which A will be X's exclusive representative in Latin America to solicit orders for X's products. A is not to handle the products of any other company but is to work full time in soliciting orders for X. A has no authority to accept orders, but must forward them to X for approval. A is to be compensated on a commission basis based on the gross sales of X's products attributable to A's efforts. All payments for such sales must be remitted directly to X by the purchaser. X is to pay the rental for A's office in Buenos Aires, but all of A's other expenses (including the salaries of clerical and other required personnel) are to be paid by A out of his commissions. The Buenos Aires telephone directory is to carry a listing in X's name showing the telephone number of A's office. X also rents space in a warehouse in Buenos Aires, from which orders from Latin American customers are filled. Under the foregoing facts A's operation, is not an AFN.

Example 10. (*Sales agents.*) A U.S. corporation (X) employs five salesmen who travel throughout Europe to solicit orders for X's products. The salesmen operate out of a rented office in France and are all permanent residents of France. All orders must be accepted by X in the United States, but payment is made to the office in France. The rental and all other expenses of the sales office, including the salaries of the salesmen and other office personnel, are paid by X. Assuming the inapplicability of § 304(d), the sales office operation is an unincorporated AFN of X because it is a business venture conducted on behalf of X by employees of X (see § 304(a)(2) and (b)(1)).

Example 11. (*Sales agents; leased warehouse facilities.*) A U.S. corporation (X) sells its products in continental Europe through independent sales agents in Europe, who also sell products of many other U.S. corporations. The agents are compensated strictly on a commission based on their gross sales of X's products. X also employs salaried salesmen in the United States who periodically travel to Europe to make sales to X's largest European customers. X does not maintain any permanent manufacturing or sales facility in Europe. Under the foregoing facts X does not have AFNs in Schedule C. In addition, if in order to expedite deliveries to its European customers, X rents space in a warehouse in the Netherlands where a substantial inventory is maintained and orders from X's Europeon customers are filled from this inventory, periodically being replenished by X, such operation would not constitute an AFN. Note that the result would be different if X owned the warehouse (assuming the inapplicability of § 304(d)); in that case, the warehouse itself would be an AFN.

Example 12. (*U.S. based consulting services.*) A U.S. corporation (X) is engaged in rendering management consulting services. Many of its clients are unaffiliated foreign corporations. During the course of a year, X's salaried personnel, all of whom are permanent residents of the United States, travel to X's foreign customers to render consulting services. They typically work at the head offices of the foreign companies for 1 to 2 months at a time. X does not have any AFNs by virtue of the foregoing facts.

Example 13. (*Construction projects.*) A U.S. corporation (X) is engaged in the construction business. During the course of a year, X bids on numerous European construction projects and receives contracts on a small fraction thereof. X has a permanent office in France where a variety of personnel are employed, principally to gather information concerning contemplated construction projects and to supervise and coordinate all projects on which X is then working. In January 1968, X received two contracts for construction of factories in Germany and Belgium. Soon thereafter, X transferred men and equipment to the project sites. Assuming the inapplicability of § 304(d), each project site is an unincorporated AFN of X, as is X's office in France (see § 304 (a)(3) and (b)(1)). (Note that the office in France is an AFN without regard to the opening of the German and Belgian project sites.)

Example 14. (*Oil concessions and licenses for exploration.*) A U.S. corporation (X) obtains a concession from a Schedule B country to drill for oil within that country. X then enters into a joint venture agreement with two U.S. and two foreign companies for the purpose of exploiting the concession. Under the terms of the agreement, X is entitled to receive 25 percent of any ensuing production. The oil exploration venture is an unincorporated AFN of X located in Schedule B (see § 304 (a)(2) and (b)(1)). Note that the joint venture will also be an unincorporated AFN of the other U.S. corporations, and that X and the other U.S. corporations are members of an "associated group." (See § 905.)

Example 15. (*Retail franchises.*) A U.S. corporation (X) operates, under a single trade name, a chain of quick-service restaurants throughout the United States. X franchises an unaffiliated French corporation (C) to open a restaurant in France using X's trade name. C agrees to purchase some of its goods from X, maintain certain quality standards, and pay X a yearly royalty based on profits. X does not have an AFN in France by virtue of this franchise arrangement.

Example 16. (*Break-even or loss ventures.*) Four U.S. news-publishing corporations (V, W, X, and Y) establish a membership corporation under New York law (Z). V, W, X, and Y each contribute 25 percent of the capital required by Z and each has 25 percent of the voting power in Z. Z is to gather news for the respective publications of V, W, X, and Y. In this connection, Z will establish and staff various permanent news-gathering offices throughout the world. Z is designed to operate on a break-even basis. The offices established by Z are unincorporated AFNs of V, W, X, Y, and Z even though not themselves operated for profit, since they are directly related to business activities that are for profit.

B305—Direct Investor

Section 305 defines the term "direct investor" ("DI") generally to mean any person within the United States (defined in § 322) owning or acquiring (directly or indirectly) a 10 percent or greater interest in a corporation or partnership organized under the laws of a foreign country or in a business venture conducted within a foreign country (an "affiliated foreign national," defined in § 304).

A DI may be a multiple entity or several individuals treated as a single person under § 323 (international finance subsidiaries of a direct investor), § 903 (affiliated groups), or § 904 (family groups). The term also includes a person owning less than a 10 percent interest in a particular foreign corporation, partnership or business venture, if (a) such person is a member of an associated group, as defined in § 905, that acts in concert pursuant to an agreement or understanding to own or to acquire a 10 percent interest in the foreign enterprise, or (b) such person owns a direct interest in another DI and an election, consented to by such person, is made with respect to such other DI under § 906 (b)(1).

A person within the United States first acquiring the requisite interest in a foreign corporation, partnership, or business venture will be treated as having been a DI in the foreign enterprise immediately preceeding the acquisition. Accordingly, initial acquisition of the requisite interest will involve a § 312(a)(1) transfer of capital (see also § 313(d)(2)). Thus, for example, if a U.S. corporation (X), owning no interest in a French corporation (C), acquires 10 percent or more of the outstanding voting stock of C from an unaffiliated foreign national for $1 million in cash, X will be treated as a DI in C immediately prior to the closing of such acquisition and will, therefore, be treated as having made a $1 million transfer of capital to C.

Although acquisition or ownership of a 10 percent voting interest in a foreign corporation, or a 10 percent profits interest in a foreign partnership or business venture, is ordinarily required to consti-

tute the foreign enterprise an AFN of a person within the United States, the regulations provide that a foreign enterprise in which a lesser interest is held may nevertheless be deemed an AFN (§ 304(b)(4)). For example, such discretionary authority might be exercised if a U.S. person were to acquire a contingent 10 percent interest in the voting securities of a foreign corporation, or a 10 percent present interest in the capital or earnings of a foreign corporation without voting rights. As a general rule, however, such determination would not be made by OFDI unless the U.S. person actually participates in and exercises a controlling influence over the affairs of the foreign enterprise and transfers funds or other property to the foreign enterprise exceeding $200,000 during any year commencing with 1968.

B306—Direct Investment

§ B306–1 Introduction.

Section 306(a) defines the term "direct investment" for purposes of the regulations. Direct investment, which may be positive or negative, means the sum of a DI's net transfer of capital to incorporated and unincorporated AFNs (defined in § 313(c)) and the DI's share of reinvested earnings of incorporated AFNs (defined in § 306(b)) during any period, usually a calendar year (see § 321). A DI governed by the § 503 minimum allowable will calculate direct investment on a worldwide basis. A DI governed by the § 504(a) historical allowable or the § 504(b) earnings allowable will calculate direct investment on a schedular basis.

Section 306(e)(1) permits deduction of available proceeds of long-term foreign borrowing (defined in § 324(d)) that are "allocated" on the DI's books and records as an offset to positive direct investment. Prior to July 1, 1972, available proceeds that were actually expended by a DI in making transfers of capital to AFNs were deducted under § 313(d)(1) in calculating the net transfer of capital.

§ B306–2 Summary.

In addition to defining the term "direct investment," § 306 deals with calculation of "reinvested earnings" and sets forth a number of rules to be followed in calculating the DI's share of such earnings as a component of direct investment.

The major topics covered in § 306 are: Basic definition of direct investment (§ 306(a)); definition of reinvested earnings (§ 306(b)); calculation of AFN earnings or losses (§ 306(c)); branch AFN earnings deemed remitted (§ 306(d)(1)); definitions and rules for dividends (§ 306(d)(2)), and allocation of proceeds of long-term foreign borrowing (§ 306(e)).

§ B306–8 Relation of § 306 to other sections.

Direct investment as defined in § 306 consists of a number of components. The way in which these various components enter into the calculation of direct investment is illustrated by the following diagram:

COMPUTATION OF DIRECT INVESTMENT

NET TRANSFER OF CAPITAL (§ 313)		REINVESTED EARNINGS (§ 306(b))		ALLOCATED PROCEEDS OF LONG-TERM FOREIGN BORROWING (§§ 306(e), 263(d)(2) and (3).)
Components		*Components*		
+Transfers of capital: DI to AFNs (§ 312(a)).	*Plus*	DI's share of: +Total earnings (§ 306(c)). −Dividends to DI (§ 306(b)(2)(x)). −Dividends paid by AFNs to AFNs in other areas (§ 306(b)(2)(y)). +Dividends received by AFNs from AFNs in other areas (§ 306(b)(1)(i)). +Profits remitted to AFNs from unincorporated AFNs in other areas (§ 306(b)(1)(ii)).	*less*	
−Transfers of capital: AFNs to DI (§ 312(b)).				
−Expended proceeds of long-term foreign borrowing (§ 313(d)(1)) (prior to July 1, 1972).				
±Transfers of capital: AFNs to AFNs (§ 505).				
±Net transfer of capital: DI to unincorporated AFN, i.e., net increase or decrease in assets (§ 313(b)).				

§ B306–4 Application of § 306.

The § 306(a) definition of direct investment applies to calculations in all scheduled areas during 1965–66 as well as for subsequent years.

The rules for calculating direct investment are modified in § 504(e). A DI governed by one of the § 504 allowables is required to disregard total losses of Schedule C incorporated AFNs in calculating direct investment in that scheduled area. Note that in 1969, if the AFNs of a DI governed by the § 503 minimum allowable had an aggregate annual loss, the DI was required to disregard such aggregate annual loss in calculating direct investment. See former § 503(b), which has been revoked for 1970 and succeeding years.

§ B306–5 Basic definition and calculation of direct investment.

Section 306(a) defines direct investment during any period as the sum of (a) net transfer of capital (defined in § 313(c)) and (b) the DI's share in the reinvested earnings of all incorporated AFNs (defined in § 306(b)). If the sum of DI's net transfer of capital and DI's share of reinvested earnings is greater than zero, DI has made "positive direct investment"; if the sum is less than zero, DI has made "negative direct investment."

Direct investment is an aggregate concept. It does not refer to individual transactions, but to the net effect of all transactions during a reporting period.

Direct investment is also a schedular concept. It does not apply to individual AFNs or countries, but to all AFNs of a DI located in each scheduled area. Since § 503 provides a worldwide allowable, however, a DI governed by this section will report direct investment on a consolidated, worldwide basis.

Direct investment in Canada is excluded from the computation of direct investment under § 306(a). (See §§ 1103–1104.)

The following examples illustrate calculation of direct investment under § 306(a):

Example 1. DI has several wholly owned incorporated AFNs in Schedule A. (The number of individual AFNs is not important.) DI has no other AFNs. During 1969 the AFNs together earn $800,000 and pay dividends of $200,000 to DI. DI's share in reinvested earnings, therefore, is $600,000. DI also makes a § 313(a) net transfer of capital to the AFNs of $500,000. DI has made positive direct investment in Schedule A for 1969 of $1,100,000.

In 1970 the same AFNs earn $600,000 and pay no dividends. During that year, however, the AFNs jointly loaned DI $700,000, resulting in a negative net transfer of capital in that amount, by operation of §§ 312(b)(1) and 313(a). Accordingly, DI has made negative direct investment of $100,000.

Example 2. DI's only AFNs are two wholly owned incorporated AFNs in Schedule B: X and Y. During 1969 X earns $400,000, and Y has losses of $200,000. No dividends are paid, and DI makes no net transfer of capital.

DI's share of reinvested earnings is $200,000. Positive direct investment for 1969 is also $200,000, since the net transfer of capital was zero.

During 1970, X has earnings of $100,000, and Y has losses of $300,000. X pays DI a dividend of $50,000. Reinvested earnings are negative in the amount of $250,000 (total losses and dividends). DI's net transfer of capital to Schedule B under § 313(a) is $600,000. Positive direct investment for 1970 is, therefore, $350,000 ($600,000 positive net transfer of capital less the $250,000 negative reinvested earnings).

If X and Y had been located in Schedule C and DI had elected a § 504 allowable, § 504(e) would have required the total losses of $200,000 to be omitted from calculation of direct investment. Direct investment would then have been $550,000.

Example 3. DI has a group of wholly owned incorporated AFNs in Schedule C that have subsidiaries (also AFNs of the DI) in Schedules A and B. In 1969 the Schedule C AFNs have earnings of zero and pay no dividends. DI makes no transfers of capital. However, the Schedule C AFNs receive dividends of $300,000 from their subsidiaries in Schedules A and B. As a result, DI has made positive direct investment of $300,000 in Schedule C consisting entirely of reinvested earnings. (Reinvested earnings in a given scheduled area are increased by dividends received by AFNs from AFNs in other scheduled areas, and reinvested earnings are reduced in the scheduled area from which the dividends are paid (see § 306(b).)

§ B306–6 Reinvested earnings of incorporated AFNs.

To compute a DI's share in the reinvested earnings of all incorporated AFNs in a scheduled area during any year, it is first necessary to determine the DI's share of the total earnings (or total losses) of such AFNs during the year as defined in § 306(c). Total earnings or losses consist of the aggregate earnings or losses of each of the incorporated AFNs in a particular scheduled area. Reinvested earnings are then found by adjusting total earnings to take into account dividends to the DI and interschedular dividends and profit remittances.

(i) *Total earnings.*—Earnings or losses of each incorporated AFN should be computed in accordance with accounting principles generally accepted in the United States and consistently applied by the DI in financial reports for pres-

entation to stockholders. Any material change in accounting procedures followed by a DI should be disclosed on the reporting form filed with OFDI for the period in which the change was made, together with an indication of the effects of such change.

In calculating total earnings of incorporated AFNs, the following considerations merit particular attention:

Adjustments and eliminations arising during the process of consolidation: Journal entries made during consolidation for the purpose of correcting AFN accounting data in accordance with generally accepted U.S. accounting principles applied by the DI in reports for presentation to its stockholders or to adjust depreciation rates or other bases of amortization to those employed by the DI (adjusting entries) shall be used in computing AFN earnings. Journal entries made during consolidation for the purpose of combining the separate entries into one (elimination entries) or equivalent journal entries made to change the carrying value of investment accounts under the Equity Method of investment accounting, generally shall not be used in computing AFN earnings. The following are illustrations of accounting entries that shall be used in computing AFN earnings where consistently applied by the DI in reports to shareholders under generally accepted U.S. accounting principles:

(1) Restatement of depreciation or amortization, substituting methods or rates applied by the DI for those used by the AFN;

(2) Capitalization and amortization of research and development expenses written off as a current year expense by the AFN; and

(3) Restatement of lease operations of AFNs as sales or purchases.

The following are illustrations of elimination entries that may not be used in computing AFN earnings:

(1) Elimination of profit arising from intercompany sales when the goods sold are in the inventory of the purchaser;

(2) Elimination of intercompany merchandise sales; and

(3) Elimination of profits and adjustments to depreciation on intercompany sales of depreciable assets. The elimination of profit arising from intercompany sales between AFNs, upon consolidation or under the Equity Method of investment accounting, in accordance with principles of accounting generally accepted in the United States and consistently applied by a DI in reports to shareholders, shall be used in computing AFN earnings, however, provided such sales are made in the ordinary course of business pursuant to arm's-length terms and the obligations arising upon any extension of credit in connection with such sales will in fact be paid within 12 months after extension of the credit. (See § 505(b).)

Thus, for example, if an AFN sells merchandise to the DI for resale, the earnings of the AFN arising from the intercompany sale should not be reduced by any amount of unrealized profit in inventory that is eliminated in the consolidation of net income of the AFN and DI. However, if the AFN sells merchandise to another AFN for resale on such terms that the extension of credit in connection with the intercompany sale does not involve a transfer of capital pursuant to § 505(b), the earnings of the first AFN arising from the sale of merchandise to another AFN should be reduced by any amount of unrealized profit in inventory that is eliminated in consolidating net income of the AFNs and DI for presentation in reports to shareholders.

Exchange gain or loss arising from the translation of foreign currency financial statements into U.S. dollars: Unrealized exchange gain or loss arising upon translation into U.S. dollars of assets, liabilities, and earnings of an AFN expressed in foreign currency should be included in computing AFN earnings if such gain or loss is recognized by the DI in preparing financial reports for presentation to stockholders. Unrealized exchange gain or loss should not be included in AFN earnings when recognition of such gain or loss is deferred by the DI through the creation of a reserve. If the DI defers translation losses under accounting principles generally accepted in the United States and consistently applied, such losses shall be recognized as a factor in computing AFN earnings as the deferred amounts are amortized in future periods.

Dividends: Dividends received by an incorporated AFN from another incorporated AFN, whether in the same or another scheduled area, should not be included in calculating earnings of the recipient AFN. (See § 306(c).)

Profit interest in unincorporated AFN of the DI: If an incorporated AFN has an interest in a partnership or business venture in another scheduled area that is a separate unincorporated AFN under § 304, the incorporate AFN's share in any profits of the unincorporated AFN should not be included in calculating earnings of the incorporated AFN, whether or not any such profits are actually remitted. (See § 306 (c) and (d) (1).)

Interests in United States: If an incorporated AFN has an interest in a U.S. corporation, partnership, or business venture that would be a separate AFN of the DI if such U.S. enterprise were a foreign national, neither dividends received from such corporation nor the share in profits of such partnership or business venture (whether or not any such profits are actually remitted) should be included in calculating earnings of the incorporated AFN.

Foreign taxes: Earnings of incorporated AFNs should be computed net of foreign taxes on income or net worth. Foreign withholding taxes on dividends paid or branch profits distributed should not, however, be deducted except for withholding taxes on dividends received by an incorporated AFN from AFNs in the same scheduled area. (See § 306(c).)

Charge for intangibles: No deduction for amortization of any like charge against earnings should be made with respect to an intangible owned by an AFN, if transfer of the intangible by the DI to the AFN was made on or after January 1, 1968, and was not considered a transfer of capital by virtue of § 312(c)(11).

Blocked earnings: Earnings that are "blocked" because of exchange controls or other like restrictions imposed by the government of a foreign country should nevertheless be included in earnings. Under certain conditions, OFDI may grant appropriate relief (pursuant to § 801) in these circumstances.

Reserve requirements: No deductions from earnings should be made because of reserves for reinvestment, asset revaluation, or legal reserve requirements, whether or not locally required, if they would not be proper charges to income under generally accepted U.S. accounting principles consistently applied.

Extraordinary gains and losses: Extraordinary gains and losses of an incorporated AFN (including gains or losses resulting from liquidation sales by the AFN or sales by the AFN of interests in other AFNs), casualty insurance proceeds to the extent that they exceed the value of the assets lost or damaged and proceeds of business interruption insurance should generally be included in earnings. However, gains or losses realized by a DI resulting from sale of an interest in an AFN are not included in reinvested earnings under § 306(b) in any scheduled area; rather, the transfer of funds or other property to the DI in exchange for the equity interest in an AFN constitutes a transfer of capital to the DI under § 312(b)(5). (See §§ B312-15(iv) and B312-16.)

The following example illustrates calculation of total earnings of incorporated AFNs in a given scheduled area, pursuant to § 306(c):

Example 4. DI has three wholly-owned subsidiaries in Schedule C. One subsidiary (D) has a branch (W) in Schedule A and a branch (X) in Schedule C; W is a separate AFN of the DI, but X is not. (See § 304(a)). Another subsidiary (E) has a wholly-owned subsidiary (Y) in Schedule B and another wholly-owned subsidiary (Z) in Schedule C. The third subsidiary (F) has no branches or subsidiaries.

The following occurs during 1969: D earns $1,700,000, $200,000 of which is attributable to earnings of W and $500,000 to earnings of X. Y earns $500,000 and pays a dividend of $300,000 to E. Z earns $200,000 and pays a dividend of $100,000 to E. E earns $2,400,000, including the dividends from Y and Z. F incurs a loss of $400,000.

Under § 306(c), total earnings of DI's incorporated Schedule C AFNs (D, E, and F) are $3,300,000, computed as follows (000 omitted):

Earnings of D under § 306(c) (W's earnings of $200 are excluded, since W is in another scheduled area. X's earnings of $500 are not excluded, because X is not a separate AFN)	$1,500
Earnings of E under § 306(c) (Dividends of $300 from Y and $100 From Z are excluded)	2,000
Earnings of Z under § 306(c) (Dividend of $100 to E is not deducted)	200
Loss of F	(400)
Total earnings	3,300

(ii) *DI's share of total earnings.* A DI's share in the total earnings (or losses) of incorporated AFNs in a given scheduled area is the sum of the DI's percentage interest in total earnings (or losses) of each such AFN in that scheduled area. Note that while a person's beneficial ownership of voting stock determines such person's ownership interest in a foreign corporation, it may not determine that person's share in earnings of the corporation. A DI's share in earnings attributable to fixed dividend nonvoting preferred stock (or other nonvoting stock) should be added to such person's share in earnings attributable to voting stock in determining the DI's share of total earnings.

Example 5. DI has three incorporated AFNs in Schedule C (companies D, E, and F). DI owns 50 percent of the stock of D, 60 percent of the stock of E and 80 percent of the stock of F. D has a branch (W) in Schedule A and a branch (X) in Schedule C; W is a separate AFN of DI, but X is not (See § 304(a) (1) (iii).) E has a wholly owned subsidiary (Y) in Schedule B and another wholly owned subsidiary (Z) in Schedule C.

The following occurs during 1969: D earns $1,700,000, $200,000 of which is attributable to earnings of W and $500,000 to earnings of X. Y earns $500,000 and pays a dividend

of $300,000 to E. Z earns $200,000, a portion of which is attributable to sale of merchandise to D, and pays a dividend of $100,000 to E. E earns $2,400,000 including the dividends from Y and Z. F incurs a loss of $400,000.

DI's share in the total earnings of incorporated Schedule C AFNs is $1,750,000 computed as follows, pursuant to § 306(c) (see table in Example 4 for treatment of earnings of the AFNs' branches or subsidiaries):

AFN earnings (000 omitted)	*DI's share* (000 omitted)
Earnings of D ($1,500×50%)	$750
Earnings of E ($2,000×60%)	1,200
Earnings of Z ($200×60%)	120
Loss of F ($400×80%)	(320)
DI's share of total earnings	1,750

It should be stressed that in Examples 4 and 5 above, only earnings of DI's Schedule C incorporated AFNs were the subject of consideration. Y's earnings would be included in the calculation of reinvested earnings for DI's Schedule B incorporated AFNs under § 306(b), and the profits of W would be included in DI's net transfer of capital to unincorporated AFNs in Schedule A under § 313(b).

Total earnings should always be carefully distinguished from reinvested earnings and from earnings of unincorporated AFNs.

(iii) *Reinvested earnings.*—After computing total earnings of incorporated AFNs and DI's share thereof, the next step in calculating direct investment is to find the DI's share of reinvested earnings. The method of determining reinvested earnings of incorporated AFNs in any scheduled area during a year is set forth in § 306(b). The DI's share of reinvested earnings in a scheduled area will generally equal the DI's share of total earnings of such AFNs for the year, less all dividends paid during the year by the AFNs to the DI and to AFNs in other scheduled areas, plus dividends received from incorporated AFNs in other scheduled areas and profits remitted from unincorporated AFNs in other scheduled areas.

Under § 306(d)(1), profits of an unincorporated AFN during the year are deemed to have been remitted to the extent that profits exceed the net increase in the net assets of such AFN during the year; if there has been no change, or a decrease, in such net assets during the year, all profits for such year are deemed to have been remitted. Dividends paid by incorporated AFNs to the DI or other AFNs are reported before deduction of foreign dividend withholding taxes; dividends and other profit distributions received by AFNs from AFNs in other scheduled areas are reported after deduction of foreign dividend withholding taxes.

For purposes of the regulations, dividends include all cash dividends, whether paid out of current or accumulated earnings. Stock dividends or dividends in kind do not qualify as dividends under the regulations. (See § 306(d)(2).) Distributions in complete or partial liquidation will qualify as dividends, but only to the extent the corporation being liquidated has current or accumulated earnings properly allocable to the distributions. Payments to a DI of amounts previously taxed under the provisions of §§ 551 through 558 and 951 through 981 of the Internal Revenue Code (1954) will qualify as dividends.

Dividends paid by one AFN to another AFN in the same scheduled area do not enter into any of the calculations required by § 306. They are not included in determining earnings of the recipient AFN, they are not deducted in calculating total dividends paid by the recipient AFN, and they are not included as dividends in calculating total dividends paid by the paying AFN. However, any foreign withholding taxes imposed on the payment of such dividends should be deducted in calculating total earnings of incorporated AFNs in the scheduled area involved. For example, DI has a wholly owned subsidiary (X) in Schedule C, that in turn has a wholly owned subsidiary (Y) in Schedule C. X and Y each earn $100,000, Y pays a $50,000 dividend to X on which there is imposed a $15,000 foreign withholding tax, and X pays a $50,000 dividend to DI on which there is also imposed a foreign withholding tax of $10,000. Total earnings of DI's Schedule C incorporated AFNs are $185,000 (i.e., $200,000 minus the $15,000 tax on dividend from Y to X) and DI's share in reinvested earnings of all such AFNs is $135,000 (i.e., $185,000 minus the $50,000 dividend (excluding the $10,000 tax paid by X to DI).

A dividend will generally be considered as having been paid or received when it first becomes payable on demand. This will ordinarily coincide with the dividend payment date, but in some cases it may coincide with the declaration date. Note that a dividend declared but not paid by an AFN when due is treated as having been paid (thus reducing the DI's share in reinvested earnings of the AFN) and then loaned back to the AFN (resulting in a transfer of capital by the DI to the AFN); subsequent payment of the amount due by the AFN will then be treated as a transfer of capital by the AFN to the DI. The same attribution of transfers of capital is applicable to dividends declared by an AFN that are not paid when due to AFNs in another scheduled area.

It should be noted that a DI may elect, on its original Base Period Report (Form FDI-101), to treat dividends received from AFNs within 60 days after the end of any compliance year as having been paid during such year; such election, if made, must also be reflected in the calculation of direct investment during the base period years, and cannot be changed without permission of OFDI.

The following formula may be helpful in applying the § 306(b) definition of reinvested earnings:

$$RE = TE - [(DP + dp) - (dr + pr)]$$

RE = DI's share of reinvested earnings of all incorporated AFNs in a scheduled area.
TE = DI's share of total earnings of all incorporated AFNs in the scheduled area.
DP = Dividends declared by AFNs in the scheduled area that are paid or payable to DI.
dp = DI's share of dividends declared by AFNs in the scheduled area that are paid or payable to AFNs in other areas.
dr = DI's share of dividends that are paid or payable to AFNs in the scheduled area by AFNs in other areas.
pr = DI's share of profits remitted to AFNs in the scheduled area from unincorporated AFNs in other areas.

Example 6. DI has two wholly owned and two 60-percent-owned subsidiaries in Schedule C. One wholly owned subsidiary (D) has a branch (V) in Schedule A. The second wholly owned subsidiary (E) has a 50-percent-owned subsidiary (W) in Schedule A. One 60-percent-owned subsidiary (F) has a branch (X) in Schedule A. The branches V and X in Schedule A are separate AFNs. See § 304(a)(1)(iii). The other 60-percent-owned subsidiary (G) has a wholly owned subsidiary (Z) in Schedule A; DI also has a wholly owned subsidiary (H) in Schedule A.

In 1969 D earns $800,000 and pays a dividend of $500,000 to DI. Of D's earnings, $300,000 is attributable to profits of V, which had an increase in net assets of $100,000. E earns $500,000 and pays no dividends to DI. Of E's earnings, $200,000 is attributable to a dividend received from W, which itself earns $600,000. F earns $1 million and pays a dividend of $200,000 to DI. Of F's earnings, $200,000 is attributable to profits of X, which had no change in its net assets. G earns $2 million and pays a dividend of $500,000 to DI. Of G's earnings, $400,000 is attributable to a dividend received from Z, which itself earns $900,000. H earns $1,500,000 and pays a dividend of $1 million to DI. Reinvested earnings of DI's incorporated AFNs are computed as follows:

Schedule C reinvested earnings [RE]:

DI's share in the total reinvested earnings of its incorporated Schedule C AFNs (D, E, F, and G) is $1,800,000 computed as follows (000 omitted):

Total earnings [TE]:	
DI's share of earnings of D: $800 less profits of V ($300)	$500
DI's share of earnings of E: $500 less dividend received from W ($200)	300
DI's share of earnings of F: $600 less profits of X ($200×60%)	480
DI's share of earnings of G: $1,200 less dividend received from Z ($400×60%)	960
DI's share of total earnings	2,240
Dividends paid to DI [DP]:	
By D	500
By E	0
By F	200
By G	500
Total	1,200

Dividends paid to AFNs in other areas [dp]	0
Dividends received and profits remitted [dr+pr]:	
DI's share of profits deemed remitted by V to D under § 306(d)(1): Earnings ($300) less net increase in assets ($100)	200
DI's share of dividends received by E from W	200
DI's share of profits deemed remitted by X to F under § 306(d)(1) ($200×60%)	120
DI's share of dividend received by G from Z ($400×60%)	240
DI's share of all dividends received and profits remitted	760

Applying the formula RE=TE−[(DP+dp)−(dr+pr)]:

RE=$2,240−[$1,200−$760]=$1,800

Schedule A reinvested earnings [RE]:

DI's share in the total reinvested earnings of its incorporated Schedule A AFNs (H, W, and Z) is $900,000 computed as follows (000 omitted):

Total earnings [TE]:	
DI's share of earnings of H	$1,500
DI's share of earnings of W ($600×50 percent)	300
DI's share of earnings of Z ($900×60 percent)	540
DI's share of total earnings	2,340
Dividends paid to DI and DI's share of dividends paid to AFNs in other areas [DP+dp]:	
Dividends paid by H to DI	1,000
DI's share of dividend paid by W to E	200
DI's share of dividend paid by Z to G ($400×60 percent)	240
Total	1,440
Dividends received and profits remitted [dr+pr]	0

Applying the formula RE=TE−[(DP+dp)−(dr+pr)]:

RE=$2,340−[$1,440−0]=$900

Example 7. Assume the same facts as in Example 6 above, except that H incurs a loss of $1 million and pays no dividend. DI's share in the total reinvested earnings of Schedule A AFNs is a negative $600,000, computed as follows (000 omitted):

Total earnings [TE]:	
DI's share of loss of H	(1,000)
DI's share of earnings of W	300
DI's share of earnings of Z	540
DI's share of total earnings	(160)
DI's share of dividends paid [dp]:	
W to E	200
Z to G	240
Total	440

RE=TE−[(DP+dp)−(dr+pr)]

RE=−$160−[(0+$440)−0]=−$600

§ B306–7 Deduction from positive direct investment: Allocated proceeds of long-term foreign borrowing.

Under § 306(e), the amount of positive direct investment charged to a DI may be reduced by allocating available proceeds of long-term foreign borrowing (see § 324(d). Positive direct investment may also be reduced by allocating proceeds of long-term foreign borrowing that were expended in making a transfer of capital to another scheduled area prior to July 1, 1972 (see § 203(d)(2)), and by reallocating proceeds previously allocated to a transfer of capital or positive direct investment in another scheduled area (see § 203(d)(3)). (See also § B324–10.)

An allocation to reduce 1973 positive direct investment must be made as of December 31, 1973 or, alternatively, February 28, 1974. The allocation will be subject to the following conditions:

The allocation must be reflected on the books and records required to be maintained by the DI under §§ 203(b) and 601.

The allocation and reduction of positive direct investment must be reported on the DI's Form FDI–102F covering the year in which the reduction is made (1973).

If the allocation is made as of December 31, 1973, proceeds that were so allocated may not at the close of December 31, 1972 and at all times thereafter be held, directly or indirectly, in the form of foreign balances (see § 203(a)(1)), securities of foreign nationals, or any other foreign property, except that such proceeds may at any time on or after July 1, 1972 be expended in making transfers of capital to AFNs.

If the allocation is made as of February 28, 1974, proceeds that were so allocated may not at the close of February 28, 1974 and at all times thereafter be held, directly or indirectly, in the form of foreign balances (see § 203(a)(1)), securities of foreign nationals, or any other foreign property, except that such proceeds may at any time on or after July 1, 1972 be expended in making transfers of capital to AFNs without any deduction from net transfer of capital.

Thus, a DI may reduce positive direct investment made during 1973 by allocating available proceeds of any long-term foreign borrowing that is outstanding on February 28, 1974. Such borrowing may be made during January or February 1974, or may have been made by the DI during 1973 or a prior year. The 12-month maturity test for long-term foreign borrowing will, of course, apply to any borrowing of which available proceeds are allocated, i.e., the borrowing, as refinanced, must be continuously outstanding for at least 12 months.

It should be noted by DIs that they may allocate to positive direct investment made during 1973 any proceeds that are available for allocation on December 31, 1973, notwithstanding the repayment of the underlying long-term foreign borrowing during January or February 1974. Such repayment will involve a transfer of capital during 1974.

Allocation is illustrated in the following example:

Example 8. In 1973 DI makes a net transfer of capital to its AFNs in Schedule A in the amount of $4 million, and its share of reinvested earnings of incorporated AFNs in Schedule A is $3 million. DI has made positive direct investment under § 306(a) of $7 million. If DI makes a $1 million long-term foreign borrowing in February 1974 and does not hold proceeds of such borrowing in any form of foreign property as of February 28, 1974 (except any amount that may have been expended in making a transfer of capital to an AFN), DI may allocate $1 million of such proceeds to its 1973 positive direct investment in Schedule A and reduce the amount of such investment to $6 million. The allocation and reduction must be reflected on DI's books and records and on Form FDI–102F for 1973.

In addition to § 306(e), two other provisions of the regulations relate to deductions for use of proceeds of long-term foreign borrowing, and a third provision, revoked on July 1, 1972, relates to such deductions in connection with expenditures of proceeds prior to that date. Section 203(d)(2) and (3) are analogous to § 306(e) insofar as they allow deductions from positive direct investment for allocation of proceeds. Section 203(d)(2) allows a DI to allocate proceeds that were expended in making transfers of capital to AFNs prior to July 1, 1972 (or were allocated to such transfers during 1968) to a new scheduled area, thus obtaining a deduction from positive direct investment in the new area (with a corresponding § 312(a) transfer of capital to the prior area). Section 203(d)(3) allows a DI to reallocate to a new scheduled area proceeds previously allocated under § 306(e) with a corresponding § 312(a) transfer of capital to the prior area). Section 313(d)(1) was revoked on July 1, 1972; prior to that date, it provided for mandatory deduction from net transfers of capital of the amount of proceeds actually expended in making transfers of capital to AFNs.

For a more detailed analysis of long-term foreign borrowing, see § B324.

Section 306(e)(3) provides for the schedular apportionment of deductions for allocations of borrowings to positive direct investment calculated on a worldwide basis under § 503 or calculated on a combined schedular basis under § 507 (as in effect during 1970, 1971 and 1972) as to Schedules B and C. Section 306(e)(3) is applicable only if the DI elects a schedular allowable and in the same year incurs a repayment charge or makes a reallocation with respect to a borrowing previously allocated to worldwide or combined schedular investment under § 503 or § 507. For example, if the DI takes a § 306(e) deduction from worldwide positive direct investment under § 503 and then repays the borrowing in a year in which § 504 is elected, the repayment charge to each scheduled area for purposes of § 312(a)(7) is established by § 306(e)(3). Similar treatment is provided for borrowings that were allocated to combined Schedules B/C under § 507 and are subsequently repaid in a year of electing § 504. Schedular apportionment of an aggregate deduction must also be made under § 306(e)(3) if the DI intends subsequently to reallocate between scheduled areas.

The rule of § 306(e)(3) does not apply to a deduction under § 313(d)(1), which is recognized in the scheduled area where the transfer of capital was made with available proceeds.

(i) *Recalculation of worldwide positive direct investment under § 503 and combined Schedules B/C positive direct investment under § 507.*—Section 306(e)(3) deems a § 306(e) deduction to have been made in proportion to the amount of positive direct investment in each scheduled area (negative direct investment being treated as zero for this purpose). DI should, therefore, recalculate direct investment for each schedule,

taking into account all interschedular transfers (§ 505), dividends and profit remittances. Treatment of aggregate annual losses (former § 503(b)) in recalculating 1969 direct investment by scheduled area is discussed below in paragraph (iii) of this section.

Example 9. DI elected § 503 for 1969 and made positive direct investment worldwide of $2 million. To comply with the regulations, DI made a long-term foreign borrowing of $1 million and allocated the proceeds to positive direct investment, under § 306(e)(1).

Assume that DI recalculates 1969 direct investment by scheduled area as follows ($000 omitted):

	Scheduled area		
	A	B	C
Direct investment	1,000	(500)	1,500
Proportionate amount	40%	0%	60%

DI's deduction under § 306(e)(1) is deemed by § 306(e)(3) to have been made as follows: Schedule A—$400,000 ($1,000,000×40%); Schedule B—0; and Schedule C—$600,000 ($1,000,000×60%).

Complete or partial repayment of the borrowing will be charged under § 312(a)(7) to each scheduled area in the same proportions (Schedule A—40%; Schedule B—0%; and Schedule C—60%). The DI may also reallocate to other scheduled areas on the basis of the amounts apportioned to each area under § 306(e)(3).

Example 10. Same facts as in Example 9. For 1970 DI elects § 507 and makes positive direct investment of $1,200,000 in Schedules B/C, consisting of $480,000 (40%) in Schedule B and $720,000 (60%) in Schedule C. DI reallocates under § 203(d)(3) to Schedules B/C $200,000 of the $400,000 deemed allocated to Schedule A in 1969. The reallocation to combined positive direct investment in Schedules B/C under § 203(d)(3) is deemed by § 306(e)(3) to have been made as follows: Schedule B (40%)—$80,000; and Schedule C (60%)—$120,000.

In 1971 DI elects § 504 and repays the borrowing in full. For purposes of § 312(a)(7), deductions in each area are as follows: Schedule A—$200,000 ($400,000 deemed allocated in 1969 less $200,000 reallocated in 1970); Schedule B—$80,000 ($80,000 deemed allocated in 1970); and Schedule C—$720,000 ($600,000 deemed allocated in 1969 plus $120,000 deemed allocated in 1970). Transfers of capital under § 312(a)(7) on account of the repayment will be charged to each area in the same amounts.

(ii) *Relation to § 313(d)(1) deductions.*—If the DI expended proceeds of the borrowing in making a transfer of capital prior to July 1, 1972, the § 313(d)(1) deduction will be recognized in the scheduled area where the transfer of capital was made, in addition to deductions deemed made in such area by § 306(e)(3), as illustrated by the following example:

Example 11. DI elected § 503 in 1969. During 1969, DI borrowed $1,500,000 and expended $500,000 in making transfers of capital to Schedule A, taking a deduction therefor under § 313(d)(1). DI also transferred $500,000 each to Schedules A and B and $1 million to Schedule C. To comply with the regulations, DI allocated the $1 million of remaining available proceeds to worldwide positive direct investment, taking a deduction under § 306(e)(1), DI's total deductions for purposes of § 312(a)(7) are: Schedule A—$750,000; Schedule B—$250,000; and Schedule C—$500,000, computed as follows ($000 omitted):

	Scheduled area		
	A	B	C
(a) Net transfer of capital	1,000	500	1,000
(b) Less § 313(d)(1) deduction	500	0	0
(c) Positive direct investment under § 306(a)	500	500	1,000
(d) § 306(e)(1) deduction		(1)	
(e) § 306(e)(1) deduction apportioned under § 306(e)(3) on basis of line (c)	250	250	500
(f) Total deductions (Lines (b) and (e))	750	250	500

[1] 1,000 worldwide.

Complete or partial repayment of the borrowing in a subsequent year will be charged as follows if § 504 is elected: Schedule A—50 percent; Schedule B—16⅔ percent; and Schedule C—33⅓ percent. If § 507 is elected, the apportionment of the transfer of capital would be: Schedule A—50 percent; Schedules B and C, 50 percent.

Note, however, that if the $500,000 deduction taken under § 313(d)(1) had been on account of a separate borrowing, repayments of that borrowing would be charged in full to Schedule A; and repayments of the borrowing allocated under § 306(e) would be charged only on the basis of the § 306(e) deductions as shown on line (e) of the above table (i.e., Schedule A—25 percent; Schedule B—25 percent; and Schedule C—50 percent). An allocation under § 203(d)(2) would be made on the basis of the amount shown on line (b) of the table and reallocations under § 203(d)(2) or (3) on the basis of line (e).

(iii) *Treatment of aggregate annual losses in recalculating 1969 direct investment under § 503 by scheduled area.*—Section 503(b) in effect for 1969 required DIs to disregard aggregate annual losses in calculating worldwide direct investment under the $1 million minimum allowable; i.e., the amount of such losses was to be added back to aggregate direct investment for all scheduled areas calculated in accordance with § 306. See § B503–3(ii). In recalculating 1969 positive direct investment for purposes of § 306(e)(3), the effect of the § 503(b) adjustment must be apportioned for each scheduled area. If a DI had aggregate annual losses for purposes of § 503(b) in 1969, direct investment should first be calculated for each scheduled area pursuant to § 306(a), taking all losses into account. Then the DI should add to direct investment in each scheduled area in which annual earnings (§ 504(b)(4)) were negative such scheduled area's share of aggregate annual losses, to be determined by multiplying aggregate annual losses by a fraction, the numerator of which is such area's negative annual earnings under § 504(b)(4) and the denominator of which is the sum of negative annual earnings for all areas where annual earnings were negative. See line (d) of the table in Example 13 below.

Example 12. DI elected § 503 for 1969. DI had only incorporated AFNs in Schedules A and B. DI transferred $500,000 to Schedule A, where its AFNs earned $500,000; and DI transferred $1 million to Schedule B, where its AFNs had losses of $1 million. No dividends were paid. DI had aggregate annual losses of $500,000 and positive direct investment worldwide under § 503 of $1,500,000, calculated as follows ($000 omitted):

	Scheduled area		
	A	B	Worldwide
Reinvested earnings	500	(1,000)	(500)
Net transfer of capital	500	1,000	1,500
Positive direct investment under § 306	1,000	0	1,000
Add back aggregate annual losses			500
Positive direct investment under § 503			1,500

For purposes of the schedular recomputation, aggregate annual losses are added to direct investment in the area where annual earnings were negative (Schedule B) in proportion to such area's share of all negative annual earnings (Schedule B—100%). Therefore, DI's § 306(e)(1) deduction will be apportioned on the basis of $1 million positive direct investment in Schedule A and $500,000 positive direct investment in Schedule B.

Example 13. DI elected § 503 in 1969. DI had only incorporated AFNs in Schedules A and B and unincorporated AFNs in Schedule C. DI made transfers of capital of $1 million to its AFNs in Schedule A and $3 million to its AFNs in Schedule B. DI's AFNs in Schedule A earned $500,000; the Schedule B AFNs lost $600,000, and the Schedule C AFNs lost $400,000 but had an increase in net assets of $100,000. DI's aggregate annual losses under § 503(b), therefore, were $500,000. There were no dividends or profit remittances. DI's worldwide positive direct investment was $4,500,000.

The following table illustrates the recalulation by scheduled area of 1969 direct investment ($000 omitted):

	Scheduled area		
	A	B	C
(a) Reinvested earnings	500	(600)	
(b) Net transfer of capital	1,000	3,000	100
(c) Direct investment under § 306(a)	1,500	2,400	100
(d) Adjustment for aggregate annual losses for purposes of § 306(e)(3)	0	[1] 300	[2] 200
(e) Direct investment for purposes of § 306(e)(3)	1,500	2,700	300

[1] 500×600÷1,000=300.
[2] 500×400÷1,000=200.

A deduction made under § 306(e), then, is deemed apportioned to the scheduled areas as follows: one-third to Schedule A; three-fifths to Schedule B; and one-fifteenth to Schedule C.

(iv) *Apportionment by other methods.*—If a DI is unable to recompute direct investment by scheduled area, the Office may, upon application, permit deductions to be apportioned on some other reasonable basis.

§ B306–8 Calculation of direct investment during year of acquisition or disposition of interest in an AFN.

By operation of § 312(c)(1), acquisition by a DI of a debt or equity interest in an AFN from a person within the United States acting for its own account does not give rise to a transfer of capital.

If the acquisition is of an equity interest from a DI in the AFN and the divesting and acquiring DIs file Form FDI–107, the divesting DI's direct investment in the AFN during the year of acquisition and in 1965–66 will be imputed to the acquiring DI in proportion to the interest acquired, as will the divesting DI's share in earnings or losses of the AFN prior to acquisition. If the acquisition is of an equity interest in an AFN from a person within the United States that was not a DI in the AFN (or from a DI but Form FDI–107 was not filed by both DIs), the acquiring DI (and also the divesting DI) must reflect a pro rata share of reinvested earnings in computing direct investment during the year of such transfer, based on the DI's share of total earnings multiplied by the fraction of the year during which the interest was held.

If a DI disposes of an AFN (other than by a transaction covered by § 312(c)(1)), the sale does not affect any transfers of capital between the DI and the AFN preceding the date of disposition. Thus, for example, if DI makes a $1 million transfer of capital to an AFN in January and sells the AFN in October to a foreign national for $900,000, DI would be charged with a $100,000 net transfer of capital during the year with respect to such AFN.

If a DI acquires an interest in an incorporated AFN from a foreign national or sells such an interest to a foreign national during a year, the DI must reflect a pro rata share of reinvested earnings in computing direct investment, based on the DI's share of total earnings multiplied by the fraction of the year during which the interest was held.

Example 14. DI reports on a calendar year basis. On April 1, 1969, DI acquires from a foreign national a 100 percent interest in an incorporated AFN that earns $200,000 for the entire year and pays a $50,000 dividend on March 1 and a $75,000 dividend on September 1. DI's share of total earnings is $150,000 ($200,000 × ¾). DI's share of reinvested earnings is $75,000 ($150,000 − $75,000). Note that the dividend paid prior to DI's acquisition is not reflected in the calculation of DI's reinvested earnings.

Example 15. During 1969, DI acquires from a foreign national the following interests in an AFN: 25 percent on January 1, an additional 30 percent on March 1 and an additional 20 percent on September 1. The AFN earns $1,200,000 during 1969 and pays no dividends. DI's share of reinvested earnings in the AFN for 1969 is $680,000:

$1,200,000 × (12/12) × 25%	equals	$300,000
$1,200,000 × (10/12) × 30%	equals	300,000
$1,200,000 × (4/12) × 20%	equals	80,000
Total		680,000

B312—Transfers of Capital

§ B312–1 Introduction.

Direct investment is defined in § 306(a) as the sum of a DI's net transfer of capital and the DI's share of reinvested earnings of incorporated AFNs. Computation of a DI's net transfer of capital (defined in § 313) is based upon the computation under § 312 of all transfers of capital from the DI to AFNs and all transfers of capital from AFNs to the DI. Section 312 sets forth rules and definitions for determining whether a given transaction constitutes a transfer of capital.

In general, a transfer of funds or other property that increases a DI's equity or debt investment in an AFN (or decreases an AFN's equity or debt investment in a DI) is a "positive" transfer of capital, i.e., a transfer by the DI to the AFN. Conversely, a transfer of funds or other property that decreases a DI's equity or debt investment in an AFN (or increases an AFN's equity or debt investment in a DI) is generally a "negative" transfer of capital, i.e., a transfer by the AFN to the DI.

§ B312–2 Summary.

Under § 312, transfers of capital by a DI to an AFN are defined in subsection (a), transfers of capital by an AFN to a DI are defined in subsection (b), certain transactions that are not considered transfers of capital are described in subsection (c), and the definition of "debt obligation" or "debt interest" is set forth in subsection (d). Generally, transactions occurring during base period years and transactions occurring after the effective date of the regulations are treated similarly in determining whether a transfer of capital has been made.

Under § 312(a), any transfer of funds or other property (without regard to the situs of the property) by, on behalf of, or for the benefit of a DI, directly or indirectly to, on behalf of, or for the benefit of an AFN, is a transfer of capital by the DI to the AFN. Also, any transaction or occurrence as a result of or in connection with which a DI directly or indirectly acquires or increases a debt or equity interest in an AFN, or the AFN directly or indirectly disposes of or reduces a debt or equity interest in the DI, is generally a transfer of capital by the DI to the AFN.

Under § 312(b), certain enumerated transactions or occurrences as a result of or in connection with which an AFN directly or indirectly acquires or increases a debt or equity interest in a DI, or the DI directly or indirectly disposes of or reduces a debt or equity interest in the AFN, are defined as transfers of capital by the AFN to the DI.

The language of subsection (a) of § 312 is substantially broader than that of subsection (b). Also, the specific transactions enumerated in subsection (a) as transfers of capital by a DI to an AFN do not purport to be all-inclusive; the transactions listed in subsection (b), however, are the only transactions which are considered transfers of capital by an AFN to a DI.

A transaction between a DI and an AFN involving immediate cash payment for goods sold or services rendered is not a transfer of capital. However, if a DI sells goods on credit or renders services on account to an AFN, DI has made a transfer of capital to the AFN, since DI's debt investment in the AFN is increased. Subsequent payment on account by the AFN is a transfer of capital by the AFN to DI, since DI's debt investment in the AFN is thereby decreased. (But see § B312–22 for a discussion of the export credit exemption system.)

Aggregate transfers of capital by a DI to all AFNs in a scheduled area during a year, less aggregate transfers of capital by such AFNs to the DI during the year, is the "net transfer of capital" by DI to the scheduled area during such year. (See § 313.) A DI electing to be governed by schedular allowables under § 504 will report net transfers of capital on a schedular basis. A DI electing to be governed by the minimum allowable under § 503 will report net transfer of capital on a worldwide basis. A DI's net transfer of capital may be a positive or negative amount; it will be a positive amount if the aggregate of transfers of capital by DI to AFNs exceeds the aggregate of transfers of capital by AFNs to DI.

Particular transactions constituting transfers of capital during a year are not independently restricted under the regulations. A transfer of capital has significance only with respect to the computation, on an annual basis, of a DI's net transfer of capital and direct investment.

If proceeds of long-term foreign borrowing have been expended in making transfers of capital to AFNs prior to July 1, 1972, or allocated to positive direct investment, repayment of the borrowing will be a transfer of capital by the DI (see § 312(a)(7)). Positive direct investment attributable to such a transfer of capital may be authorized by § 1002, with the effect set forth in § 1003, provided the certification requirements of § 1002 have been met.

Since positive direct investment in Canada is generally authorized without limitation as to amount (see § 1102), transfers of capital by a DI to Canadian AFNs may be made in unlimited amounts without contravening the regulations. However, a transfer of funds or other property by a Canadian AFN to a non-Canadian AFN of the DI will, under certain circumstances, be treated as a transfer of capital by the Canadian AFN to the DI, and as a further transfer of capital by the DI to the non-Canadian AFN. (See § 505.) Furthermore, if an interest is acquired in a Canadian AFN from another AFN, the transfer of capital is deemed to have been made by a DI to the latter AFN; and if a DI acquires a Canadian AFN from any foreign national (other than another AFN), an appropriate portion of the transfer of capital by DI will be allocated among any non-Canadian second-tier AFNs owned by the Canadian AFN.

The net transfer of capital by a DI to unincorporated AFNs in any scheduled area during any period generally is computed in the manner set forth in § 313(b).

Transfers of funds or other property between AFNs of a DI are governed by § 505. In general, a transfer by one AFN to another AFN is treated as a transfer of capital by the transferor AFN to the DI, and a further transfer of capital in the same amount by the DI to the transferee AFN, provided that (a) at least one of the AFNs is an affiliate of the DI (i.e., the DI owns, alone or with other

affiliates, a greater than 50 percent direct interest in the AFN) and (b) the transfer of funds or other property would be a transfer of capital under § 312(a) if actually made by the DI. (See § 505(a).) Extension of a trade credit for less than 1 year by one AFN to another AFN in the ordinary course of business normally will not involve a transfer of capital, provided neither AFN is Canadian. (See §§ 505(b) and 1103(c).)

§ B312–3 Valuation of transfers of capital.

The amount of transfer of capital is ordinarily determined in accordance with generally accepted U.S. accounting principles consistently applied by the DI in financial reports to stockholders. In no event, however, will the amount be less than the value of the transferred property at the time of the transfer as shown on the books and records of the transferor for financial reporting purposes. Thus, for example, if a transfer involves an export credit sale by a DI to an AFN, the amount of the transfer will ordinarily be the intercompany billing price. If transfers of property are valued by a DI at amounts that differ materially from the intercompany billing price or the export declaration value of the property (if applicable), the DI's annual report including the transfers should contain a note to such effect and an appropriate explanation of the basis therefor.

A transfer of capital arising from repayment of a foreign curency loan from a DI to an AFN or from an AFN to a DI must be reported in U.S. dollars at the rate of exchange prevailing at the time of repayment, regardless of intervening devaluation or revaluation of the foreign currency. Likewise, a transfer of capital arising from repayment by the DI of an AFN's foreign currency borrowing pursuant to the DI's guarantee thereof, or a transfer of funds by the DI to the AFN to enable the latter to repay a foreign currency borrowing, will be reported in U.S. dollars at the rate of exchange prevailing at the time of repayment. On the other hand, a transfer of capital arising from repayment by a DI of its own foreign curency long-term foreign borrowing will be charged at the dollar equivalent on the date of the borrowing regardless of intervening devaluation or revaluation of the foreign currency. The effect of currency revaluation or devaluation on proceeds of long-term foreign borrowing is discussed in § B324–13.

§ B312–4 Acquisition of interest in an AFN.

Acquisition of an equity or profit interest in a foreign corporation, partnership or business venture (defined in § 304) by a person within the United States (defined in § 322) will involve a transfer of capital by such person under § 312(a)(1), or will be included in the calculation of the net transfer of capital to unincorporated AFNs under § 313(b), if:

The person from whom the acquisition is made is a foreign national (defined in § 302), including the foreign corporation, partnership, or business venture in which the interest is acquired; and

The person making the acquisition is at the time of the acquisition, a DI in the foreign corporation, partnership, or business venture, under §§ 305, 905(b)(1) (members of an associated group treated as separate DIs) or 906(b)(3) (owners of a DI electing to be treated themselves as DIs), or becomes a DI as a result of or in connection with the acquisition.

If the acquisition is from a person within the United States acting for its own account, no transfer of capital is involved (§ 312(c)(1)). Also, a specific authorization may be granted, under certain conditions, for positive direct investment attributable to creation of a DI–AFN relationship by acquisition of a foreign corporation's assets in exchange for property (e.g., stock) of the new DI, where the foreign corporation is to be liquidated in a related transaction by distribution of the property received (e.g., stock of the DI purchasing the assets) to persons within the United States.

If acquisition of an equity interest involves a transfer of capital by the DI, the transfer of capital will generally be deemed to have been made to the AFN in which the interest is acquired. There are, however, two exceptions to this rule. First, if the interest is acquired from another AFN of the DI, the transfer of capital will be deemed to have been made to the selling AFN. Second, if (a) the interest is acquired from an unaffiliated foreign national after December 31, 1967, (b) the AFN in which the interest is acquired first becomes an AFN as a result of the acquisition, and (c) such AFN has interests in other foreign corporations, partnerships or business ventures that become separate AFNs of the DI as a result of the acquisition, the transfer of capital will be allocated among the separate AFNs in a manner reasonably reflecting the respective values of each direct and indirect interest acquired. As a general rule, an allocation based on the respective net asset values of the foreign corporations, partnerships, and business ventures involved will be acceptable. In calculating such respective net asset values, there should be excluded from liabilities all equity interests in and debt obligations of each AFN that are held by other AFNs of the DI, and there should be excluded from assets all equity interests in and debt obligations of other AFNs of the DI that are held by each AFN.

Example 1. On June 1, 1969, a U.S. citizen and resident (X), who owns no voting stock in a foreign corporation, purchases 10 percent of the outstanding voting stock of a French corporation (C) from a citizen and resident of the United Kingdom for $1 million cash. C has no subsidiaries or branches in Schedule A or B that would constitute separate AFNs under § 304.

(a) Under the facts as presented, X has made a $1 million transfer of capital to C under § 312(a)(1).

(b) If X had purchased only 9 percent of the voting stock of C, no transfer of capital would be involved unless or until (i) additional stock acquisitions give rise to a DI–AFN relationship or (ii) OFDI determines that such relationship does, in fact, exist. (See §§ 305, 313(d)(2); see also § 304(b)(4).)

(c) If X purchased only 9 percent of the voting stock of C, but X was a member of an affiliated, associated, or family group, and another member or members of the group owned or acquired an additional 1 percent or more of the voting stock of C, X's acquisition would have involved a transfer of capital. (See §§ 903–905.)

(d) If X had purchased only 9 percent of the voting stock of C, but X acquired an additional 1 percent or more of the voting stock of C between June 2, 1969, and May 31, 1970, X's net transfer of capital to Schedule C in 1969 or 1970 (depending on when the additional stock was acquired) would be increased by the $1 million expended in purchasing the 9-percent interest on June 1, 1969. (See § 313(d)(2).)

(e) If X had purchased 10 percent of C's outstanding preferred stock that has no voting rights (other than contingent voting rights not presently exercisable), instead of 10 percent of the voting stock, X would not have made a transfer of capital to C. (See § 304(b)(2)(i).)

(f) If X purchased 10 percent of the voting stock of C and subsequently purchased nonvoting preferred stock of C for $1 million, purchase of the preferred stock would involve a $1 million transfer of capital to C. (See § 312(a)(1).)

(g) If X purchased nonvoting preferred stock of C for $1 million and subsequently, within a 12-month period, purchased 10 percent of the voting stock of C, X's net transfer of capital to Schedule C during the year when the voting stock was acquired would be increased by the $1 million expended in purchasing the preferred stock. (See § 313(d)(2).)

(h) If X had purchased C's voting stock from its Panamanian AFN (P), instead of from the nonaffiliated United Kingdom resident, the purchase would involve a transfer of capital to P, since acquisition of an equity interest in an AFN from another AFN of the acquiring DI is treated as a transfer of capital to the selling AFN.

(i) If C had a wholly-owned subsidiary in the United Kingdom (B) with net assets of $600,000, and a branch in Brazil (A) with net assets of $400,000 (calculated in accordance with § 313(b)), and C itself had net assets of $1 million (exclusive of debt and equity interests in B and A), X's purchase of 10 percent of C's voting stock from the United Kingdom resident for $1 million would involve a transfer of capital required to be allocated among A, B, and C. The $1 million transfer of capital made by X might be allocated $500,000 to C (i.e., 50 percent of $1 million), $300,000 to B (i.e., 30 percent of $1 million), and $200,000 to A (i.e., 20 percent of $1 million), or might be allocated among C, B, and A in any other manner fairly reflecting the interests acquired in C, B, and A.

(j) If C had a wholly-owned subsidiary in the United Kingdom (B) with net assets of $600,000, and a branch in Brazil (A) with net assets of $400,000, and C itself had net assets of $1 million (exclusive of its interests in A and B), X's purchase of 10 percent of C's voting stock from a Panamanian AFN (P) for $1 million would involve a $1 million transfer of capital to P, since no allocation among AFNs is made when the acquisition is from another AFN of the acquiring DI.

(k) If X had inherited 10 percent of the outstanding voting stock of C or had received the stock as an inter vivos gift from a relative residing in the United Kingdom, X would not have made a transfer of capital, since he would not have transferred funds or other property in connection with the acquisition of the equity interest in C.

(i) If X, after acquiring 10 percent of the outstanding voting stock of C, transfers equipment and machinery valued at $20,000 to C in exchange for additional stock of C, X has made a $20,000 transfer of capital to C. (See §312(a)(1).)

(i) *Equity financing.*—A DI's acquisition of an AFN from an unaffiliated foreign national in exchange for stock of the DI involves a transfer of capital to the AFN in the amount of the value of DI's stock on the date of the acquisition. Deferral, in whole or in part, of a charge to DI's allowables for positive direct investment attributable to such transfer of capital may be specifically authorized by OFDI under certain circumstances and subject to certain conditions. (See § B801.)

(ii) *Contingent consideration.*—In connection with a DI's acquisition of an AFN (other than through equity financing as described in (i) above), to the extent a payment by the DI is subject to the occurrence of a bona fide future contingency, such payment will involve a transfer of capital at the time when it is actually made. If the payment consists of stock or other property of the DI, the amount of the transfer of capital will be the value of the stock or other property at the time of the transfer.

(iii) *Unincorporated AFNs.*—Acquisition of an interest in an unincorporated AFN will be reflected as an increase in DI's share of the AFN's aggregate net assets, and will have significance under the regulations only insofar as it contributes to yearend positive net transfer of capital or postive direct investment. Acquisition of an interest in an incorporated AFN will be reflected as a transfer of capital under § 312(a)(1); similarly, it will have significance only insofar as a positive net transfer of capital or positive direct investment results. Although earnings and losses of incorporated AFNs are reflected as reinvested earnings and not in the determination of a DI's net transfer of capital, while earnings and losses of unincorporated AFNs are taken into account in determining a DI's net transfer of capital, the disparity arising from this difference in treatment of incorporated and unincorporated AFNs is minimized under the program, since direct investment is the sum of the net transfer of capital plus reinvested earnings.

The following instances of similar or identical treatment of unincorporated and incorporated AFNs in transactions involving transfers of capital should be noted:

The same rules regarding valuation of the interest acquired apply, whether the AFN is unincorporated or incorporated.

The same rule and exceptions thereto apply to determination of the AFN to which the transfer of capital will be deemed made, whether the acquisition is of an equity interest or of a profit interest. Normally, the transfer of capital will be to the acquired AFN. However, if the acquisition is made from another AFN, the transfer of capital will be to the selling AFN. Thus, DI's acquisition of an unincorporated AFN from an incorporated AFN will be reflected as a transfer of capital to the incorporated AFN, and not as an increase in the DI's share of the unincorporated AFN's aggregate net assets. Nevertheless, for future transactions the DI will be deemed to have the share in such AFN's net assets as was acquired on the date of acquisition. Also, if (i) the interest in the AFN is acquired after December 31, 1967, (ii) the interest is not acquired from another AFN, (iii) the AFN in which the interest is acquired is not, at the time of acquisition, an AFN of DI but becomes an AFN as a result of or in connection with the acquisition, and (iv) such AFN owns an interest or interests in other foreign entities that become separate AFNs of DI as a result of or in connection with the acquisition, the transfer of capital will be allocated among all of the separate AFNs in a manner reasonably reflecting the respective values of each direct and indirect interest acquired.

§ B312–5 Acquisition of an AFN's debt obligation.

Acquisition by a DI of an AFN's debt obligation, regardless of the nature of the transaction or occurrence giving rise to the obligation (e.g., a loan or advance by the DI to an AFN on open account or otherwise), involves a transfer of capital by the DI to the AFN in an amount equal to the amount of the obligation so acquired. If, however, a debt obligation of an AFN is acquired by a DI from another AFN, a transfer of capital will be deemed to have been made by the DI to the selling AFN in an amount equal to the cost of the obligation to the selling AFN; any gain or loss realized by the selling AFN will be included in calculating earnings of that AFN for the period involved. The exemptions provided in § 312(c)(1) (relating to acquisitions from persons within the United States) and § 312(c)(11) (relating to transfers of intangibles) are applicable to acquisitions of debt obligations as well as to acquisition of equity interests.

Example 2. The foregoing concepts are illustrated by the transactions considered below. In each instance, assume the DI has a 50-percent interest in a Mexican AFN (A).

(a) DI lends A $500,000 against A's 3-year note and advances an additional $500,000 to A on open account. DI has made two $500,000 transfers of capital to A under § 312(a)(1). Repayments of each indebtedness by A will involve transfers of capital from A to DI under § 312(b)(3), in the amounts repaid.

(b) DI licenses A to manufacture and sell certain products for a royalty of 5 percent of A's gross sales of such products. Any accrual of unpaid royalties will involve a transfer of capital under § 312(a)(1).

(c) A foreign bank lends $100,000 to A against A's 3-year note bearing interest at the prevailing rate. DI's acquisition of the note from the bank for $95,000 will involve a $95,000 transfer of capital by DI to A under § 312(a)(1). Repayment of the note by A will involve a $100,000 transfer of capital by A to DI under § 312(b)(3).

(d) A declares a dividend to DI that is not actually remitted on the date payable. DI has acquired a debt obligation of A, and has made a transfer of capital to A under § 312(a)(1). Actual payment of the dividend will be a transfer of capital by A to DI under § 312(b)(3). Note that for purposes of calculating reinvested earnings, however, the dividend is deemed to have been paid on the date it becomes payable. (See § 306(d)(2).)

(e) Renewal of a loan from DI to A in a previous year will not involve a transfer of capital, since renewal is not deemed repayment of the old obligation or creation of a new obligation. However, accrual of unpaid interest on the loan will involve a transfer of capital to A under § 312(a)(1). Subsequent payment of such accrued interest will be a transfer of capital by A to DI under § 312(b)(3).

(f) DI sends A certain equipment to be repaired by A and returned to DI. No transfer of capital is involved.

(g) Semiprocessed goods or raw materials are shipped by DI to A for processing or testing, and such goods or materials (title to which is retained by DI) will be returned to DI after processing or testing. No transfer of capital is involved. Payments by DI for the services rendered by A will not involve transfers of capital, but may be reflected in earnings of A.

Commencing January 1, 1973, acquisition by a DI of an AFN's qualified debt obligation does not involve a transfer of capital until such obligation has been outstanding for a period longer than the applicable arm's-length term. See § B312–22.

§ B312–6 Contributions by a DI to capital of AFNs.

Section 312(a)(2) is intended to cover a transfer of funds or other property by a DI to an AFN that is not reflected on the books and records of the DI or the AFN as either an acquisition of an equity interest by the DI or creation of a debt obligation from the AFN to the DI. Thus, for example, if no stock is issued and no debt obligation is created in return for machinery shipped by a DI for use of an AFN, the DI will be deemed to have made a contribution of capital to the AFN (a transfer of capital under § 312(a)(2)) in the amount of the value of the machinery.

If marketable securities owned by an AFN increase in value, or fixed assets of an AFN are reappraised to increase their value, no transfer of capital to the AFN will result. Similarly, no transfer of capital will result if an incorporated AFN capitalizes retained earnings.

Expenses incurred by a DI in rendering services primarily for the benefit of an incorporated AFN will not result in transfers of capital, under § 312(a)(2) or otherwise, provided such expenses are charged to the DI under generally accepted U.S. accounting principles consistently applied. If such expenses are charged to the AFN and the DI is not compensated therefor, transfers of capital under § 312(a)(1) or (2) will result.

§ B312–7 Repayment of DI's indebtedness to an AFN.

Any repayment by a DI of indebtedness to an AFN will involve a transfer of capital by the DI to the AFN under § 312(a)(3).

If indebtedness is created in a transaction involving a transfer of capital from an AFN to a DI under §312(b)(1), and is repaid by the DI during the same compliance period, no net transfer of capital will result.

§ B312–8 Reduction of an AFN's equity interest in a DI.

Under § 312(a)(4), reduction of an AFN's equity interest in a DI as a result of a redemption of stock, liquidating dividend (whether or not any part is allocable to earnings of the DI), or like

transaction is a transfer of capital to the AFN. Thus, for example, if an AFN purchases stock of a DI from the DI for $1 million and the DI subsequently redeems the stock for $1 million, the AFN's purchase involves a $1 million transfer of capital to the DI under § 312(b)(1) and the DI's redemption involves a $1 million transfer of capital to the AFN under § 312(a)(4).

§ B312–9 Disposition of an equity or debt interest in a DI held by an AFN.

Whereas § 312(a)(4) encompasses those cases where an equity interest in a DI held by an AFN is reduced or liquidated by virtue of a redemption, liquidating dividend or like transaction, § 312(a)(5) covers those cases where such an equity or debt interest of a DI is sold or otherwise transferred by an AFN to another person. Such disposition will involve a transfer of capital by the DI to the AFN only if (a) the interest is sold back to the DI, or (b) the selling AFN is an affiliate of the DI (as defined in § 903(a)), or (c) the interest is sold to another AFN that is an affiliate of the DI. (See § 312(c)(2).) For example, an AFN that is an affiliate of a DI purchases stock of the DI from the DI for $1 million and subsequently sells the stock to an unaffiliated foreign national for $1.2 million. The AFN's purchase involves a $1 million transfer of capital from the AFN to the DI under § 312(b)(1). Subsequent sale of the stock involves a $1 million transfer of capital to the AFN under § 312(a)(5), and a $200,000 capital gain to be reflected in calculation of the AFN's earnings.

§ B312–10 DI's satisfaction of an AFN's debt obligation.

Under § 312(a)(6), any payment by a DI to satisfy an obligation in respect of which an AFN is the primary obligor will involve a transfer of capital by the DI to the AFN. Thus, for example, payment by a DI of an AFN's rent, salary expenses, advertising expenses, legal fees, auditing fees, or other expenses will involve transfers of capital to the AFN. Similarly, if a DI guarantees an obligation owed by an AFN to another person, payment by the DI of any part of the principal amount of such obligation and payment of interest with respect thereto that has accrued prior to the AFN being relieved of or defaulting upon the obligation, will involve a transfer of capital by the DI to the AFN.

The making of a guarantee by a DI does not itself involve a transfer of capital. (See § 312(c)(7).) However, a DI's assumption of an AFN's obligation in a transaction in which AFN is relieved of liability will involve a transfer of capital by the DI to the AFN, while subsequent payments of the obligation will not involve transfers of capital. Payment by a DI of interest on the obligation of an AFN after the DI has become primarily liable for the obligation does not involve a transfer of capital by the DI to the AFN. (See § 312(c)(8).)

In addition to involving a transfer of capital, a DI's assumption of an AFN's obligation in a transaction in which the AFN is relieved of liability is deemed a borrowing by the DI from the former creditor of the AFN. Such borrowing by the DI may, depending on the facts and circumstances, qualify as long-term foreign borrowing under § 324(a). Special provisions of the regulations cover the assumption by a DI of an obligation incurred by its OFS in connection with overseas borrowing (see § 1407).

§ B312–11 Repayment of a DI's long-term foreign borrowing.

Repayment by a DI of a long-term foreign borrowing involves a transfer of capital by the DI under § 312(a)(7), if proceeds of the borrowing were:

Expended by the DI in making a transfer of capital during the period January 1, 1965 through June 30, 1972; or

Allocated to a transfer of capital made by the DI during 1968; or

Allocated to positive direct investment made during any year commencing with 1969.

A transfer of capital under § 312(a)(7) is deemed to have been made to the scheduled area in which proceeds of the DI's borrowing were expended (prior to the revocation of § 313(d)(1) on July 1, 1972) or are allocated at the time of repayment. Positive direct investment attributable to a transfer of capital under § 312(a)(7) is generally authorized by § 1002(a), subject to compliance by the DI with the certification requirements of § 1002(b). (See § B324–11.)

Repayment by an AFN of a DI's long-term foreign borrowing is a transfer of capital by the DI under § 312(a)(7) to the same extent and in the same manner as if the repayment had been made by the DI. Such repayment by an AFN also involves a transfer of capital by the AFN under § 312(b)(6). If a portion of the proceeds of long-term foreign borrowing has been expended prior to July 1, 1972, or allocated, while the remainder constitutes available proceeds, a partial repayment by an AFN of such long-term foreign borrowing shall be treated first as a reduction of available proceeds (until the available proceeds are reduced to zero) and then as a transfer of capital under § 312(a)(7). See § B324–11. To the extent that any repayment by an AFN of a DI's long-term foreign borrowing reduces available proceeds, the transfer of capital by the AFN under § 312(b)(6) will exceed the transfer of capital by the DI under § 312(a)(7) involved in such repayment.

It should be noted that the transfer of capital under § 312(b)(6) is from the scheduled area in which the AFN making the repayment is located, while the transfer of capital under § 312(a)(7) is deemed to have been made to the scheduled area(s) in which proceeds of the DI's borrowing were expended or allocated at the time of the repayment. Thus, if a DI made a long-term foreign borrowing of $5 million and expended $3 million of the proceeds in a loan to a Schedule C AFN, a $4 million repayment of such borrowing by a Schedule A AFN would reduce available proceeds from $2 million to zero and would involve two transfers of capital: a transfer of capital in the amount of $4 million from Schedule A under § 312(b)(6), and a transfer of capital in the amount of $2 million to Schedule C under § 312(a)(7).

§ B312–12 Lease of property by a DI to an AFN.

Under § 312(a)(8), a lease of property by a DI to an AFN is considered a transfer of capital to the AFN if the property has a useful life at the time of the lease of 1 year or more, and is not required or expected to be returned to the DI in less than 1 year. (A charter of a vessel is treated as a lease of property.) This rule recognizes that long-term leases are substantially similar in economic effect to outright transfers. Accordingly, such long-term leases of property by a DI to an AFN will be considered transfers of capital (in the amount of the market value of the property at the time of lease), without regard to the nature of expected use of the property, while a transfer of capital from the AFN to the DI will be recognized under § 312(b) when the property is returned to the DI in the amount of the market value of the property at such time.

Payment of current rentals under such a long-term lease wil not be considered a transfer of capital by the AFN to the DI (§312(c)(9), since rental payments are deducted in calculating the AFN's earnings.

A sublease by a DI to an AFN of property that was leased by the DI from an unaffiliated foreign national involves a transfer of capital only to the extent that the annual rental paid by the AFN to the DI is less than that that paid by the DI to the lessor. See § B312–12, Example 4. On the other hand, a sublease to an AFN of property leased by the DI from a U.S. person is treated in the same manner as a lease by the DI to its AFN, i.e., the sublease is treated as a transfer of capital to the AFN (in the amount of the market value of the property at the time of the sublease) if the property has a useful life at the time of the sublease of 1 year or more and is not required or expected to be returned to the DI in less than 1 year.

Example 3. DI leases machinery and equipment to an incorporated AFN (X) for a 10-year term for a rental of $1,000 per year. The machinery and equipment have an aggregate value of $12,000 at the time the lease is made. At the end of 10 years, the machinery and equipment will be returned to DI, at which time it will have a value of $2,000. DI has made a $12,000 transfer of capital to X at the time of the lease and X will make a $2,000 transfer of capital to DI when the property is returned. The $1,000 annual rental payments will not constitute transfers of capital from X to DI.

Example 4. On January 1, 1970, DI leases an office building in Germany from an unaffiliated foreign national for a term of 5 years at an annual rental of $30,000. On the same date DI subleases the property to its German AFN (C) for the same term at an annual rental of $20,000. DI has made a transfer of capital to C of $10,000 for 1970. DI will be charged with a transfer of capital in the same amount for each remaining year of the sublease.

Commencing January 1, 1973, a transfer of property pursuant to a "qualified export lease", or the return of property so transferred, does not involve a transfer of capital. See § 312(c)(14). This provision is part of the general export credit exemption that is discussed comprehensively in § B312–22.

The treatment of leases or subleases between AFNs is illustrated in § B505–5.

§ B312–13 Inducements for loans to a DI or to an AFN.

Under § 312(a)(9), a DI's pledge, hypothecation, or transfer of foreign balances (defined in § 203(a)(1), or of equity securities of a foreign corporation (other than equity securities of an AFN), will involve a transfer of capital by the DI if the pledge, hypothecation or transfer is made to or with a foreign national in connection with a loan to an AFN or a loan to the DI that qualifies as long-term foreign borrowing and the proceeds of which are invested in an AFN. The amount of the transfer of capital for purposes of § 312(a)(9) is the lesser of (a) the value of the foreign balances or equity securities or (b) the amount borrowed by or invested in the AFN. The transfer of capital occurs as of the date the funds are borrowed by or invested in the AFN.

For purposes of § 312(a)(9), proceeds of long-term foreign borrowing are deemed invested in an AFN if such proceeds were expended in making a transfer of capital to such AFN prior to July 1, 1972, or are allocated to positive direct investment in any one or more scheduled areas.

A pledge or hypothecation constituting a transfer of capital under §312(a)(9) will, upon release, be considered a transfer of capital to the DI under § 312(b) in the amount of the DI's initial transfer of capital. If, on the other hand, the property pledged or hypothecated is not released but is applied to payment of the secured indebtedness, no additional transfer of capital by the DI will result therefrom.

Example 5. DI deposits $1 million (cash or securities) with a foreign bank as an inducement (or collateral) for an $800,000 loan by the bank to an AFN (X). The deposit is an $800,000 transfer of capital by DI to X. If cash was deposited, only the $200,000 excess over the amount of the loan would constitute a liquid foreign balance (see § B203–4). The result would be the same if the deposit were made as collateral for an $800,000 long-term borrowing by DI from the foreign bank and the proceeds of the borrowing were allocated by the DI under § 306(e). No transfer of capital under § 312(a)(9) would be involved if the pledge or deposit were made as collateral for a short-term borrowing by DI.

Example 6. In September 1970, DI pledges $1 million of equity securities of a foreign corporation with a foreign bank as collateral for a $1 million long-term foreign borrowing by DI from such bank. For the year 1970, DI allocates $400,000 of the proceeds of such borrowing to positive direct investment in Schedule C and $300,000 to Schedule B under § 306(e). DI repatriates the proceeds as of yearend in accordance with § 306(e). Under § 312(a)(9), DI has made a transfer of capital of $400,000 to Schedule C and $300,000 to Schedule B. When the pledge is withdrawn, DI will report a negative transfer of capital from Schedule C of $400,000 and from Schedule B of $300,000. When DI repays the borrowing, there will be transfers of capital of $400,000 to Schedule C and $300,000 to Schedule B.

Example 7. DI deposits $1 million with the home office of a domestic bank, as security for a $1 million loan by a foreign branch of the bank to an AFN (X). The deposit is not a transfer of capital, since it was not placed with a foreign national, but does constitute a guarantee by DI of X's borrowing. See § B1001–3. (In this connection, positive direct investment attributable to a subsequent transfer of capital pursuant to DI's guarantee (under § 312(a)(6)) will be authorized by § 1002(a)(5), provided DI has complied with the certification requirements of § 1002(b).)

Example 8. DI pledges equity securities of U.S. corporations, together with equity securities of an AFN, with a foreign bank as collateral for a loan by the bank to another AFN (X) or, alternatively, as collateral for a long-term borrowing by DI from the foreign bank. The pledge is not a transfer of capital in either instance, since the securities pledged are not those of an unaffiliated foreign national. (However, the pledge of securities as collateral for the loan to X would be considered a guarantee by DI of X's obligation.)

Example 9. DI deposits $1 million with a foreign bank pursuant to an arrangement whereby the bank lends $1 million to an AFN (X). The deposit constitutes a $1 million transfer of capital by DI to X, whether or not the bank has a legal right to resort to the deposit should there be default by X. However, if DI's deposit was a deposit in the ordinary course of business, there would be no transfer of capital, in the absence of an agreement that the funds would stay on deposit while the loan was outstanding, and the funds on deposit would constitute a liquid foreign balance.

An AFN's pledge, hypothecation or transfer of foreign balances or equity securities of a foreign corporation (other than securities of an AFN) in connection with a loan by a foreign national to another AFN of the same DI will involve a transfer of capital to the DI by the AFN making the pledge, hypothecation or transfer and a transfer of capital by the DI to the AFN receiving the loan, if either AFN is an affiliate of the DI. See § 505. The amount of both transfers of capital will be the lesser of (a) the value of the foreign balances or equity securities or (b) the amount borrowed by the second AFN. Thus, if DI's wholly-owned AFN in Scheduled Area C pledges $800,000 with a foreign bank to secure a borrowing in the amount of $1 million by an AFN of the DI located in Scheduled Area A, the pledge will involve a transfer of capital from Scheduled Area C to the DI in the amount of $800,000 and from the DI to Scheduled Area A in the same amount.

§ B312–14 Indirect transfers by a DI to an AFN.

It is important to recognize that § 312(a) focuses on the substance rather than the form of transactions. Transactions that do not come precisely within the language of any of the subparagraphs of § 312(a), but nevertheless are undertaken by a DI for the benefit of an AFN, may involve a transfer of capital by the DI to the AFN even though the transactions are effected through nominees, financial conduits or other intermediaries. While the outcome of each transaction will depend on the specific facts and circumstances involved, DIs should recognize the general rule that transactions effected indirectly with an AFN will be treated under the regulations as if effected directly by the DI.

§ B312–15 Transfers of capital by an AFN to a DI.

The provisions of § 312(b), relating to transfers of capital by an AFN to a DI, are roughly parallel to the provisions of § 312(a)(1)–(6), relating to transfers from a DI to an AFN. Thus, with certain exceptions, any transaction that would involve a transfer of capital by a DI to an AFN under subparagraphs (1) through (6) of § 312(a) will involve a transfer of capital by the AFN to the DI under § 312(b) if the position of the parties is reversed (e.g., the AFN, rather than the DI, is the lender). Paragraph (c) of § 312, however, describes several transactions which do not constitute transfers of capital under paragraph (a) or (b) notwithstanding the provisions of the latter paragraphs. Paragraph (c) (and § B312–18 of this bulletin dealing with paragraph (c)) should therefore be consulted in connection with each transaction described in paragraph (b). The following points deserve specific mention.

(i) *Acquisition by AFN of interest in DI.*—Under § 312(a)(1), acquisition of an equity or debt interest in an AFN will ordinarily involve a transfer of capital by the DI, regardless of the identity of the person from whom the interest is acquired; the only exception is an acquisition from a person within the United States acting for its own account. Under § 312(b), however, acquisition by an AFN of an equity or debt interest in a DI involves a transfer of capital by the AFN only if the person from whom the interest is acquired is the DI itself (§ 312(c)(3)). Thus, for example, if an AFN lends $100,000 to a DI, a $100,000 transfer of capital from the AFN to the DI is involved under § 312(b)(1). If the loan were made to the DI by a bank and the AFN subsequently acquired the debt obligation, no transfer of capital to the DI would be involved; however, satisfaction of the obligation by the DI would involve a $100,000 transfer of capital to the AFN under § 312(a)(3).

(ii) *Export-related credit.*—In accordance with the Federal Reserve Foreign Credit Restraint Program ("FRFCRP") guidelines, certain export-related transfers of funds by financial institutions subject to the FRFCRP ("U.S. financial institutions") are not charged against the FRFCRP ceilings of such institutions. Where such a nonchargeable transfer of funds or other property is made directly or indirectly to a DI or an AFN in connection with a transaction that would otherwise be a transfer of capital from the AFN to the DI, § 312(c)(4) or § 312(c)(12) generally will operate to defer recognition of the transfer of capital until the debt obli-

gation acquired by the U.S. financial institution in connection with the transaction is repaid. (See § B312–18(iv) and § B312–18(xii).)

Commencing January 1, 1973, satisfaction of a qualified export obligation of an AFN, or the transfer of such an obligation by a DI to a U.S. financial institution, will not involve a transfer of capital, except to the extent that a transfer of capital by the DI was previously recognized with respect to such obligation in 1973 or thereafter. If a transfer of capital was previously so recognized, the satisfaction by an AFN of its obligation held by the DI will involve a transfer of capital, or, if the DI has transferred the obligation to a U.S. financial institution, recognition of a transfer of capital in connection with the AFN's debt obligation that has been so acquired by a U.S. financial institution will be deferred, as described above. See § B312–22.

(iii) *Accounts receivable.*—If an AFN transfers accounts receivable, notes or other debt obligations of an unaffiliated person in exchange for the debt obligation of the DI or in satisfaction of a debt obligation of the AFN held by the DI, a transfer of capital to the DI will not be recognized under § 312(b)(3) until the debt obligations are paid by the unaffiliated person to the DI or are sold by the DI to an unaffiliated foreign national (or sold to a domestic bank or nonbank financial institution subject to the FRFCRP but only to the extent of the charge made against the ceiling of such institution under the FRFCRP). (See also § 312(c)(12) and § B312–18(xii).)

Commencing January 1, 1973, if accounts receivable of an unaffiliated person are transferred by an AFN to the DI in satisfaction of a qualified export obligation, such transaction will not involve a transfer of capital, except to the extent that a transfer of capital by the DI was previously recognized with respect to such obligation in 1973 or thereafter. To the extent of such previously recognized transfer of capital, a transfer of capital will be recognized when the accounts receivable are paid by the unaffiliated person to the DI or sold by the DI to an unaffiliated foreign national, or, if the DI sells such accounts receivable to a U.S. financial institution, a transfer of capital will be recognized as described in paragraph (ii), above. See § B312–22.

(iv) *Disposition by DI of interest in AFN.*—Disposition by an AFN of an equity or debt interest in a DI involves a transfer of capital by the DI under § 312(a)(5) if the selling AFN is an "affiliate" (defined in § 903(a)), or if the transferee is the DI or another AFN that is an affiliate of the DI. Under § 312(b)(5), however, disposition by a DI of an equity or debt interest in an AFN involves a transfer of capital to the DI only if the transferee is either (a) a foreign national or (b) a financial institution (bank or nonbank financial institution) subject to the FRFCRP and the transfer is charged against the ceiling of such financial institution under the FRFCRP (§ 312(c)(4)). Where the transferee is a foreign national, however, no transfer of capital is recognized if a domestic bank or other financial institution, without charging its ceiling under the FRFCRP, transfers funds or other property to such foreign national in connection with its acquisition of the debt obligation of an AFN. (See §§ 312(c)(4)(b), 312(c)(12) and B312–18(xii).)

Commencing January 1, 1973, disposition by a DI of a qualified export obligation of an AFN will not involve a transfer of capital, except to the extent that a transfer of capital by the DI was previously recognized with respect to such obligation in 1973 or thereafter. See paragraph (ii), above, and § B312–22.

When a DI disposes of a debt or equity interest in an AFN to a foreign national (under circumstances constituting a transfer of capital to the DI under § 312(b)(5)), the transfer of capital to the DI is the full value of consideration received therefor, whether the transaction results in a gain or a loss to the DI. When the DI disposes of a debt or equity interest in an AFN to a financial institution subject to the FRFCRP, the transfer of capital is the amount charged against the FRFCRP ceiling of such institution.

Thus, if a DI lends $100,000 to an AFN (resulting in a $100,000 transfer of capital to the AFN) and discounts the AFN's note for $98,000 with a U.S. financial institution, a $98,000 transfer of capital by the AFN to the DI will result if the financial institution is subject to the FRFCRP and the amount transferred is charged against the financial institution's ceiling under the FRFCRP.

If the DI's disposition of the obligation of an AFN does not involve a transfer of capital under § 312(b)(5) because of the operation of § 312(c)(4), satisfaction of the obligation by the AFN (other than a qualified export obligation or qualified export lease) will involve a transfer of capital to the DI. To determine whether § 312(c)(4) is applicable to a transfer of an AFN debt obligation to a U.S. financial institution, the DI should inquire whether such institution incurs a charge under its FRFCRP ceiling with respect to such transfer, and the result of such inquiry should be retained in the books and records of the DI. (See § B312–18(iv) and see also § 312(c)(12) and § B312–18(xii).)

A transfer of capital under § 312(b)(5) will generally be deemed to have been made to the DI by the AFN that issued the debt or equity interest disposed of. There are, however, two exceptions to this rule. First, if the debt or equity interest in an AFN is sold by a DI to another AFN, the transfer of capital is deemed to have been made to the DI by the latter AFN. Second, if an equity interest in an AFN is both acquired from and sold to unaffiliated foreign nationals after December 31, 1967, and at the time of the disposition the AFN involved has subsidiaries or branches in other scheduled areas that are separate AFNs under § 304, the transfer of capital to the DI should be allocated among all such AFNs in a manner fairly reflecting the respective values of all direct and indirect interests in the AFNs disposed of. (See § B312–4.)

Sale of an AFN to an unaffiliated foreign national during a year does not affect any transfers of capital between the DI and the AFN preceding the date of disposition. Thus, if a DI makes a $1 million transfer of capital to an AFN in the beginning of the year and in December sells all equity interest in the AFN to an unaffiliated foreign national for $900,000 in cash, the DI has made a positive net transfer of capital of $100,000 to the scheduled area of the AFN (assuming no other relevant transactions during such year).

(v) *Breach of warranty.*—Payments to a DI resulting from breach of warranty or representations made by an unaffiliated foreign national seller in connection with the acquisition by the DI of an AFN are deemed to involve transfers of capital by the AFN to the DI.

§ B312–16 Sale of an AFN to an unaffiliated foreign national with deferred payment.

If a DI receives a debt obligation of an unaffiliated foreign national as consideration for an interest in the AFN disposed of, no transfer of capital to the DI will result from the disposition until the obligation is paid or is sold by the DI to another unaffiliated foreign national for cash or other property (other than a debt obligation), or to a domestic bank or nonbank financial institution subject to the FRFCRP and the transfer is charged against the ceiling of such bank or is treated as a covered asset of such institution under that program.

Example 10. DI sells 50 percent of the stock of a wholly owned French corporation (C) to an unaffiliated foreign national (F) for $1 million in cash. C has no subsidiaries or branches outside Schedule C, DI had originally acquired all of the stock of C for $100,000.

(a) Under the facts as presented, the sale involves a $1 million transfer of capital from C to DI, pursuant to § 312(b)(5).

(b) If F had given DI a note for $1 million instead of cash, the transfer of capital from C to DI would occur when the note is paid or is sold by DI to another unaffiliated foreign national for cash or other property (other than a debt obligation).

(c) If F had been an AFN of DI located in Schedule B, the sale of C for cash would involve a $1 million transfer of capital from F to DI.

(d) If F had been an AFN of DI located in Schedule B and paid DI with a note for $1 million, DI's exchange of stock in C for a debt obligation of F would not involve a transfer of capital. However, payment of the note by F would involve a transfer of capital from F to DI, pursuant to § 312(b)(3).

(e) If C had a subsidiary in Schedule A (X), a branch in Schedule B (Y) that was a separate AFN of DI, and a subsidiary in Schedule C (Z), the transfer of capital to DI involved in a cash sale of C to an unaffiliated foreign national would be allocated among C, X, Y, and Z in a manner reasonably reflecting the respective values of each direct and indirect interest disposed of by DI. If C were sold to another AFN for cash, no allocation of the transfer of capital to DI would be made among the second-tier AFNs; the

transfer of capital under § 312(b)(5) would be from the acquiring AFN to DI.

(f) The fact that DI had originally acquired C with proceeds of a long-term foreign borrowing would not alter any of the above results.

§ B312–17 Triangular and parallel financing.

Triangular loan arrangements are generally those in which a loan by a DI to an unaffiliated foreign national is the basis for, or is otherwise associated with, a loan by such foreign national to an AFN. Parallel loan arrangements are generally those in which a loan by a DI to a U.S. subsidiary of an unaffiliated foreign national is the basis for, or is otherwise associated with, a loan by such foreign national to an AFN.

As stated in the instructions for specific authorizations issued May 24, 1973, each such type of arrangement will generally give rise to a transfer of capital by the DI to the AFN at the time and in the principal amount of the foreign loan to the AFN. However, such instructions indicate that relief will be available, subject to certain conditions, in the form of a specific authorization to exclude the current charge against allowable resulting from such transfer of capital. See also Revenue Ruling 72–299, 1972 Int. Rev. Bull. No. 24, at p. 12, pertaining to exclusion from Interest Equalization Tax based upon the direct investment exception.

§ B312–18 Certain transactions not involving a transfer of capital; § 312(c).

Section 312(c) sets forth particular transactions not deemed to involve transfers of capital although technically encompassed by the language of § 312 (a) or (b).

(i) Under § 312(c)(1), acquisition by a DI from a person within the United States acting for its own account, of a debt or equity interest in an AFN (as described in § 312(a)(1)) will not be deemed to involve a transfer of capital.

The transfer of an interest in an AFN by a person within the United States to a DI may occur (i) in connection with the acquisition of such interest from a person within the United States that is not a DI in the AFN immediately prior to the sale, or (ii) in connection with the acquisition of such interest by one DI from another DI, or (iii) in connection with some form of combination of two or more DIs or a DI and a person within the United States. The acquisition of an interest in an AFN by one DI from a person within the United States is treated under § 312(c)(1)(i); the combination of two or more DIs or a DI and a person within the United States is treated under § 312(c)(1)(ii). Neither the acquisition nor the combination involves a transfer of capital, although the reporting requirement will vary depending upon the type of transaction.

When a DI acquires an equity interest in an AFN from a person within the United States that was not a DI in the AFN immediately prior to the sale, there is no transfer of capital and Form FDI–107 may not be filed by the acquiring DI. The acquiring DI is not responsible for any transfer of funds made by the seller prior to the transaction. In computing direct investment for the year of acquisition, however, the DI must reflect a pro rata share of earnings reinvested in the AFN based on the DI's share of total earnings multiplied by the fraction of the year during which the interest was held. Dividends paid to the person within the United States shall not be deemed to have been paid to the DI.

When a DI acquires an equity interest in an AFN from another DI, there is no transfer of capital by either of the DIs, and the filing of Forms FDI–107 (formerly revised Forms FDI–101 and FDI–102F for the preceding year) by the acquiring and divesting DIs is required only if the DIs determine to transfer base period direct investment and prior years' annual earnings corresponding to the interest in the AFN being transferred. A condition for the transfer of such historical investment experience from the divesting to the acquiring DI is that all direct investment in the year of acquisition that corresponds to the interest transferred is deemed to have been made by the acquiring DI.

Form FDI–107 is a short form and contains the entries that are necessary to transfer historical investment experience and related allowables that may be available to the DIs under §§ 504 and 506. It should be used in connection with § 312(c)(1)(i) acquisitions occuring on or after June 1, 1971.

If historical investment experience corresponding to the interest transferred is to be transferred from the divesting to the acquiring DI, Form FDI–107 must be filed by each DI on or before the end of the month following the close of the calendar quarter during which the transfer occurred. Whether or not Forms FDI–107 are filed, the acquiring and divesting DIs are required to report the change in ownership interest in an AFN on Supplement B to the next Form FDI–102 or FDI–102F filed by each DI.

As set forth in § 312(c)(1)(i), the result of filing Forms FDI–107 is that direct investment in the base period and the entire year of the acquisition which corresponds to the interest transferred is deemed to have been made by the acquiring DI, and annual earnings in the preceding year which correspond to the interest transferred are attributed to the acquiring DI. Deeming the direct investment in the base period to have been made by the acquiring DI effectively transfers, along with the interest in the AFN, the amount of historical allowable (§ 504(a)) that is based on such interest. Similarly, attributing annual earnings during the preceding year to the acquiring DI effectively transfers, along with the interest in the AFN, the amount of earnings allowable (§504(b)) and possible adjustment to historical allowable (§ 504(c)) that are based on such interest. In addition, the attribution to the acquiring DI of annual earnings in 1966 and 1967 corresponding to the interest transferred will affect the calculation of incremental earnings allowables (§ 506) that may be available to the acquiring and divesting DIs.

The filing of Form FDI–107 in the case of an acquisition of an interest in an AFN by one DI from another DI does not affect the following calculations: the amount of liquid foreign balances that may be held by either DI (§ 203(c)); carryforward and Schedule C reinvestment allowables (§ 504(d), (e) and (f)).

In determining the amount of direct investment that corresponds to an equity interest in an AFN that is acquired by a DI from another DI, no deduction (under § 203(d) (2) or (3), § 306(e)(1), or §313(d)(1)) for expenditure of proceeds of long-term foreign borrowing during the base period, or expenditure (prior to July 1, 1972) or allocation of such proceeds during the year of transfer, shall be made unless the acquiring DI assumes the obligation to repay the borrowing. If the acquiring DI does assume such obligation, the deduction in computing direct investment is limited to the amount assumed by the acquiring DI, and the subsequent repayment of the borrowing will involve a transfer of capital under § 312(a)(7) by the acquiring DI. It should be noted that the repayment of borrowing after the obligation is assumed by an acquiring DI will involve a transfer of capital by such DI under § 312(a)(7), whether or not Forms FDI–107 are filed, to the extent that deductions were made during any period by the divesting DI in respect of such borrowing.

If an acquiring DI assumes an obligation to repay long-term foreign borrowing in connection with its acquisition of an interest in an AFN from another DI, the borrowing is not deemed to have been repaid but the acquiring DI must file a certificate on Form FDI–106 in order for positive direct investment resulting from the subsequent payment of the obligation being assumed to be authorized under § 1002(a). Such certificate should be filed with OFDI on or before the end of the month following the close of the calendar quarter during which the acquisition took place (together with Form FDI–107 if such form is filed) and should identify the original certificate being replaced and indicate that it is being filed in connection with a § 312(c)(1) transaction. The information in Items II through V of Form FDI–106 filed by the acquiring DI, including the date of the borrowing, will presumably remain the same as on the original certificate. In Item VI, the acquiring DI should certify on the basis of its own position with respect to the regulations and allowables thereunder.

When Forms FDI–107 have been filed by the acquiring and divesting DIs in connection with the transfer between them of an equity interest in an AFN, dividends that correspond to the interest that was transferred are reported as follows: Such dividends that were paid to the divesting DI during the base period are reported by the acquiring DI on Form FDI–107 in accordance with the manner in which the divesting DI

elected to report dividends. Such dividends that were paid during the first 60 days of the year of transfer to a divesting DI which made the 60-day dividend election are reported by the divesting DI on Form FDI–102F for the preceding year. Such dividends that were paid during the first 60 days of the year of transfer to a divesting DI which did not make the 60-day dividend election are reported by the acquiring DI as having been paid during the year of transfer, whether or not the acquiring DI made the 60-day dividend election. Such dividends that were paid to the divesting DI after the first 60 days of the year of transfer are reported for such year by the acquiring DI. Such dividends that were paid to the acquiring DI during the year of transfer are reported by the acquiring DI in accordance with the manner in which the acquiring DI elected to report dividends.

If Forms FDI–107 are not filed within the prescribed period by both DIs in connection with the acquisition of an equity interest in an AFN by one DI from another DI, such acquisition will still not involve a transfer of capital and there will be no transfer of historical investment experience corresponding to the interest transferred. Earnings of the AFN during the year of transfer that correspond to the interest transferred should be prorated between the DIs on the basis of the fraction of the year during which the interest was held by each DI. Dividends are reported by the DI to which they were paid by the AFN in accordance with the manner in which such DI has elected to report dividends. Each DI should report the net transfer of capital that was actually made by it to the AFN during the year of transfer.

Prior specific authorizations issued to acquiring and divesting DIs will continue to be applicable except in cases where a § 312(c)(1)(i) transaction affects the amount of a specific authorization as the result of a change in a DI's Subpart E allowables. In such instances, OFDI should be consulted as to the continuing applicability of the specific authorization.

When two or more DIs, or a person within the United States and a DI, combine by merger, consolidation, reorganization or otherwise, no transfer of capital is involved and the surviving DI is required to file Form FDI–107 on or before the end of the month following the close of the calendar quarter during which the combination occurs. The acquisition (from a person within the United States acting for its own account) by a DI, or by a person within the United States that was not a DI prior to the acquisition, of a DI which thereby becomes an affiliate as defined in § 903(a) is a combination within the meaning of § 312(c)(1)(ii). In the following discussion, all the members of the combination, whether or not they were DIs prior to combination, are referred to as "merging DIs", and a DI that results from a combination is referred to as the "surviving DI".

On Form FDI–107, the surviving DI shall report the aggregate amount of direct investment made by the merging DIs during the base period, the aggregate amount of annual earnings of AFNs attributed to the merging DIs during 1966, 1967, and the year preceding the year in which the combination occurs, and the amount of liquid foreign balances held by the merging DIs during 1965, 1966, and 1967. Historical earnings and incremental earnings allowables that are available to the surviving DI, and the amount of liquid foreign balances that may be held at the end of any month by the surviving DI, will be based on the aggregate figures reported on Form FDI–107. In addition, carryforward and Schedule C reinvestment allowables that would have been authorized under § 504 (d), (e) and (f) to the merging DIs during the year in which the combination occurs will be authorized to the surviving DI if it elects § 504 allowables.

A borrowing made by a merging DI and assumed by the surviving DI is not considered to have been repaid as a result of the combination. A new certificate on Form FDI–106 with respect to long-term foreign borrowing or overseas borrowing is not required to be filed by the surviving DI in order for positive direct investment resulting from repayment to be authorized under § 1002(a). The repayment by the surviving DI of a borrowing in connection with which deductions were made by the merging DIs (under § 203(d)(2) or (3), § 306(e)(1) or § 313(d)(1)) will involve transfers of capital under § 312(a)(7) as though such deductions had been made by the surviving DI. Repayment charges incurred under § 1003 by the merging DIs are deemed to have been incurred by the surviving DI, and corresponding reductions in the allowables of the merging DIs that would have been made in the year in which the combination occurs shall instead be made in the allowables of the surviving DI. Transfers of capital that would have been recognized by the merging DIs in the year in which the combination occurs as the result of conversions in the preceding year shall be recognized and included in calculating direct investment by the surviving DI.

Dividends paid by AFNs to merging DIs during the base period are reported by the surviving DI on Form FDI–107 in accordance with the manner in which the respective DIs which received such dividends elected to report them. Dividends paid during the first 60 days of the year in which the combination occurs by an AFN to a merging DI that made the 60-day dividend election are reported by such merging DI on Form FDI–102F for the preceding year. Dividends paid during the first 60 days of the year in which the combination occurs by an AFN to a merging DI that did not make the 60-day dividend election, and all dividends paid by AFNs to merging DIs after the first 60 days of such year, are reported for such year by the surviving DI, whether or not the surviving DI is deemed to have made the 60-day dividend election.

Dividends paid by an AFN to the surviving DI during the first 60 days of the year in which the combination occurs are reported for the preceding year by the merging DI in respect to whose former interest such dividends were paid, provided such merging DI made the 60-day dividend election. All dividends paid to the surviving DI by AFNs during the first 60 days of the year in which the combination occurs in respect to former interests of a merging DI which did not make the 60-day dividend election, and all dividends paid by AFNs to the surviving DI after the first 60 days of such year, are reported for such year by the surviving DI, whether or not the surviving DI is deemed to have made the 60-day dividend election.

The surviving DI shall be deemed to have elected to report dividends in the manner that was elected, and (for the year preceding the year during which the combination occurred) to have made the election of allowables under § 502(a) that was made (for such preceding year), by the merging DI which has made the largest amount of aggregate positive direct investment since the effective date of the program (January 1, 1968). Such deemed election of allowables shall be binding on the surviving DI in the year in which the combination occurs and thereafter to the extent provided under § 502 (b), (c) and (d). For the purposes of this paragraph, aggregate positive direct investment shall be calculated by adding net transfers of capital plus reinvested earnings of incorporated AFNs, without deductions for the expenditure or allocation of proceeds of long-term foreign borrowing.

OFDI should be consulted as to the applicability of any outstanding specific authorizations (and conditions thereto) that were issued to merging DIs prior to the combination. Also, DIs are advised that violations of the regulations by merging DIs will ordinarily be treated by OFDI as having been committed by the surviving DI, and compliance remedies that have been imposed but not satisfied when a combination occurs will be invoked against the surviving DI.

If a DI acquires a debt obligation of an AFN from another DI in the same AFN, no transfer of capital is involved and no transfer of historical investment experience between the DIs may be made.

(ii) Pursuant to § 312(c)(2), disposition of an equity or debt interest in a DI by an AFN involves a transfer of capital by the DI to the AFN under § 312(a)(5) only if (a) the interest is sold back to the DI, or (b) the selling AFN is an affiliate of the DI, or (c) the interest is sold to another AFN that is an affiliate of the DI.

(iii) Pursuant to § 312(c)(3), acquisition by an AFN of an equity or debt interest in a DI is not a transfer of capital to the DI under § 312(b)(1) unless the acquisition is from the DI.

(iv) Pursuant to § 312(c)(4), transfer by a DI or an equity or debt interest in an AFN is not a transfer of capital by the AFN to the DI under § 312(b)(5) unless

the transfer (a) is made to a foreign national or is charged under the FRFCRP ceiling of a financial institution subject to such program, and (b) constitutes a transfer of capital after application of § 312(c)(12) (which became effective July 1, 1972). See § B312–18(xii). Commencing January 1, 1973, § 312(c)(4) does not apply to the transfer by a DI of a qualified export obligation, except to the extent that a transfer of capital by the DI was previously recognized with respect to such obligation in 1973 or thereafter. See § B312–22.

(v) Under § 312(c)(5), increase of equity interest in an incorporated AFN resulting from reinvestment of the AFN's earnings does not involve a transfer of capital. Reinvestment of the DI's share of an incorporated AFN's earnings does, however, constitute an element of direct investment, as defined in § 306(a).

(vi) Under § 312(c)(6), increase or decrease in the value of an AFN's assets resulting from reappraisal of such assets does not involve a transfer of capital.

(vii) Under § 312(c)(7), a DI's guarantee of borrowing by an AFN does not itself involve a transfer of capital. (For a definition of the term "guarantee", see § 1001(c).) However, payments pursuant to a guarantee may involve transfers of capital under § 312(a)(6) or (b)(6). Positive direct investment attributable to a DI's performance under a guarantee of an AFN's obligation will be authorized in excess of applicable allowables, provided that in the case of a guarantee made on or after January 1, 1968, the DI has complied with applicable certification requirements of § 1002(b).

(viii) Under § 312(c)(8), payment by the primary obligor of interest currently due, or fees or commissions in connection with borrowings, does not involve a transfer of capital. Prepayments of interest pursuant to customary lending practices or commercial transactions likewise do not involve transfers of capital. (The fees or commissions referred to above include commitment and termination fees, premiums, underwriters' commissions, original issue discounts, broker-dealer fees, legal and accounting fees, and other like items.) Thus, for example, an AFN's payment of interest on a loan from a DI, or vice versa, does not involve a transfer of capital if the interest is paid when due. If not paid when due, however, an additional debt obligation will be created, involving a transfer of capital from the obligee to the obligor under § 312(a)(1) or (b)(1) and a transfer of capital in the opposite direction under § 312(a)(3) or (b)(3) when the additional obligation is paid. It should be noted that the exemption under § 312(c)(8) applies only to the primary obligor. Thus, payments by a DI, pursuant to a guarantee of an AFN's borrowing, of interest, commissions and fees owed by the AFN, are transfers of capital to the AFN under § 312(a)(6). (See § B312–10.)

(ix) Under § 312(c)(9), payment of rental currently due under a lease, or prepayment of rental if customary under leases of the type involved, does not involve a transfer of capital. However, a lease of property by a DI to an AFN may involve a transfer of capital under § 312(a)(8).

(x) Under § 312(c)(10), payment of royalties currently due by a licensee does not involve a transfer of capital, absent circumstances indicating that such payments are essentially equivalent to transfers of capital and are merely disguised as royalty payments. Likewise, prepayment of royalties will not be treated as transfers of capital if such prepayments are customarily made by licensees under similar license agreements. As in the case of interest payments, the exemption under § 312(c)(10) applies only to payments by a primary obligor.

(xi) Section 312(c)(11) provides, as a general rule, that a transfer of any of the following items does not involve a transfer of capital by a DI to an AFN, or vice versa: Patents, copyrights, trademarks, trade names, trade secrets, technology, proprietary processes, proprietary information, and similar intangibles, and any rights, interests, contracts or applications relating to the foregoing items.

"Trade secrets, technology, proprietary processes, proprietary information and similar intangibles" as used in § 312(c)(11) means information or know-how in which the DI has a legally protected, proprietary right. The performance of services will not qualify under § 312(c)(11) unless such services are ancillary to a transfer of property which qualifies under § 312(c)(11). Generally, OFDI will consider a transfer of information or know-how to involve a transfer within the meaning of § 312(c)(11) if the information or know-how would qualify as property for purposes of tax-free exchange treatment under section 351 of the Internal Revenue Code (1954).

The exemptions of § 312(c)(11) are applicable regardless of the form of the transfer, or the consideration received in exchange therefor. However, DI's transfer of any of the foregoing intangibles to an AFN on or after January 1, 1968, is considered a transfer of capital by the DI if (a) the transfer represents a substantial departure from a previously established practice of the DI with respect to exploitation of intangibles of the type transferred, and (b) the intangible transferred was, prior to the transfer, a substantial source of royalty or other like fixed or determinable, annual or periodic, income.

A two-step transaction in which a DI sells intangibles to an AFN for cash and thereupon purchases an equity interest in the AFN with the cash generated by the sale of intangibles; or the DI purchases an equity interest in the AFN for cash and the AFN thereupon purchases intangibles from the DI with the cash generated by the sale of its stock to the DI, shall be considered a transfer of the intangibles in exchange for the equity interest. If the intangibles qualify under § 312(c)(11), the transfer will not involve a transfer of capital by the DI.

If a post-January 1, 1968, transfer of an intangible does not involve a transfer of capital because of the foregoing rule, no deduction for amortization or any like charge with respect to the intangible transferred may be made against earnings in calculating the transferee AFN's earnings. Also, even if a transfer of intangibles does not involve a transfer of capital, a person within the United States making such transfer may become a DI if a 10-percent interest (as defined in § 304) in the foreign enterprise is received in exchange for the transfer.

The determination whether transfer of an intaugible represents a substantial departure from previously established practice and whether the intangible transferred was a substantial source of royalty or like income will depend on the facts and circumstances in each case.

(xii) Commencing July 1, 1972, under § 312(c)(12), a transaction that would otherwise involve a negative transfer of capital under § 312(b) will not (with one exception) be a negative transfer of capital if the ultimate source of financing of the transaction is a U.S. financial institution (i.e., a bank or nonbank financial institution subject to the Federal Reserve Foreign Credit Restraint Program (FRFCRP)) which does not charge its FRFCRP ceiling. Commencing January 1, 1973, however, § 312(c)(12) does not apply to transactions involving qualified export obligations or leases. See § B312–22.

The central principle of § 312(c)(12) is that U.S.-source funds, derived from a U.S. financial institution but exempt from restraint under the FRFCRP, cannot be used to generate a negative transfer of capital under § 312(b). With the exception regarding qualified export obligations and leases, and the specific exception described below, § 312(c)(12) provides that no transaction described in § 312(b) will involve a transfer of capital if, in connection with such transaction, a U.S. financial institution, without charging its FRFCRP ceiling, acquires the debt obligation of a foreign national and transfers funds or other property to the DI or an AFN, or indirectly to a DI or an AFN through a foreign financial institution or through an unaffiliated foreign national. Section 312(c)(12) applies whether the transfer of funds or other property by the U.S. financial institution takes the form of a loan or other extension of credit, purchase of a debt obligation or a claim on a foreigner, or any other form, including indirect transfers through intermediaries.

Thus, where an AFN obtains funds or other property from a U.S. financial institution free of the FRFCRP ceiling, as by borrowing or discounting the debt obligations of unaffiliated foreign nationals under the FRFCRP export credit exemption, a transaction described in § 312(b) that is accomplished by the use of such or equivalent funds will not constitute a negative transfer of capital as a result of § 312(c)(12).

Section 312(c)(12) applies in all cases where funds or other property come from a U.S. financial institution under an FRFCRP exemption, including cases

where the funds are flowed through a foreign bank or other foreign intermediary. Thus, when a U.S. financial institution subject to the FRFCRP transfers funds or other property to a foreign bank (such as a foreign branch of a U.S. bank) in connection with the foreign bank's loan to an AFN or its purchase from an AFN of the debt obligations of other foreign nationals, § 312(c)(12) prevents the AFN's use of the proceeds of such transaction from generating a negative transfer of capital under § 312(b), such as by making payment to the DI in satisfaction of export-related debt (that is not a qualified export obligation as defined in § 312(c)(13)(ii)) if the U.S.-source financing is exempt from restraint under the FRFCRP. Similarly, through the interplay of §§ 312(c)(4) and 312(c)(12), where the U.S. financial institution makes such a transfer to the foreign bank in connection with the DI's transfer of a debt obligation of an AFN or other foreign national to the foreign bank, no negative transfer of capital will be recognized if the U.S.-source financing is not charged against the U.S. financial institution's FRFCRP ceiling. These results will obtain whether the U.S. financial institution, for example, lends the funds to the foreign bank or purchases the AFN's (or other foreign national's) debt obligations from the foreign bank; in each case the U.S. financial institution transfers funds and acquires the debt obligation of a foreign national.

However, § 312(c)(12) will not affect established practices for financing the purchase of U.S. exports by unaffiliated foreign nationals. Under the exception in subparagraph (iv), where an unaffiliated foreign national itself obtains funds from a domestic financial institution for the purchase of U.S. exports from an AFN of a DI, the AFN's use of such funds to pay down its own debt to the DI (or its use otherwise in a transaction described in § 312(b)) is not affected by the provisions of § 312(c)(12), to the extent that a FRFCRP-exempt export credit to the unaffiliated foreign national is involved and is arranged without the intervention of the DI or an AFN in a manner that departs from their previously established practices. It does not permit DIs and their AFNs to circumvent the purposes of § 312(c)(12) by inducing unaffiliated foreign nationals to shift from established financing sources to U.S. financing exempt from restraint under the FRFCRP export credit exemption. Accordingly, if a DI or AFN intervenes with a U.S. or foreign financial institution to arrange such U.S.-source financing for an unaffiliated foreign customer of the AFN, § 312(c)(12) will block recognition of a negative transfer of capital unless such intervention is in accordance with previously established practices of the DI or AFN. Intervention may be found notwithstanding the absence of an endorsement or guarantee by the DI or an AFN.

In cases in which a negative transfer of capital is blocked under § 312(c)(12), a negative transfer of capital is recognized at the later time of repayment of the debt obligation by a foreign national (including an AFN, a foreign bank, or an unaffiliated foreign national, as the case may be) to a person within the United States (ordinarily the financial institution which initially acquired the debt obligation of a foreign national under the FRFCRP export credit exemption). Commencing January 1, 1973, however, no transfer of capital will be recognized at any time in connection with the repayment by an AFN of its qualified export obligation, except to the extent that a transfer of capital by the DI was previously recognized with respect to such obligation in 1973 or thereafter. See § B312–22.

To assure compliance with § 312(c)(12) and § 312(c)(4), DIs transferring export-related debt obligations of AFNs or unaffiliated foreign nationals to foreign nationals (including foreign financial institutions), and AFNs (a) borrowing from U.S. financial institutions or from foreign nationals to pay for exports or (b) transferring export-related debt obligations of other AFNs or unaffiliated foreign nationals to U.S. financial institutions or to foreign nationals, should make the following inquiries: (1) Where such transaction is with a foreign national, whether a transfer of funds or other property is or will be made by a U.S. financial institution in connection with such transaction, and if so, whether the U.S. financial institution charges such transfer under its FRFCRP ceiling; (2) where such transaction is directly with a U.S. financial institution, whether the transfer of funds or other property by the financial institution is charged under its FRFCRP ceiling. The results of these inquiries should be retained in the books and records of the DI. (These inquiries need not be made in connection with qualified export obligations or qualified export leases.)

In all the examples below, it is assumed that the transactions do not involve qualified export obligations or qualified export leases (either because the DI has elected out of the export credit exemption system or because the goods exported are not United States goods as defined in § 312(c)(13)(iii)), that the U.S. financial institution's acquisition of a foreign national's debt obligation and transfer of funds, in connection with the transaction in question, fall within the FRFCRP export-credit exemption, and that there is therefore no charge against the financial institution's FRFCRP ceiling.

Example 11. DI exports goods on credit to an AFN, thereby acquiring a debt obligation of the AFN. AFN borrows funds from a U.S. bank to repay its debt obligation held by the DI. The U.S. bank has acquired the AFN's debt obligation and transferred funds to it. By operation of § 312(c)(12), no transfer of capital is recognized under § 312(b)(3) until the AFN's debt obligation acquired by the U.S. bank is repaid.

Example 12. DI exports goods on open account to an AFN, which in turn sells the goods on credit to an unaffiliated foreign national. AFN sells the debt obligation of such unaffiliated foreign national, with or without recourse, to a U.S. bank. The bank has acquired the unaffiliated foreign national's debt obligation, and has transferred funds to the AFN. The AFN's repayment of its export debt to the DI is not a transfer of capital under § 312(b)(3) until the debt obligation acquired by the U.S. bank is repaid by a foreign national.

Example 13. DI exports goods on open account to an AFN, which in turn sells such goods on credit to an unaffiliated foreign national. A U.S. bank lends funds to a foreign financial institution, and the latter lends funds to the AFN which repays its export debt to the DI. The U.S. bank has acquired the debt obligation of the foreign financial institution. The AFN's repayment of its debt to the DI is not a transfer of capital under § 312(b)(3) until the foreign financial institution's debt obligation to the U.S. bank is repaid. The result is the same if the foreign financial institution discounts the debt obligation of the AFN with the U.S. bank.

Example 14. DI exports goods on open account to an AFN, which in turn sells the goods on credit to an unaffiliated foreign national. A U.S. bank lends funds to a foreign financial institution, which purchases from the AFN the debt obligation of the unaffiliated foreign national. The AFN's repayment of its export debt to the DI is not a transfer of capital under § 312(b)(3) until the foreign financial institution's debt obligation to the U.S. bank is repaid. Similarly, the transfer of capital under § 312(b)(3) is deferred if the foreign financial institution rediscounts the debt obligation of the unaffiliated foreign national with the U.S. bank.

Example 15. DI exports goods on open account to an AFN, thereby acquiring a debt obligation of the AFN. The DI discounts the AFN's debt obligation with a U.S. bank. Since the transfer by the DI of a debt obligation of the AFN is neither to a foreign national nor to a domestic financial institution which charges its FRFCRP ceiling, by operation of § 312(c)(4)(a) no transfer of capital is recognized under § 312(b)(5) until the AFN repays its debt obligation held by the U.S. bank.

Example 16. DI exports goods on open account to an AFN. A U.S. bank lends funds to a foreign financial institution, which purchases the debt obligation of the AFN from the DI. As a result of §§ 312(c)(4) and 312(c)(12), no transfer of capital is recognized under § 312(b)(5) until the foreign financial institution's debt obligation to the U.S. bank is repaid. Although the DI has transferred the AFN debt obligation to a foreign national within § 312(c)(4)(a)(i), the transaction does not constitute a transfer of capital after application of § 312(c)(12), since the U.S. bank has acquired the debt obligation of the foreign financial institution and transferred funds to it without charging its FRFCRP ceiling; hence § 312(c)(4)(b) is not fulfilled. The result is the same if the foreign financial institution rediscounts the debt obligation of the AFN with a U.S. bank.

Example 17. DI exports goods on open account to an AFN, which in turn sells the goods to an unaffiliated foreign national. Without the intervention of the DI or the AFN, the unaffiliated foreign national borrows funds from a U.S. bank and pays the AFN. A negative transfer of capital is recognized under § 312(b)(3) when the AFN repays the DI.

Example 18. DI exports goods on open account to an AFN, which in turn sells the goods to an unaffiliated foreign national. Without the intervention of the DI or the AFN, a U.S. bank lends funds to a foreign financial institution, which in turn lends funds to the unaffiliated foreign national to pay the AFN for the exported goods. The AFN's repayment of its own export debt to the DI is a negative transfer of capital under § 312(b)(3). The result is the same if the

foreign financial institution rediscounts with the U.S. bank the debt obligation its has acquired from the unaffiliated foreign national.

Example 19. DI exports goods on open account to an AFN, which sells the goods on credit to an unaffiliated foreign wholesaler. The wholesaler in turn sells the goods on credit to an unaffiliated foreign retailer. Without the intervention of the DI or AFN, the foreign wholesaler sells the debt obligation of the foreign retailer to a U.S. bank, and repays the AFN which in turn repays the DI. The AFN's repayment of its export debt to the DI is a negative transfer under § 312(b)(3). The result is the same if the foreign wholesaler sells the foreign retailer's debt obligation to a foreign financial institution, which purchases the retailer s debt by borrowing from a U.S. bank or by rediscounting the retailer's debt obligation with a U.S. bank.

Example 20. DI exports goods on open account to an AFN, which in turn sells the goods on credit to an unaffiliated foreign national. Neither the AFN nor the DI has an established practice of arranging U.S.-source financing of the AFN's sales. With the assistance of the AFN or the DI, the unaffiliated foreign national borrows from a foreign bank which discounts the debt obligation of the unaffiliated foreign national with a U.S. bank. The unaffiliated foreign national repays the AFN, which in turn repays the DI. No transfer of capital under § 312(b)(3) may be recognized until the debt obligation held by the U.S. bank is repaid.

The following example illustrates the interplay between § 312(c)(12) and § 312(b)(3) as interpreted in § B312–15(iii):

Example 21. DI exports goods on open account to an AFN, which in turn sells the goods on credit to an unaffiliated foreign national. The AFN assigns the debt obligation of the unaffiliated foreign national to the DI. The assignment is treated on intercompany accounts as a satisfaction of the AFN's export debt obligation to the DI, but no transfer of capital under § 312(b)(3) results from such an assignment until the unaffiliated foreign national's debt obligation is paid, or is sold by the DI to another unaffiliated foreign national or to a U.S. financial institution which charges the transfer under its FRFCRP ceiling (see § B312–15(iii)). If the DI sells the debt obligation of the unaffiliated foreign national to a foreign financial institution which borrows equivalent funds from a U.S. bank or rediscounts the unaffiliated foreign national's debt obligation with a U.S. bank § 312(c)(12)(iii) blocks recognition of a transfer of capital under § 312(b)(3) until the debt obligation held by the U.S. bank is repaid by a foreign national.

§ B312–19 Unenumerated transactions not involving a transfer of capital.

Certain other transactions not enumerated in § 312(c) will be deemed not to involve transfers of capital between a DI and an AFN, even though a foreign enterprise may become or cease to be an AFN as a result of the transactions. However, if a foreign enterprise ceases to be an AFN as a result of any such transaction, this will not change the amount of direct investment chargeable to the DI during the base period in the appropriate scheduled area. The transactions referred to are as follows:

Acquisition by a DI, from an AFN or unaffiliated foreign national, of stock or assets of a foreign corporation, partnership, or business venture in exchange for stock of an AFN;

Contribution by a DI of stock or assets of an AFN to capital of another AFN;

Merger of one incorporated AFN into another incorporated AFN of the same DI, or consolidation of AFNs of the same DI, or merger or consolidation of an AFN into or with the DI;

Division of an AFN into two or more entities; and

Recapitalization of an AFN involving an exchange of stock for stock, debt for debt, stock for debt, or debt for stock.

A DI will not be exempt from recognizing a transfer of capital in a stock-for-stock/assets acquisition as described in the first category above of the exchange in effect results in an acquisition for cash.

Example 22. During 1970, DI organizes an incorporated AFN (A) in Schedule A and contributes $20 million cash to the capital of A. DI then enters into an agreement with X, a foreign national, whereby DI acquires from X all of the stock of a French corporation (C) in Schedule C in exchange for all of the stock of A. Thereafter, X causes A to be dissolved and the assets of A ($20 million cash) to be distributed to itself. This transaction is not a bona fide exchange of stock for stock, exempt from §§ 312 and 505, but is equivalent to an acquisition of C for cash, and constitutes a transfer of capital from A to DI under § 312(b) and a transfer of capital from DI to C under § 312(a) of $20 million.

A DI will not be deemed to have made a transfer of capital to its AFN if the DI deposits funds with a foreign government or a foreign bank pursuant to an import deposit law, regulation or requirement of the foreign government in connection with exports made by the DI to the AFN. The foregoing rule applies only if the deposit is not returned or returnable to the AFN or otherwise carried on the books and records of the AFN as an asset or a debt obligation to the DI.

§ B312–20 International construction projects.

Bid preparation expenditures in connection with international construction projects are to be excluded from computation of a DI's net transfer of capital, whether such expendtures have been incurred by the DI or it has advanced funds for such purpose to an AFN. However, such expenditures may not subsequently be deducted in computing earnings of incorporated AFNs or aggregate net assets of unincorporated AFNs. Specific authorizations with respect to transfers of capital to foreign construction projects may also be granted in appropriate circumstances under § 801.

§ B312–21 Expropriation.

A DI which has had AFN property expropriated by a foreign government should apply for an interpretive opinion concerning application of the regulations to the particular facts of the case. Such an application may also request a specific authorization. See Part IV(J) of the Revised Instructions for Submitting Applications for Specific Authorizations, dated May 24, 1973.

§ B312–22 Export credit.

(i) *Introduction.*—Sections 312(c)(13), 312(c)(14), and 313(b) are the key provisions constituting a general exemption in connection with qualifying export transactions. The general approach of the new export credit exemption system is to exempt, from positive transfer of capital charge, an extension of qualified export credit by a DI to its AFN, unless and until the AFN fails to repay the credit within a time period that would be permitted if the DI and AFN were dealing at arm's length. Under this approach, a DI will generally age its receivables for qualifying export credits that are outstanding at yearend, to determine which are "overdue" as measured by the applicable arm's-length terms and therefore give rise to transfer of capital consequences.

In keeping with the balance of payments objectives of the regulations, the exemption system rests on the assumption that DIs will continue to cause their AFNs to maintain repayments of export credits that were outstanding at yearend 1972 at a rate consistent with past practice. (Such repayments in 1973 may be attributed in part to credits extended in 1973, rather than to prior-year credits, as set forth in paragraph (iv) below.) Where a DI causes its AFNs to curtail their repayment of such prior-year credits, in an attempt to take undue advantage of the exemption system, such action may be treated as an evasion of the regulations under § 204. Increases in the level of outstanding export credit not related to increased levels of exports may similarly be viewed as evidence of such evasion. Such a DI also may be deemed to have elected out of the exemption under § 312(c)(13)(vi). Further, the indefinite extension or forgiveness of export credits may be deemed a contribution to the capital of the AFNs involved. DIs will continue to be required to report export and export credit information on quarterly and annual reports.

The exemption system will not affect the computation of positive direct investment during the base period, 1965–1966. Forms FDI–101, on which base period calculations are reported, should not be refiled to exempt export credits.

(ii) *General explanation.*—Under the regulations in effect through 1972, the acquisition by a DI of an obligation of an incorporated AFN attendant to an export sale of goods or services to the AFN by the DI was a positive transfer of capital under § 312(a)(1); repayment of the obligation by the AFN, or transfer of the obligation by the DI, was a negative transfer of capital under § 312(b)(3) or (5). The provisions applicable to unincorporated AFNs produced the same result. The newly adopted export credit exemption provisions of the regulations (§§ 312(c)(13), 312(c)(14), 313(b)), effective for transactions on or after January 1, 1973, in general block all positive and negative transfers of capital in connection with qualifying export transactions.

Section 312(c)(13) is the principal provision governing the treatment of ob-

ligations of incorporated AFNs acquired by DIs in connection with qualified export sale transactions. For such transactions § 312(c)(13) establishes exceptions to the general definitions of positive and negative transfers of capital set forth in §§ 312(a) and 312(b). Provisions in § 313(b), governed by the definitions set forth in § 312(c)(13), provide the same substantive treatment with respect to unincorporated AFNs. Section 312(c)(14) provides an exclusion with respect to the transfer or return of property pursuant to qualified export leases by DIs to incorporated AFNs.

Under § 312(c)(13), no transfer of capital is recognized in connection with an acquisition by a DI on or after January 1, 1973, of a debt obligation of an incorporated AFN attendant to a sale by the DI to the AFN of U.S. goods or U.S. services, until the obligation has been outstanding for a period longer than the arm's-length term applicable to the transaction. A positive transfer of capital in the amount of the debt obligation is charged when the credit becomes overdue as measured by the arm's-length term if the DI holds the obligation at that time. Commencing January 1, 1973 no negative transfer of capital will be recognized in connection with any repayment of a qualified export obligation by an AFN, or transfer by a DI of such an obligation, except to the extent that a positive transfer of capital has been previously recognized in 1973 or thereafter with respect to the obligation. (It should be noted that this rule applies to the repayment or transfer after 1972 of qualified export obligations that were acquired by the DI in 1972 or earlier.) Moreover commencing January 1, 1973, no negative transfer of capital is recognized for the repayment by or in behalf of an AFN of a qualified export obligation held by a financial institution subject to the Federal Reserve Foreign Credit Restraint Program ("FRFCRP") even though such repayment would have been deemed a transfer of capital by the AFN under the proviso to § 312(c)(4) or § 312(c)(12).

The substantive rules applicable to unincorporated AFNs produce the same net result. Ordinarily the liability of an unincorporated AFN to a DI is excluded in calculating the net assets of the AFN under § 313(b). Thus, a sale of goods by the DI to the AFN on credit resulted prior to 1973 in an increase in the AFN's net assets by increasing its assets without increasing its libilities. This had the effect of a positive transfer of capital. Commencing January 1, 1973, the liabilities of unincorporated AFNs to the DI which represent qualified export obligations are not excluded from the calculation of net assets, until such obligations have been outstanding for periods of time longer than the arm's-length terms applicable to them. When such obligations become overdue as measured by the arm's-length term, they must be excluded in the net asset calculation; this increases net assets and has the effect of a positive transfer of capital. Payment made to the DI from AFN assets, eliminating the excluded liability, reduces net assets and has the effect of a negative transfer of capital.

A qualified export obligation which is acquired and then satisfied or transferred within the same year has no net effect under the regulations, whether or not it is repaid or transferred within the arm's-length term applicable to the transaction. But where the debt obligation remains outstanding at yearend, and is at that time overdue as measured by the arm's-length term, the DI will incur a positive transfer of capital charge in that year. The DI can recognize a negative transfer of capital in the year in which such obligation is repaid or transferred.

Sections 312(c)(4) and 312(c)(12) as amended effective January 1, 1973 are not applicable to qualified export obligations. Thus, where a DI transfers a qualified export obligation to an institution subject to the FRFCRP, or an AFN obtains funds from such an institution to repay a qualified export obligation to the DI, §§ 312(c)(4) and 312(c)(12) have no effect on the treatment of such transactions, regardless of whether the institution charges its ceiling under the FRF CRP in connection with the transaction.

The provisions of §§ 312(c)(13) (pertaining to incorporated AFNs) and 313(b)(1), (2) (pertaining to unincorporated AFNs) apply to sales transactions. Separate provision is made in § 312(c)(14) to exempt the transfer of property to an incorporated AFN pursuant to a qualifying export lease and the return of property so transferred. The effect of these provisions is described in paragraph (ix), below.

The provisions constituting the export credit exemption system do not affect the treatment of acquisitions of export obligations of AFNs which are not qualified export obligations as defined in § 312(c)(13). Acquisitions of such nonqualified obligations continue to constitute positive transfers of capital under § 312(a)(1), or, in the case of unincorporated AFNs, increase in net assets under § 313(b) (by exclusion of the imputed debt obligation), at the times the obligations are acquired; repayment of the obligations by the AFN or transfers of them by the DI continue to constitute negative transfers of capital under § 312(b)(3) or (5) or a decrease in net assets under § 313(b) (unless recognition of the negative transfer of capital or reduction in assets is blocked by § 312(c)(4) or § 312(c)(12)). Also, § 312(c)(14), which provides an exemption for qualified lease transactions, does not affect the treatment of nonqualified leases. It should be carefully noted that these rules apply regardless of whether the nonqualified obligation or lease arose before 1973.

Because of the differing treatment that is provided for qualified and nonqualified export obligations and leases, DIs (except DIs which elect out of the exemption system in accordance with § 312(c)(13)(vi)) should segregate on their books and records those AFN obligations which are qualified export obligations and those lease transactions which constitute qualified export leases. DIs are also required to determine which of the AFN obligations held as of the end of the year 1972 were qualified export obligations and which leases outstanding were qualified export leases, since repayment of such qualified export obligations and returns of property under such leases are not negative transfers of capital.

Such segregation of AFN debt to the DI that was outstanding at yearend 1972 many be unduly difficult for many DIs which recorded a variety of miscellaneous transactions, in addition to qualified export obligations, through general intercompany accounts with their AFNs. Where such is the case, a DI may segregate yearend 1972 outstanding debt, with respect to any general intercompany account, by certifying in good faith, on its form FDI–102F filed for 1973, that at least a certain percentage of the outstanding balance due from the AFN at yearend 1972 was attributable to items which were not qualified export obligations. The percentage certified may not exceed 15 percent. Such segregation of the yearend 1972 balance of a general intercompany account into qualified export obligations and other items by certification shall be binding for all purposes of the regulations. The certification is, of course, subject to audit. No certification may be made with respect to post-1972 transactions.

Example 23.—In 1972 DI maintained a general intercompany account with its AFN. The large majority of the items accounted for in this account were acquisitions of qualified export obligations of the AFN and repayments of such obligations by the AFN. However, the account also recorded sales of non-U.S. goods to the AFN, certain royalty payments overdue from the AFN and other items. At yearend 1972 the account reflected a balance of $400,000 due from the AFN. DI has not computed exactly what portion of this 1972 amount was attributable to items other than qualified export obligations, but, based on its general knowledge of its dealings with the AFN and the use of the intercompany account, it believes in good faith that at least 7 percent of the account represents such items. DI may certify this percentage on its form FDI–102F filed for 1973. *Accordingly*, DI may recognize up to $28,000 (7 percent x $400,000) of 1973 repayments applied against this outstanding balance as negative transfers of capital. Of course, DI acquisitions in 1973 of AFN obligations other than qualified export obligations will give rise to positive transfers of capital. Therefore, the net increase or net decrease in the nonqualifying portion of the account over the year, beginning with the $28,000 yearend 1972 balance, will equal the net positive or net negative transfer of capital resulting from acquisitions and satisfactions of AFN obligations other than qualified export obligations. But, by virtue of the certification, any amount in excess of $28,000 repaid in 1973 applicable to the 1972 ending intercompany account balance will be considered repayment of qualified export obligations for which no negative transfer of capital is recognizable.

The amendments are described in greater detail as follows:

(iii) *Definitions.*—(a) *Qualified export obligation.* Under § 312(c)(13)(ii)(A), the term "qualified export obligation"

means a debt obligation of an AFN acquired by a DI in any year (including any year before 1973) attendant to a sale of U.S. goods or U.S. services. There are two exceptions:

(1) In no event is a qualified export obligation recognized in connection with a transaction that is in substance a contribution to capital. Where a transfer of goods or services is recorded on a DI's books and records as a credit sale, and timely payment is subsequently forgiven in whole or in part, the transaction may be deemed a contribution to capital in the year the goods or services were transferred. (However, where changed circumstances give rise to a legitimate business reason for forgiving the indebtedness attendant to a transaction previously treated in good faith as a credit sale, the amount of the debt forgiven will be treated as a transfer of capital in the year of forgiveness.) This rule applies to unincorporated AFNs as well as incorporated AFNs. Thus, where a DI ships goods to an unincorporated AFN or performs services for it with the arrangement that the AFN will make full payment for the goods or services, the DI may treat the transaction as a sale to the unincorporated AFN. If the other requirements are met, such a sale gives rise to a qualified export obligation. However, if the DI does not anticipate full payment for the goods or services, or foregoes payment, the transaction may be considered a contribution to capital, which does not give rise to a qualified export obligation.

(2) In no event does a qualified export obligation arise in connection with an installment sale unless the terms of the sale require installment payments at an arm's-length rate, taking into account the time and amount of each payment to be made. For example, if a DI sells equipment to an AFN for a total price of $60,000, and the sale agreement requires three semiannual payments of $10,000 and a final semiannual payment of $30,000, the sale does not require payments at an arm's-length rate, if an arm's-length rate of payment would require four semiannual payments of $15,000. If, on the other hand, the agreement requires an initial semiannual installment of $30,000 and three additional semiannual payments of $10,000, the sale would give rise to qualified export obligations since the rate of payment required is faster than the arm's-length rate. The arm's-length rate of payment for these purposes is the rate that would have been provided at the time the transaction was entered into, in independent transactions with or between unrelated parties under similar circumstances, considering all relevant factors except the credit standing of the AFN. The AFN is considered to be an average or typical credit risk, not an unusually good or a poor one. See paragraph (v) below.

Each payment due under an installment sale which gives rise to a qualified export obligation is deemed to be a separate qualified export obligation. Thus, in the last example in the preceding paragraph, the transaction would give rise to one qualified export obligation of $30,000 and three qualified export obligations of $10,000 each, due at successive semiannual intervals.

(b) *United States goods.*—The exemption of § 312(c)(13) is applicable to sales of "United States goods", which are defined in § 312(c)(13)(iii) to be tangible property meeting two requirements. It must be grown, produced or manufactured in the United States, and it must be exported from the United States by the DI.

Property is considered grown, produced or manufactured in the United States only if it may be classified as "domestic" for purposes of a Department of Commerce Shipper's Export Declaration on Commerce Department Form 7525–V. This is the form that must be completed and submitted by all exporters shipping domestic goods from the United States. With regard to classification of goods shipped as "foreign" or "domestic", article IV of the form provides as follows:

> Exports of domestic merchandise include commodities which are the growth, produce, or manufacture of the United States. Exports of foreign merchandise include commodities of foreign origin which entered the United States as imports, and which, at the time of exportation, are in the same condition as when imported. Commodities of foreign origin which have been changed in the United States from the form in which they were imported, or which have been enhanced in value by further manufacture in the United States, are considered as "domestic" commodities.

(c) *United States services.*—Sales of services will qualify for the § 312(c)(13) exemption only if they are "United States services", as defined in § 312(c)(13)(iv), which must be services performed for an AFN by the DI. Services performed by a DI through one of its AFNs for another AFN are not considered performed by the DI. Services subcontracted to another party for performance on behalf of the DI are not considered performed by the DI.

(d) *Arm's-length term.*—The regulations provide that the acquisition by a DI of a qualified export obligation is exempt from recognition only during an arm's-length term of obligation. This is explained in paragraphs (v) and (vi), below.

(iv) *Overdue qualified export credit.*—Under the regulations in effect through 1972, a positive transfer of capital was recognized upon the acquisition of an AFN obligation by a DI in connection with any credit sale to the AFN, and a negative transfer of capital was recognized upon repayment of the obligation by the AFN or transfer of it by the DI. Under § 312(c)(13)(i), no positive transfer of capital is recognized in connection with an acquisition on or after January 1, 1973 of a qualified export obligation of an incorporated AFN until the obligation, held by the DI, has been outstanding for a period longer than the arm's-length term applicable to it. Thus, if the obligation is not "overdue" as measured by the arm's-length term, no positive transfer of capital arises. The repayment or other satisfaction of a qualified export obligation by an incorporated AFN, or transfer by a DI of a qualified export obligation, does not constitute a negative transfer of capital if effected within the period of the arm's-length term. If, however, the obligation becomes overdue and is held by the DI so that a positive transfer of capital is recognized with respect to it (on or after January 1, 1973), such repayment or satisfaction or transfer does constitute a negative transfer of capital.

The rules provided in § 313(b) applying to unincorporated AFNs produce the same net result as the rules for incorporated AFNs. Where a qualified export obligation of an unincorporated AFN is acquired by a DI, the liability of the AFN is included in calculating the net assets of the AFN under § 313(b) until the obligation has been outstanding for a period longer than the arm's-length term applicable to it. This AFN liability either offsets the exported asset (resulting in no change in the net asset position) or, where payment for services is expensed, produces a reduction in net assets.

Where payment or satisfaction of the qualified export obligation is made before the obligation becomes overdue as measured by the arm's-length term, there is a reduction in assets and a corresponding reduction in liabilities, producing no change in net assets. The net result of the credit sale and subsequent payment within the arm's-length term is either (1) no change in net assets if an asset is recognized (as for the purchase of goods or capitalized services), or, (2) a reduction in net assets if the item purchased is expensed (as for the purchase of expensed services).

But when the obligation becomes overdue under the arm's-length term the liability must then be excluded in calculating net assets under § 313(b), resulting in an increase in net assets. The net change attendant to the sale on credit and subsequent failure to pay within the arm's-length term is an increase in net assets where an asset is recognized (as for the purchase of goods or of capitalized services), or no change in net assets where the item purchased is expensed (as for the purchase of expensed services). Repayment by an AFN of an "overdue" qualified export obligation results in a reduction in net assets as computed under § 313(b), since cash is expended to pay the obligation but the liability eliminated is an excluded liability.

Under § 313(b)(2) any reduction in net assets resulting from a repayment of a qualified export obligation acquired by the direct investor prior to 1973 is disregarded in computing the increase or decrease in net assets of the AFN.

For any year commencing with 1973, the DI will compute positive transfers of capital related to qualified export obligations (of either an incorporated or an unincorporated AFN) on the basis of the qualified export obligations of the AFN acquired on or after January 1, 1973 that are overdue at yearend as measured

by the arm's-length term. When such overdue obligations are repaid by the AFN in a subsequent year, a negative transfer of capital will be recognized.

Example 24.—On March 15, 1973, DI sells $50,000 worth of U.S. goods to an incorporated AFN. On October 31, 1973, the DI sells $75,000 worth of U.S. goods to the AFN. The arm's length term applicable to both transactions is 9 months. As of December 31, 1973, neither qualified export obligation has been repaid. A positive transfer of capital of $50,000 is recognized in connection with the first acquisition on December 15, 1973, the date the obligation became overdue as measured by the 9-month arm's-length term applicable to it. Since the obligation has not been repaid by yearend 1973, there is no offsetting negative, and the positive transfer of capital must be charged for 1973 Program compliance. No transfer of capital is recognized, however, in connection with the second qualified export obligation, since at yearend 1973 the obligation has been outstanding for a period less than the 9-month arm's-length term applicable to it.

On January 31, 1974, the AFN repays both obligations ($125,000). A negative transfer of capital of only $50,000 is recognized in connection with the repayments, since a positive transfer of capital of only $50,000 was previously recognized as a result of acquisition of the obligations.

Example 25.—Same facts as in Example 2, except that the AFN involved is unincorporated. As of December 31, 1973, the net assets of the AFN have been increased by $50,000 as a result of the first purchase, since the exported goods are included as AFN assets, while the liability to the DI arising from the purchase, having become overdue as measured by the arm's-length term on December 15, 1973, is excluded in calculating the net assets of the AFN under section 313 (b). The second purchase has no effect on net assets, since the liability is not overdue as of yearend and therefore is included in calculating the AFN's net assets, offsetting the acquired asset. When the obligations are repaid on January 31, 1974, the repayment of the $50,000 obligation results in a $50,000 reduction in net assets as computed under § 313(b). There is a $50,000 reduction in assets (cash), while there is no reduction in liabilities since the corresponding liability had been excluded for § 313(b) purposes. The repayment of the $75,000 obligation has no effect on net assets as computed under § 313(b) since the liability eliminated is an included liability; thus, the reduction in assets is offset by the reduction in liabilities.

A DI which in past years has extended greater than arm's-length terms to its AFNs may incur positive transfer of capital charges in 1973, even where its exports are not rising and AFN repayments are maintained at a level consistent with past practice, if the DI attributes all 1973 repayments of qualified export obligations to outstanding obligations under the first-in-first-out concept. Similarly, a DI which in past years has extended greater than arm's length terms to its AFNs may incur transfer of capital charges in 1973 where its volume of exports is rising, even though all new credits in 1973 are extended on arm's-length terms. In both situations, under the first-in-first-out concept a large part of 1973 repayments would be attributed to 1972 qualified export obligations, and a corresponding amount of qualified export obligations acquired in 1973 would remain outstanding and possibly "overdue" at yearend 1973. To alleviate this difficulty, a DI may treat a greater portion of 1973 repayments as attributable to qualified export obligations arising in 1973 than would ordinarily be the case if all repayments were matched on a first-in-first-out basis. Specifically, the DI may treat all 1973 repayments by an AFN of qualified export obligations as attributable to that AFN's repayments of such obligations arising in 1973, except for an amount equal to the lesser of (1) one-half the balance of qualified export obligations outstanding from the AFN at yearend 1972, or (2) one-half the total amount of qualified export obligations repaid in 1973. Insofar as 1973 AFN repayments are attributed to 1973 qualified export obligations, such obligations are deemed satisfied; they therefore are not outstanding at yearend 1973, and thus need not be aged to determine whether they give rise to positive transfer of capital charges in 1973.

Example 26. During 1971 and 1972 DI shipped AFN $50,000 of U.S. goods each month on 12-month terms, resulting in a yearend 1972 balance of outstanding qualified export obligations of $600,000. In 1973 DI continues shipping $50,000 of U.S. goods to AFN each month, acquiring qualified export obligations with each shipment, and AFN continues repaying $50,000 of qualified export obligations each month. The arm's length term applicable to each shipment is 6 months. Under the first-in-first-out concept, the entire $600,000 of 1973 repayments would be applied to reduce the 1972 yearend balance, for which no negative transfer of capital could be recognized. The entire $600,000 yearend 1973 balance would be considered 1973 qualified export obligations which, when aged, would show all of the obligations acquired in the first 6 months to be overdue, giving rise to a $300,000 positive transfer of capital charge in 1973. The DI may elect, however, to attribute $300,000 of the repayments to satisfaction of qualified export obligations arising in 1973 ($600,000 actually repaid in 1973 reduced by the lesser of (1) one-half the $600,000 yearend 1972 balance, or (2) one-half the $600,000 of 1973 repayments of qualified export obligations); the remaining $300,000 of repayments is attributed to obligations outstanding at yearend 1972. Thus, as of yearend 1973 the DI would hold $600,000 of qualified export obligations, $300,000 of which were acquired prior to 1973 and need not be aged, and $300,000 of which were acquired in the last 6 months of 1973 and are not "overdue" as measured by the applicable arm's-length term. No positive transfer of capital charge is incurred.

Example 27. During 1969 through 1972 DI shipped AFN $50,000 of U.S. goods each month on 2-year terms, resulting in a yearend 1972 balance of outstanding qualified export obligations of $1,200,000. In 1973 DI ships AFN $150,000 of U.S. goods each month. AFN continues repaying $50,000 each month for the first 6 months, but for the months July through December repays $200,000 each month, leaving a balance of $1,500,000 at yearend 1973. The arm's-length term applicable to all shipments is 6 months. Under the first-in-first-out concept, $1,200,000 of 1973 repayments would be applied to reduce the 1972 yearend balance, and $300,000 would be considered repayments of the obligations arising in January and February of 1973. The balance at yearend 1973, when aged, would show $600,000 of qualified export obligations arising in March through June of 1973 (for which a transfer of capital charge is recognized since they are "overdue" by the applicable arm's-length terms), and $900,000 of such obligations arising in the last 6 months (which are not yet "overdue" and therefore not subject to charge). The DI may elect, however, to attribute $900,000 of 1973 repayments to qualified export obligations arising in 1973 ($1,500,000 of 1973 repayments reduced by the lesser of (1) one-half the yearend 1972 balance of $1,200,000, or (2) one-half the 1973 repayments of $1,500,000); the remaining $600,000 of repayments is attributed to obligations outstanding at yearend 1972. The yearend balance of $1,500,000 would be composed of $600,000 of pre-1973 qualified export obligations, which need not be aged, and $900,000 of obligations arising in the last 6 months of 1973, which are not "overdue" and therefore do not give rise to a transfer of capital charge.

As with nonqualifying obligations, where an incorporated or unincorporated AFN transfers an account receivable, note or other debt obligation of an unaffiliated foreign person in satisfaction of a qualified export obligation (or in immediate payment where nonpayment would give rise to a qualified export obligation) the qualified export obligation is deemed to remain outstanding and held by the DI. The qualified export obligation is deemed repaid by the AFN or transferred by the DI only when the debt obligation of the unaffiliated person is repaid to the DI or is transferred by the DI to an unaffiliated foreign national or to a U.S. financial institution subject to the FRFCRP which charges its ceiling under that program in connection with the acquisition. See § B312–15(iii) of the 1973 General Bulletin.

(v) *Arm's-length term.*—The arm's-length term, defined under § 312(c)(13)(v), is the length of time to make payment which would have been provided at the time the sale was entered into, in an independent transaction between unrelated parties under similar circumstances, considering all relevant factors except the credit standing of the AFN. The AFN is considered to be an average or typical credit risk, not an unusually good or a poor one. Relevant factors to be considered include the type of goods and services, the security, if any, the shipping time, and the terms prevailing at the situs for comparable transactions.

With respect to the sale of U.S. goods, any term of 180 days or less from the time of the shipment of the goods is deemed an arm's-length term. With respect to the sale of U.S. services, any term of 90 days or less, measured from the end of the month in which such services would be billed in a similar transaction between unrelated parties, is deemed an arm's-length term. Furthermore, where U.S. services are related and subsidiary to a sale of goods which entails a qualified export obligation, the arm's-length term is the same as that for the sale of the goods.

Where there is an insufficient number of similar independent transactions from which the DI can reasonably determine the duration of credit which would have been extended in such transactions, and where an AFN resells or leases the goods or services (without significant further

processing) to an unrelated foreign person, the term of credit extended by the AFN to the unrelated person may, in the absence of strong contrary considerations, be added to appropriate shipping time to determine the arm's-length term.

(vi) *Arm's-length term for installment sales.*—As explained in paragraph (ii), above, an installment sale gives rise to qualified export obligations only if payments under the terms of the sale are to be made at an arm's-length rate; for installment sales so qualifying, each payment is considered a separate export obligation. Thus, a term within arm's-length limits is established by agreement with respect to each individual installment. If all payments are made on schedule, no positive or negative transfer of capital is recognized in connection with the sale. But when a scheduled payment is not timely made, a positive transfer of capital arises. Subsequent payment of the obligation, for which a positive transfer of capital has been recognized on or after January 1, 1973, constitutes a negative transfer of capital.

Example 28.—On March 31, 1973, DI sells a computer to an AFN for $5 million, the fair market value. The terms of the sale provide for 20 semiannual installments of $250,000, with interest, commencing September 30, 1973. An arm's-length rate of payment would require 10 semiannual installments of $500,000, with interest. The sale does not give rise to qualified export obligations.

Example 29. Same facts as in Example 28, except that the sale agreement requires the arm's length rate of payment—10 semiannual installments of $500,000, with interest, commencing September 30, 1973. The AFN does not make the September 30 payment called for under the contract. A positive transfer of capital of $500,000 is therefore recognized under § 312(a)(1) as modified by § 312(c)(13)(i)(A). (Non-payment of the interest due on September 30 is also a positive transfer of capital under § 312(a)(1). See § B312–18(viii) of the 1973 General Bulletin.) On March 31, 1974 the AFN pays the DI $1 million (the installment currently due and the overdue installment) plus all accrued interest. A negative transfer of capital of $500,000 is recognized by reason of the payment of the overdue installment for which a positive transfer of capital was previously recognized. (A negative transfer of capital for payment of the overdue interest is also recognized.) There is no negative transfer of capital for payment of the March 31 installment, which was not overdue.

(vii) *Applicability to section 313(e).*—As announced January 2, 1973, the adoption of the export credit exemption did not affect the operation of section 313(e) for the year 1972. As provided in § 313(e)(4), the use of the § 313(e) option was governed by the regulations as in force on December 31, 1972. Thus, a DI could count a repayment in January or February 1973 by an AFN of a qualified export obligation outstanding on December 31, 1972 as a negative transfer of capital for purposes of computing 1972 transfers of capital under § 313(e), even though repayment of such obligation would not constitute a negative transfer of capital for 1973. If a DI chose to include repayments of qualified export obligations as negative transfers of capital in computing 1972 compliance under § 313(e), the DI must have included acquisition of qualified export obligations during the elected extension period as positive transfers of capital for purposes of computing the worldwide net transfer of capital during the period under § 313(e)(2), even though such acquisitions were not in themselves charged as positive transfers of capital for the year 1973.

(viii) *Nonrenewal of § 313(e) for 1973.*—Under the export credit exemption system, § 313(e) is not being renewed to apply to the compliance year 1973. The section 313(e) device aided DIs that experienced unusually high levels of export credit outstanding to their AFNs toward the end of a compliance year. The extension period permitted additional time for such DIs to reduce their levels of outstanding credit to a normal level and eliminate the positive transfer of capital charge arising from the higher level. Since positive transfers of capital will not ordinarily arise from increased levels of export credit under the proposed exemption system, § 313(e) will not be necessary for 1973.

(ix) *Qualified export leases.*—Under the regulations in force on December 31, 1972, a lease of property by a DI to an incorporated AFN was a positive transfer of capital (§ 312(a)(8)) in the amount of the fair market value of the property at the time of the transfer. Return of the property by the AFN was a negative transfer of capital in the amount of the fair market value at the time of the return. Payments of rental charges currently due were not transfers of capital, but failure of an AFN to make timely payment was a positive transfer of capital and subsequent payment of the overdue rent was a negative transfer of capital.

Under new § 312(c)(14), effective commencing in 1973, a transfer of property to an incorporated AFN pursuant to a qualified export lease is exempt from a transfer of capital charge. Return of property under a qualified lease is not a negative transfer of capital.

A lease by a DI to an incorporated AFN is a qualified export lease if it (1) transfers U.S. goods and (2) provides rental payments at an arm's-length rate, considering the time and amount of each payment to be made. The arm's-length rate of rental payment is determined in the same manner as for installment sales. See paragraphs (iii)(a)(2) and (vi) above.

However, where a DI finds that the "safe-haven" rule of Treasury Regulation, § 1.482–2(c)(ii), (iii) (as in effect January 1, 1973) is operative to determine the arm's-length rental payment for a lease of U.S. goods for purposes of section 482 of the Internal Revenue Code of 1954, as amended, the amount calculated under that provision will be considered an arm's-length annual rental amount for purposes of satisfying the arm's-length-rate-of-payment requirement for qualified export leases under § 312(c)(14) of the regulations. The lease must also require that the arm's-length annual rental amount be paid within the year in at least as many equal installments as would ordinarily be required with respect to the type of lease involved if entered into between unreleated parties.

In no event is a transfer recognized as pursuant to a qualified export lease if it is, in substance, a contribution to capital, regardless of the manner in which such transfer is entered on the DI's books and records. Accordingly, if rental payments are subsequently forgiven, in whole or in part, with respect to a transfer recorded by a DI as a lease, the transaction transferring the goods may be deemed a contribution to capital in the year the goods are transferred. (However, where changed business circumstances give rise to a legitimate business reason for contributing the leased property to the capital of the AFN, a transfer of capital attendant to such a contribution will be recognized in the year the contribution is made in the amount of the then fair market value of the property. See paragraph (iii)(a)(1), above.)

Where a lease meets the qualification requirements, the transfer of property to the AFN does not constitute a positive transfer of capital, notwithstanding § 312(a)(8); the return of the property by the AFN, whether or not the property was leased after 1972, does not constitute a negative transfer of capital under § 312(b) (as described in section B312–12 of the 1973 Bulletin). Rental payments under such a lease, however, are subject to the same provisions as apply to nonqualified leases under the general provisions of the regulations. If a rental payment of the AFN becomes overdue, an acquisition of a debt obligation of an AFN is recognized, which constitutes a positive transfer of capital under § 312(a)(1). When payment of the overdue rent is made, a negative transfer of capital is recognized under § 312(b)(3). If all rental payments are met on schedule as required under the terms of the lease, no transfer of capital is recognized at any time.

Where lease property is not returned at the termination of the lease (and the lease is not extended), a contribution to capital in the full fair market value of the property is recognized, constituting a positive transfer of capital under § 312(a)(2). Subsequent return of the property by the AFN constitutes a negative transfer of capital under § 312(b)(2).

A DI which elects not to be subject to the export credit exemption scheme, as discussed in paragraph (x), may not treat any lease as a qualified export lease under § 312(c)(14).

(x) *Election out of export credit exemption system.*—Section 312(c)(13)(vi) provides that any DI may elect that none of its transactions be deemed to involve qualified export obligations or qualified export leases. In effect, this permits the DI to disregard the export credit exemption system and treat all export obligations and leases as nonqualifying: the effect of the regulations governing the

export credit transactions of such an electing DI is the same as under the regulations in effect on December 31, 1972. In this connection, it should be noted that the standard export credit specific authorization available for years prior to 1973 will no longer be obtainable.

The election out will be made by notification on the Form FDI–102F for 1973 filed by the DI. Any DI not affirmatively electing out at such time is subject to all provisions of the regulations concerning qualified export obligations and qualified export leases.

An election out once made by a DI will not be revocable without the prior permission of the Office.

The Office retains the power to deem that any DI has elected out of the export credit exemption system under § 312(c)(13)(vi). Such discretion will be exercised where a DI evades or abuses the exemption system by forgiving or indefinitely extending qualified export obligations that arose prior to 1973, or otherwise causing its AFNs to curtail repayments of such obligations in a manner inconsistent with past practice.

(xi) *Reporting.*—Quarterly reports on Form FDI–102 do not have to reflect transfers of capital to or from AFNs related to qualified export obligations or qualified export leases. The quarterly and annual reports continue to require reporting of the "memo" items concerning exports and export credit.

(xii) *Relation to § 312(c)(4) and (12).*—The amendments to § 312(c)(4) and (12) provide that, commencing January 1, 1973, these subparagraphs do not apply to transactions involving qualified export obligations or qualified export leases. (Where a DI has elected out of the export credit exemption system under § 312(c)(13)(vi), however, none of the DIs transactions will involve such obligations or leases; therefore § 312(c)(4) and (12) will be fully applicable to such a DI.) It should also be noted that, commencing January 1, 1973, under § 312(c)(13)(i)(C), any repayment relating to a qualified export obligation that would otherwise be deemed a transfer of capital under the provisio to § 312(c)(4) or the proviso to § 312(c)(12) is deemed not to be a transfer of capital.

Thus, if, prior to January 1, 1973, a DI transferred a qualified export obligation to an institution subject to the FRFCRP and the negative transfer of capital attendant to the transfer was blocked by section 312(c)(4), repayment of the obligation in 1973 is not deemed a negative transfer of capital. If such an obligation is transferred by a DI after December 31, 1972 to an institution subject to the FRFCRP, § 312(c)(4) has no effect on the treatment of the transaction under the regulations, regardless of whether the institution charges its FRFCRP ceiling in connection with the transfer.

(xiii) *Transfers between AFNs.*—The export credit exemption system does not apply to transactions between AFNs. Section 505(a)(7) provides that, in determining the effect of transfers between AFNs and the effect of changes in net assets of unincorporated AFNs under § 505, the fact that the underlying transactions may involve qualified export obligations or qualified export leases shall be disregarded.

(xiv) *Effect on specific authorization process.*—In view of the adoption of the export credit exemption system in the regulations, the standard export credit specific authorizations previously available will no longer be obtainable. (These specific authorizations are described in the June 16, 1972 memorandum for DIs and also on page 39 of the publication titled "1972 Foreign Direct Investment Program".)

Specific authorizations granted in the past with regard to export credit contained "recapture" provisions which deemed the DIs to have made positive transfers of capital in subsequent years under certain circumstances. Although there have been different recapture provisions employed, each is geared in some manner to reductions in the level of exports or export credit from that at the end of the year for which the specific authorization was obtained. In conjunction with adoption of the export credit exemption system, the Office has rescinded all export credit specific authorization recapture provisions still outstanding for those DIs that do not elect out of the exemption system under § 312(c)(13)(vi). (This rescission does not apply to recapture charges incurred in 1972 but deferred to 1973 at the option of DIs.) DIs that received export credit specific authorizations have received specific instructions on this subject.

B313—Net Transfer of Capital

§ B313–1 Introduction.

Net transfer of capital as defined in § 313(c) is one of the components of direct investment (§ 306). Net transfer of capital under § 313(c) consists of:

The net transfer of capital to incorporated AFNs in a scheduled area (§ 313(a)); plus

The net transfer of capital to unincorporated AFNs in the scheduled area (§ 313(b)); less

Proceeds of long-term foreign borrowing expended in the scheduled area prior to July 1, 1972 (§ 313(d)(1)).

If the calculation produces a positive result, the DI has made a "positive net transfer of capital" to the scheduled area; if a negative figure results, the DI has made a "negative net transfer of capital" to the scheduled area.

Section 313(d)(1) was revoked effective July 1, 1972. Proceeds expended on or after July 1, 1972 remain available for allocation under § 306(e).

Section 313(d)(2) provides that transfers in connection with the acquisition of AFNs, including transfers during the 12-month period preceding any such acquisition, must be included in computing net transfer of capital.

Net transfer of capital to incorporated AFNs under § 313(a) consists of all § 312(a) transfers of capital from the DI to AFNs, less all § 312(b) transfers from AFNs to the DI. The net transfer of capital to unincorporated AFNs under § 313(b) equals the DI's share in any net increase or decrease in the aggregate net assets of its unincorporated AFNs.

While § 313 provides the basic definition of net transfer of capital, § 505 contains additional rules essential to the application of § 313, viz.:

Transfers involving certain unincorporated AFNs are treated as transfers of capital by the immediate parents or to the immediate parents of such AFNs (§ 505(a)(1), (2), and (3));

A DI is charged with the net change in assets of an unincorporated AFN under § 313(b) only if the immediate parent of such AFN is the DI or another AFN that is a § 903(a) affiliate of the DI (§ 505(a)(4));

A change in net assets of an unincorporated AFN that is not attributable to earnings or losses results in a corresponding § 312 (a) or (b) transfer of capital between the DI and the immediate parent of such AFN, provided the immediate parent is an incorporated AFN and a § 903(a) affiliate (§ 505(a)(5) and (6));

Certain short-term trade credits between non-Canadian AFNs are, in effect, excluded from the calculations of net transfer of capital (§§ 505(b), 1103(c)); and

Transfers between two incorporated AFNs, if either is a § 903(a) affiliate, result in a § 312(b) transfer by the transferor AFN to the DI and a § 312(a) transfer by the DI to the transferee AFN (§ 505(a)(3)).

The rules set forth in § 313 apply to the base period as well as to subsequent years.

Section 313(b) was amended as of January 1, 1973, in connection with the export credit exemption. The effect of this amendment is discussed in § B312–22.

§ B313–2 Net transfer of capital to incorporated AFNs.

Under § 313(a), a DI's net transfer of capital to all incorporated AFNs in any scheduled area during any period consists of:

Aggregate transfers of capital during such period by the DI to such AFNs (as described in §§ 312(a) and 505); less

Aggregate transfers of capital during such period by such AFNs to the DI (as described in §§ 312(b) and 505).

The following examples illustrate this concept.

Example 1. During 1969, DI transfers $1 million to an incorporated subsidiary in Schedule A (AFN) as an advance on open account, $500,000 as a contribution to capital, and $400,000 resulting from an increase in accounts receivable due from AFN to DI. In the same year, AFN repays $1,100,000 of a $2 million loan received from DI in 1967. DI has no other incorporated AFNs in Schedule A. DI's net transfer of capital during 1969 to AFN is $800,000, calculated as follows (000 omitted):

Transfers by DI under § 312(a):	
Advance on account to AFN	$1,000
Contribution to capital of AFN	500
Increase in accounts receivable from AFN	400
Total	1,900
Transfers to DI under § 312(b):	
Repayment of loan by AFN	(1,100)
Net transfer (positive)	800

Example 2. At the beginning of 1969, DI has two wholly-owned incorporated AFNs

in Schedule A (X and Y). In March 1969, DI purchases all the stock of a Brazilian corporation (Z) from an unaffiliated foreign national for $2 million in cash. The following transactions also occur during 1969: DI lends $1 million to X on open account and leases equipment valued at $500,000 to X for a term of 3 years; X redeems (at cost) an issue of preferred stock held by DI for $500,000; Y repays a 1966 loan from DI of $3 million; Y declares a $200,000 dividend to DI, payable on December 15 but not remitted during 1969, and DI repays a $1 million loan owed by Y to a U.S. bank, together with accrued interest and other charges aggregating $100,000. DI's net transfer of capital during 1969 to its incorporated Schedule A AFNs (X, Y, and Z) is $1,300,000, computed as follows (000 omitted):

Transfer by DI under § 312(a):	
Purchase of Z	$2,000
Open account loan to X	1,000
Lease of equipment to X	500
Dividend not paid by Y when due	200
Payment on Y's loan	1,100
Total	4,800
Transfers to DI under § 312(b):	
Redemption by X	(500)
Repayment of loan by Y	(3,000)
Total	(3,500)
Net transfer (positive)	1,300

§ B313–3 Net transfer of capital to unincorporated AFNs.

(i) *General.*—Under § 313(b), a net transfer of capital by a DI to all unincorporated AFNs in any scheduled area during any period is defined as the DI's share of the aggregate net increase or decrease during such period in the aggregate net assets of such AFNs. Computation of net assets should take into account all assets (wherever located) and liabilities allocable to the AFN under generally accepted U.S. accounting principles consistently applied, whether such assets and liabilities are recorded in the AFN's legal books of account or in other books of account (including those of the parent AFN).

(ii) *Rules applicable to § 313(b).*—In calculating the net change in net assets of an unincorporated AFN the following rules apply:

There should be excluded from liabilities all equity interests in and debt obligations of the unincorporated AFN that are held by the DI and other AFNs of the DI; likewise, there should be excluded from assets all equity interests in and debt obligations of the DI and other AFNs that are held by the unincorporated AFN (§ 313(b) (1) and (2)). Notwithstanding the general exclusion of debt obligations of the unincorporated AFN that are held by the DI, qualified export credit obligations held by the DI should be included as liabilities, unless the DI has elected out of the export exemption system pursuant to § 312(c)(13)(vi). See § B312–22(ii).

The foregoing rule also does not apply with respect to short-term trade credits extended by one AFN to another AFN. That is, if another AFN extends a short-term trade credit to an unincorporated AFN of the same DI, the trade credit should be included as a liability of the unincorporated AFN for the purposes of § 313(b). The asset received and the liability incurred will net out, and there will be no change resulting therefrom in the AFN's net assets. Note that this is the result prescribed by § 505(b), i.e., short-term trade credits extended or received by an unincorporated AFN (to or from another AFN) should not be taken into account under § 313(b).

On the other hand, if either the AFN extending the credit or the AFN receiving the credit is Canadian, § 505(b) is inapplicable (§ 1103(c)). Thus, if an unincorporated AFN in Schedule C receives a short-term trade credit from a Canadian affiliate of the DI, the liability so incurred will be excluded and the AFN's net assets will include the amount of the credit for purposes of § 313(b).

Any increase or decrease in net assets of an unincorporated AFN resulting from changes in the valuation of such assets during the period involved (such as unrealized gains or losses), should be eliminated from the calculation under § 313(b). However, depreciation of tangible assets should be taken into account to the extent such depreciation is reflected in the calculation of the unincorporated AFN's earnings.

§ B313–4 DI's share of net change in assets under § 313(b).

(i) *Direct ownership.*—Where a DI directly owns an unincorporated AFN (e.g., a branch of the DI), the DI's share in the net change in net assets will equal the profits (or losses) of the AFN plus all transfers of capital made by the DI (or other AFNs of the DI) to the AFN, less all remittances made by the AFN to the DI. When the DI does not own all of the unincorporated AFN, transfers between the AFN and its other owners and such other owners' share of the AFN's profits or losses are not included in calculating the DI's share in the net change in the AFN's net assets.

Example 3. DI has two branches in Schedule A (X and Y). Net assets of X and Y at the beginning of 1969 are $200,000 and $300,000, respectively. During 1969, X incurs a loss of $100,000 and DI transfers $50,000 to X on open account; Y earns $90,000, remitting $30,000 to DI; and DI spends $500,000 for construction of a factory in Schedule A, which becomes an unincorporated AFN (branch) (Z) of DI. At the end of 1969, X and Y have net assets of $150,000 and $360,000, respectively. DI's net transfer of capital during 1969 to its unincorporated Schedule A AFNs is $510,000 ($50,000 net decrease in X's assets plus $60,000 net increase in Y's assets plus $500,000 net increase in Z's assets).

Example 4. In March 1969, DI's unincorporated AFN in Schedule A (Y) invests $50,000 of its own funds in a parcel of local real estate having a fair market value of $100,000 at the end of 1969. Assuming no other relevant transactions, Y's net assets would remain unchanged for purposes of the regulations, since unrealized gains are not taken into account under § 313(b).

Example 5. DI has an unincorporated AFN (B) in Schedule B with net assets of $1 million as of December 31, 1969. During 1970, DI sells B to an unaffiliated foreign national for $1,200,000 cash. DI has made a negative net transfer of capital to Schedule B of $1 million under § 313(b).

Example 6. During 1969, a U.S. corporation (X) enters into a joint venture agreement with an unaffiliated foreign corporation (Y) to operate a factory in Schedule C. Y contributes an existing plant in Schedule C and equipment, valued in the aggregate at $10 million. X contributes patents and technology valued at $5 million (under circumstances exempting the contribution from treatment as a transfer of capital under section 312(c)(11)) and $5 million in cash for working capital. X and Y each has a 50-percent-profit interest in the joint venture. During 1969, a wholly-owned subsidiary of X in Australia (B) lends $3 million to the joint venture, repayable at the end of 5 years. Also during 1969, the joint venture realizes $500,000 in gross revenues, spends $300,000 for operating expenses and depreciates its plant and equipment by $200,000. At the end of 1969, the joint venture has $8,200,000 in cash, patents valued at $5 million, plant and equipment valued on its books at $9,800,000, and no liabilities other than the $3 million liability to B. X's net transfer of capital during 1969 to its unincorporated AFN's in Schedule C is $8 million, calculated as follows (000 omitted):

Net assets of joint venture as of Jan. 1, 1969	0
Net assets of joint venture as of Dec. 31, 1969 (the $3,000 loan by B is not included as a liability of the joint venture under § 313(b)(1)):	
Plant and equipment	$9,800
Patents and technology	5,000
Cash	8,200
Total	23,000
Increase in net assets during 1969	23,000
X's share in net increase:	
Net increase	23,000
Less:	
Plant and equipment contributed by Y	10,000
Patents and technology	5,000
Net transfer of capital by X	8,000

Note that the loan by B to the joint venture involves a transfer of capital by B to X under § 505(a)(1) and (2).

Example 7. DI is a partner in a partnership organized under German law and doing business only in Germany. DI has a 50-percent share in the partnership profits. The other partners (X and Y), each of whom has a 25-percent interest, are residents and citizens of Germany. At the beginning of 1969, the partnership has net assets of $1 million. During 1969 the partnership earns $100,000 and distributes $20,000 to DI and $10,000 to each of X and Y. Also during 1969, DI lends $200,000 to the partnership on open account. At the end of 1969 the partnership has net assets of $1,260,000 (excluding liabilities to DI). DI's net transfer of capital during 1969 to its unincorporated Schedule C AFN is $230,000 (i.e., DI's $50,000 share of profits plus the $200,000 loan, less the $20,000 remitted to DI).

Had the partnership incurred a loss of $50,000 and made no distribution to the partners, the net assets at the end of 1969 would be $1,150,000 (excluding liabilities to DI), and DI's net transfer of capital during 1969 to its unincorporated Schedule C AFN would be $175,000 (i.e., the $200,000 loan less DI's $25,000 share of the loss).

(ii) *Indirect ownership.*—A DI's net transfer of capital to all unincorporated AFN's in a scheduled area includes the DI's share of the net changes in the net assets of unincorporated AFN's in the scheduled area which are owned by other

AFNs of the DI located in other scheduled areas, so long as such other AFNs are "affiliates" of the DI, as described in § 903(a) of the regulations. (See § 505 (a)(4).) The calculation of any such net change should be made as if the DI itself were the immediate parent of the unincorporated AFN; the DI's share of the net change is a percentage thereof equal to the DI's percentage interest in the immediate parent.

The following examples are illustrative:

Example 8. DI has a 60-percent-owned incorporated AFN (A) in Schedule A, which has a 50-percent profits interest in a joint venture (B) in Schedule B. The other 50-percent interest in B is owned by an unaffiliated foreign national (X). During 1970, A makes a $1 million loan to B, and as a result B's net assets increase by $1 million. A's share of the increase is $1 million (see Example 7 above); and DI's share is $600,000 (i.e. 60% of A's share). DI has made a § 313 (b) net transfer of capital of $600,000 to Schedule B for 1970. By operation of § 505 (a)(6), A is deemed to have made a $600,000 transfer of capital to DI.

In 1971, B has earnings of $1 million, makes no remittances and has an increase in its assets of $1 million. A's share of such increase is $500,000, and DI's share is $300,000 (60% of A's share). DI has made a § 313(b) net transfer of capital of $300,000 to Schedule B for 1971.

Example 9. DI has a wholly-owned subsidiary in Germany (C) that has a branch in Brazil (A). At the beginning of 1969, A's balance sheet is as follows (000 omitted):

Assets

Cash	$75
Customer receivables	140
Inventory	360
Fixed assets (net)	400
Total	975

Liabilities and net assets

Trade payables (liabilities)	$210
Home office (net assets)	765
Total	975

During 1969, A earns $25,000 and DI and C each make cash advances to A of $75,000. On August 1, 1969, a wholly-owned subsidiary of DI in Australia (B) sells $50,000 of inventory to A on 6-month credit terms. At the end of 1969, A's balance sheet is as follows (000 omitted):

Assets

Cash	$340
Customer receivables	175
Inventory	410
Fixed assets (net)	325
Total	1,250

Liabilities and net assets

Trade payables [1]	$310
Home office account (net assets) [2]	940
Total	1,250

[1] Including the payable of $50 [thousand] owed to B. If the credit terms extended by B had been for more than 12 months, the amount due would be included under the home office account rather than in "trade payables." DI's net transfer to A would, therefore, be increased by $50 [thousand] and result in a $50 [thousand] negative net transfer of capital to Schedule B (see § 505 (b) and 505(a)(2)).

[2] Including payable of $75 [thousand] owed to DI.

DI's net transfer of capital during 1969 to Schedule A unincorporated AFNs is $175,000 (i.e., the increase in home office account (net assets) from $765,000 to $940,000 during 1969). However, DI will have a $75,000 negative net transfer of capital to Schedule C (i.e., the $75,000 deemed transferred by DI to C by operation of § 505(a)(1) and (a)(2), less the $150,000 deemed transferred by C to DI by operation of § 505(a)(6)).

If DI owned only 80 percent of C's voting stock, DI's net transfer of capital during 1969 to Schedule A unincorporated AFNs would be $140,000 (i.e., $175,000 × 80 percent). However, DI would have a $45,000 negative net transfer of capital to Schedule C (the $75,000 deemed transferred by DI to C by operation of § 505 (a)(1) and (a)(2), less the $120,000 deemed transferred by C to DI by operation of § 505(a)(6)).

If DI were to own only 50 percent of C's voting stock, DI's net transfer of capital during 1969 to Schedule A unincorporated AFNs would be zero (see § 505(a)(4)). In this event, however, DI will have a $75,000 positive net transfer of capital to Schedule C, deemed transferred by DI to C by operation of § 505 (a)(1) and (a)(2).

§ B313–5 Special treatment of certain § 312 transfers in computing net transfer of capital to unincorporated AFNs.

A transaction involving an unincorporated AFN that constitutes a transfer of capital under § 312 must be reflected in computing net transfer of capital to unincorporated AFNs under § 313(b) even though it would not necessarily enter into the calculation of net assets in accordance with ordinary accounting principles.

(i) *Repayment of long-term foreign borrowing.*—Section 312(a)(7) provides that when a DI satisfies, in whole or in part, a long-term foreign borrowing (whenever made) and the proceeds of such borrowing were either expended in making transfers of capital during the period January 1, 1965, through June 30, 1972, or were allocated to positive direct investment, such repayment constitutes a transfer of capital to the scheduled area or areas in which the proceeds were expended or are allocated at the time of repayment and with respect to which a deduction (against net transfer of capital or positive direct investment) was taken pursuant to § 203(d) (2) or (3), § 306(e) or § 313(d)(1). (See § B312–11.)

Example 10. In January 1968, DI makes a long-term foreign borrowing of $5 million from a London bank, the proceeds of which are used to construct a factory in Chile (Schedule A) resulting in a net increase in net assets of DI's Schedule A AFN in 1968 of $5 million (from $0 to $5 million). DI deducts this expenditure from 1968 net transfer of capital to Schedule A, pursuant to § 313(d)(1). In 1969, the AFN has earnings of $450,000, and transfers $200,000 to DI. The net increase in net assets is, therefore, $250,000. On December 1, 1969, DI repays $1 million to the London bank. Accordingly, DI's net transfer of capital to Schedule A in 1969 is $1,250,000 ($250,000 net increase in the Chilean factory's net assets, plus repayment of $1 million that had previously been expended in, and deducted from, net transfer of captal to Schedule A).

(ii) *Transfers under § 312(a)(9).*—If DI makes a pledge, hypothecation or other transfer of foreign balances or equity securities of a foreign corporation to a foreign national to induce a loan by such foreign national to an AFN or a long-term foreign borrowing which DI invests in an AFN, such transfer of foreign balances constitutes a transfer of capital to the AFN under § 312(a)(9).

Example 11. DI has a 50 percent profits interest in a joint venture (B) located in Schedule B. During 1970 DI deposits $1 million cash with a foreign bank as inducement for a loan of $800,000 by the bank to B. Although the loan would not result in an increase in B's net assets under § 313(b), DI must recognize a transfer of capital of $800,000 to B under § 312(a)(9) during 1970. Similarly, it will report a transfer of capital under § 312(b) from B in the same amount when the deposit is withdrawn even though B's net assets may not decrease.

(iii) *Offshore drilling rigs.*—When a vessel directly owned by a person within the United States is used as part of an offshore drilling operation (i.e., a branch of a DI), it is assigned a value of zero for purposes of computing any net change in net branch assets.

Example 12. In January 1969, DI began drilling operations off the coast of Australia. This venture constitutes an unincorporated Schedule B AFN. In February 1969, DI sends its U.S.-flag barge to the worksite, and the barge is used during 1969 in drilling operations. Although transfer of the barge constitutes a transfer of capital to the AFN under § 312(a), the barge is assigned a value of zero for purposes of computing the net assets of the AFN. The same rule would also apply to other U.S.-flag vessels used in support of the offshore drilling operations (such as supply or crew vessels). Note that since such vessels are deemed to have a value of zero, no deductions for depreciation of such vessels may be taken.

§ B313–6 Deduction for expended proceeds of long-term foreign borrowing.

In calculating a DI's net transfer of capital to a scheduled area during any reporting period (including the base period years, 1965 and 1966) prior to July 1, 1972, the DI should deduct an amount equal to the proceeds of long-term foreign borrowing expended during such period in making transfers of capital to AFNs in the scheduled area. Such deductions were required under § 313(d)(1), which was revoked effective July 1, 1972. On or after such date, there is no reduction in net transfer of capital for the expenditure of available proceeds. Instead, such proceeds may be allocated when required by the DI and, notwithstanding such allocation, may remain expended in AFNs.

Available proceeds that were expended prior to July 1, 1972 may not be allocated to positive direct investment under § 306(e)(1). Also, the repayment of long-term foreign borrowing at any time will continue to involve a transfer of capital under section 312(a)(7) or section 1404(a)(2) to the extent that a deduction for expenditure of available proceeds of such borrowing was made under section 313(d)(1). Section 203(d)(2) provides for allocation where a deduction for expenditure of available proceeds previously was made under section 313(d)(1). Section 324(d) reduces available proceeds where such proceeds were expended prior to July 1, 1972. Section

1404(a)(2) provides for the recognition of a transfer of capital upon repayment of an overseas borrowing where a deduction for expenditure of available proceeds previously was made under section 313(d)(1).

Example 13. In September 1970, DI acquired all the stock of a corporation in Argentina from an unaffiliated foreign national (Y). The purchase price was $1 million, $500,000 payable in cash at closing and the balance payable in equal annual installments of $100,000 thereafter. Each installment was represented by a promissory note of DI, with respect to which Y made the necessary written representations referred to in § 324(a)(1)(iv). DI made a $500,000 "foreign borrowing" within the meaning of § 324(a)(1). Assuming the borrowing qualified as long-term foreign borrowing under § 324(a)(2), the proceeds thereof were deducted from DI's net transfer of capital under § 313(d)(1). DI's net transfer of capital to Schedule A during 1970 was, therefore, $500,000 (i.e., the $1 million purchase price, minus $500,000 proceeds of long-term foreign borrowing). Each principal payment by DI on the outstanding notes is a transfer of capital to the AFN under § 312(a)(7), and must be so reflected in calculating DI's net transfer of capital to Schedule A in 1971 and in each subsequent year of payment.

§ B313–7 Step acquisitions.

In calculating a DI's net transfer of capital to all AFNs in a scheduled area during any period (including the base period years of 1965 and 1966), the DI should include (a) all transfers of funds or other property as a result of which the DI acquires an AFN and (b) all transfers of funds or other property to, on behalf of, or for the benefit of such AFN made by, on behalf of, or for the benefit of such DI within 12 months prior to the date of the transfer by which it became a DI in such AFN.

Example 14. On November 1, 1969, a U.S. corporation (X) having no AFNs acquires 8 percent of the voting stock of a French corporation (C) from an unaffiliated foreign national for $1 million in cash. On December 1, 1969, X lends C $500,000. On March 1, 1970, X acquires an additional 2 percent of C's voting stock from a second unaffiliated foreign national for $250,000 in cash. X's net transfer of capital during 1969 to Schedule C is zero. X's net transfer of capital during 1970 to Schedule C is $1,750,000.

If the initial purchase of X's voting stock had been made on February 1, 1969, there would still be no net transfer of capital in 1969, and X's net transfer of capital during 1970 to Schedule C would be $750,000 (i.e., the $250,000 transfer of capital that gave rise to the DI–AFN relationship plus the $500,000 lent to C within 12 months prior thereto).

Example 15. On January 1, 1969, a U.S. corporation (X), having no AFNs, enters into a construction contract with an unaffiliated foreign national (Y) whereby X is to construct a factory for Y in a Schedule C country. On March 1, a project office is opened and preliminary survey work on the project is commenced. On April 1, 1969, X sends equipment, machinery and supplies valued at $1 million to the project site. At the time the project office was opened, X reasonably expected that the work would be completed by the end of February 1970. Thus, the project is not an AFN of X (see § 304(d)(ii)). At the end of 1969, net assets of the project are $1 million, but there has been no net transfer of capital to Schedule C during 1969 since the project is not an AFN. Significant difficulties of an unexpected nature are encountered, and during 1970, X sends additional equipment, machinery and supplies valued at $1 million to the project site. At the end of 1970, the net assets employed in the project amount to $2 million. Work on the project is not in fact completed until March 1, 1971. Accordingly, since work on the project was not in fact completed within 12 months from the date it commenced, the project is an AFN of X commencing January 1, 1970, and, because of the provisions of § 313(d)(2), X has made a positive net transfer of capital of $2 million to Schedule C during 1970.

§ B313–8 Repayment of debt by AFN to DI: Prior-year treatment.

Section 313(e) permitted a DI, in calculating its net transfer of capital made in 1972, to include certain transfers of capital made by AFNs during the first one or two months of 1973. The effect of § 313(e) on calculations under the export credit exemption system is discussed in § B312–22(vii).

B319—Schedule A, B, and C Countries

Section 319 assigns each of the countries of the world to one of three scheduled areas, A, B, and C. Direct investment made by a DI is generally calculated on the basis of a scheduled area, reflecting aggregate transactions involving all AFNs in such schedule.

The countries in Schedule A include those designated as less-developed countries for purposes of the Interest Equalization Tax. The countries in Schedule B include certain designated countries such as Australia, Ireland, Japan, New Zealand, the United Kingdom, certain Middle East oil-producing countries and, commencing in 1970, Spain. The countries in Schedule C include those not included in Schedule A or B, such as South Africa and the countries of continental Europe other than Finland, Greece, Turkey, and Yugoslavia and, commencing in 1970, Spain.

Section 319(b) was amended in 1970 to reclassify Spain from Schedule C to Schedule B as of January 1, 1970. Consequently, for 1970 and succeeding years DIs should include all direct investment in Spanish AFNs in calculating direct investment in Schedule B and should exclude such direct investment from the Schedule C computation. No change will be made in the base period figures used to calculate § 504(a) historical allowables or in any direct investment reported for 1968 and 1969. Furthermore, a DI's 1970 § 504(b) earnings allowable in Schedules B and C (based on 1969 earnings reported on the 1969 Annual Report Form FDI–102F) will not be changed. It is not necessary or permitted for any DI to amend or refile its Form FDI–101 or Forms FDI–102 and FDI–102F for 1968 or 1969 as a result of the reclassification of Spain. However, commencing in 1970 earnings of Spanish AFN's will be included with other schedule B earnings for purposes of determining a DI's 1971 § 504(b) earnings allowable and 1971 § 504(c)(3) upstream adjustment for Schedule B. The computation of the § 506 incremental earnings allowable, being based on aggregate worldwide figures, will not be affected as a result of this change. Although the Schedule B historical and earnings allowables in effect for 1970 will not be increased as a result of this change in the scheduled area to which Spain is assigned, DIs may downstream unused Schedule C allowables to Schedule B to cover any increased investment in Schedule B in 1970 and succeeding years.

Example 1. DI has one AFN, which is located in Spain, and § 504(a) allowables of $1,200,000 in schedule C and zero in Schedules B and A. In 1970 DI elects § 504(a) and makes positive direct investment of $1 million in its Spanish AFN. DI should report positive direct investment in 1970 of $1 million in Schedule B and zero in Schedule C. The Schedule B investment is authorized by DI's Schedule C allowable, under the carrydown provisions of § 504(d)(3). DI will have $200,000 of carryforward under § 504(d)(3) which will authorize additional positive direct investment in Schedules C, B, or A in 1971 and succeeding years.

Example 2. DI has one AFN, which is located in Spain. The AFN's 1969 earnings are $4 million. DI's § 504(a) historical allowables are $800,000 in Schedule C and zero in Schedules B and A. In 1970, DI elects the § 504(b) earnings allowable and makes positive direct investment of $1,200,000 in its Spanish AFN, which is correctly reported in Schedule B. This positive direct investment is authorized by DI's Schedule C earnings allowable of $1,200,000 which is available in Schedule B under § 504(d)(3).

Example 3. DI has one AFN which is located in Spain. At the end of 1969, the AFN owed DI $1 million on open account. In March 1970, the AFN pays DI $1 million in satisfaction of the open account balance. In October 1970 AFN is billed $1,500,000 for a shipment of goods, so that the open account balance at the end of 1970 is $1,500,000. In 1970, DI has made a net transfer of capital to Schedule B of $500,000.

If a DI expended proceeds of long-term foreign borrowing in making transfers of capital to Spanish AFNs prior to 1970 and took a deduction from net transfer of capital to Schedule C under § 313(d)(1), repayment of such borrowing on or after January 1, 1970, will constitute a transfer of capital to Schedule C (not Schedule B) under § 312(a)(7).

B321—Calendar Year and Fiscal Year

The term "year", as used in the regulations, is defined in § 321(a) to mean a calendar year except for DIs securing permission under § 321(b) to measure compliance on the basis of their normal fiscal year. Although, in appropriate cases, a fiscal year DI may be permitted to comply with the substantive provisions of the regulations on such basis (§ 321(b)), all DIs (including all fiscal year DIs) are required to submit cumulative quarterly reports (Form FDI–102) and the annual report (Form FDI–102F) on a calendar basis. DIs receiving permission to measure compliance on a fiscal year basis must file an additional annual compliance report covering operations for such fiscal year.

DIs may request permission to comply with the regulations on a fiscal year basis by applying for a specific exemption under § 801. The applicant must demonstrate that by reason of the nature of its business, accurate reflection of total

annual operations for purposes of the regulations can only be on the basis of its fiscal year. DIs maintaining normal books and records on a calendar year basis are not eligible for relief under § 321(b) merely because one or more AFNs operate on a fiscal year basis. DIs should refer to the general instructions to Forms FDI–102 and 102F with respect to reporting earnings of AFNs that operate on the basis of a fiscal year different from the DI's.

B322—Person Within the United States

§ B322–1 Introduction.

The regulations apply only to DIs, and a person is not a DI unless he (or it) is a "person within the United States," as defined a § 322. (The term "United States" is defined in § 318.)

§ B322–2 Individuals.

(i) *Residence.*—Section 322(a)(1) provides that a resident of the United States is a person within the United States. This rule applies without regard to citizenship.

The determination whether a person is a "resident" of the United States depends on the facts and circumstances of each particular case. In general, a permanent place of abode within the United States or physical presence in the United States for more than 183 days during the year will be conclusive. However, aliens will not be considered residents of the United States if they have no intention to remain in the United States permanently or for an indefinite period. Thus, for example, an alien present in the United States as a student, an entertainer on tour, an athlete competing in one or more athletic contests, a patient undergoing medical treatment, or a traveler will not be treated as a resident of the United States. Residence in the United States will be treated as continuous notwithstanding occasional trips out of the country during such residence.

(ii) *Center of economic interest.*—Section 322(a)(2) provides that a citizen of the United States residing abroad is nevertheless a person within the United States, if the center of his economic interests is located within the United States. Whether a U.S. citizen's center of economic interests is located within the United States depends on the particular facts and circumstances of each case. Among the factors that will be considered are the length of time residence has been outside the United States, the person's intention concerning future residence, the relative values of investments in the Untied States and in foreign countries, and the nature of the U.S. investments (i.e., whether passive portfolio investments or active participation in business is involved).

Example 1. A U.S. citizen (X) becomes a resident of a foreign country in February 1968. X owns all the stock of a U.S. corporation (Y). After X becomes a nonresident of the United States, he nevertheless continues actively to participate in Y's business and makes frequent trips to the United States for this purpose. X's only other investments are of a portfolio and short-term debt nature. X is a person within the United States.

Example 2. A U.S. citizen (X) owns a retail merchandising business in the United States. Upon reaching age 65, X sells his business to an unrelated person within the United States and purchases an annuity from a U.S. insurance company. In January 1968, X sells his home in the United States and he and his wife move to Iceland, X's ancestral homeland, where he establishes a permanent residence. X's grown children continue to live in the United States. X continues to maintain bank accounts in the United States, into which periodic payments from the proceeds of his annuity are made. X also continues to own a small parcel of undeveloped real estate in the United States, purchased many years ago for investment. X is not a person within the United States.

Example 3. A U.S. citizen (W), resident in a foreign country for many years, owns 75 percent of the stock of X and Y, both U.S. corporations. Y owns 75 percent of Z, a third U.S. corporation. X owns all the share capital of 6 foreign corporations and has 12 branch operations in foreign countries, and Y owns all the share capital of six different foreign corporations and has 10 branch operations in foreign countries. X, Y, and Z all have substantial manufacturing or selling operations in the United States. The products of X, Y, and Z are sold both in the United States and in foreign countries. Total sales of X, Y, and Z and their 12 foreign affiliated corporations and 22 foreign branches amount to several million dollars annually. All major policy decisions of X, Y, and Z and their affiliated foreign nationals are made by W, who maintains no fixed office abroad.

Decisions on particular matters within the policy guidelines laid down by W are made at the head offices of the three U.S. corporations and are relayed to all domestic and foreign operations from such head offices, subject only to the periodic review of W. W conducts no significant separate foreign business activities aside from those conducted through his direction of the affairs of X, Y, and Z corporations. W is a person within the United States.

Example 4. A U.S. citizen (X) owns all the stock of Y, a U.S. corporation with extensive, worldwide foreign operations. In 1965, X establishes his permanent residence in Belgium, and C, a foreign corporation, in Belgium. In September 1966, C purchases all the stock of Y from X, in exchange for additional shares in C. In a series of corporate reorganizations carried out in 1966 and 1967, the foreign operations formerly conducted by Y and the foreign corporations previously owned by Y become foreign operations and corporations conducted and owned, respectively, by C. Direction of all such operations is carried on in Belgium; the head offices and senior managerial staff are moved to Belgium; and by December 1967, Y has no foreign holdings of its own. X is not a person within the United States in 1968.

Example 5. A U.S. citizen (X), having permanently resided in Italy since 1961, owns several parcels of undeveloped and commercial real estate in the United States with an aggregate fair market value in excess of $10 million in January 1968. The commercial real estate is managed for X by an independent real estate organization, and profits are remitted to X periodically. X maintains certain bank accounts in the United States in connection with his real estate investments. His only other U.S. investments consist of marketable securities of large U.S. corporations. X makes one or two trips per year to the United States, primarily to visit relatives. X has no significant investments in foreign countries. X is not a person within the United States.

§ B322–3 Corporations or partnerships.

Section 322(a)(3) provides that a corporation or partnership organized under the laws of the United States (excluding a branch of such corporation or partnership, if the branch is a separate foreign national under § 302) is a person within the United States.

§ B322–4 Trusts.

Trusts (other than a trust deemed to be a corporation under § 307(b)) deemed to be persons within the United States, under § 322(a)(4), include inter vivos or testamentary trusts established by persons within the United States in which a person or persons within the United States have substantial beneficial interest.

An inter vivos trust governed by the laws of the United States to which any property is or has been contributed by a person who, at the time of making the contribution, is or was a person within the United States would be governed by § 322(a)(4), if: (a) Such contribution is or was made on or after January 1, 1968; or (b) the terms of the trust are such that the income therefrom is currently taxable to such persons for U.S. Federal Income Tax purposes; or (c) a majority of the trustees thereof are or were, at any time after January 1, 1968, persons within the United States and OFDI has not been furnished with satisfactory evidence that no person or persons within the United States have a substantial beneficial interest in the trust.

A testamentary trust governed by the laws of the United States and created by a person who, at the time of his death, was a person within the United States, would likewise be governed by § 322(a)(4), if a majority of the trustees thereof are or were, at any time after January 1, 1968, persons within the United States and OFDI has not been furnished satisfactory evidence that no person or persons within the United States have a substantial beneficial interest in the trust.

§ B322–5 Estates.

A decedent's estate is deemed to be a person within the United States under § 322(a)(5), if the deceased was a person within the United States at the time of his death, and: (a) A majority of the executors or administrators are persons within the United States, or substantial assets of the estate are being administered under the laws of the United States; and (b) OFDI has not been furnished satisfactory evidence that no persons or persons within the United States have a substantial beneficial interest in the estate.

§ B322–6 Domestic banks.

Section 322(a)(6) makes clear that a domestic bank (including a domestic branch or office of a foreign bank), as defined in § 317(a), will be considered a person within the United States.

§ B322–7 Special cases.

Under § 322(b), OFDI may determine, in particular cases based on the facts

and circumstances involved, that a person not described in § 322(a), or an activity (such as a branch) of a person not described in § 322(a), is nevertheless a person within the United States for purposes of the regulations.

Example 6. Corporation Y, a foreign corporation, has no managerial office or operations in the country of incorporation. Ninety-five percent of Y's share capital is held by persons within the United States and shares are traded on a national securities exchange in the United States. The principal office of Y is in the United States and all officers and directors are citizens and residents of the United States. Y owns more than 10 percent of the share capital (in proportions ranging from 15 percent to 100 percent) of more than 20 foreign corporations. Under the foregoing facts, Y could be deemed a person within the United States for purposes of the regulations.

B323—International Finance Subsidiaries

Section 323 defines the term "international finance subsidiary" ("IFS") to mean a corporation organized under the laws of the United States, all the stock of which (disregarding directors' qualifying shares) is owned directly or indirectly by a DI, and the principal business of which is to borrow funds from foreign nationals, other than AFNs of the DI, and to invest such funds in debt or equity securities of AFNs of the DI. The section further provides that a DI and its IFS are considered a single person for all purposes of the regulations.

Accordingly, direct investment transactions of, and foreign balances held by, an IFS are attributed to the DI, and transactions between the DI and the IFS are ignored for purposes of the regulations. Similarly, long-term foreign borrowings obtained by the IFS are considered borrowings by the DI, and only one certificate need be filed by the DI under § 1002 (a)(6) and (b) concerning each such borrowing. Therefore, if the DI guarantees due and punctual payment of the principal, premium(if any), and interest on debt obligations of the IFS, together with due and punctual mandatory sinking fund payments (if any), the DI should file the "Subpart J" certificate as a borrower, not a guarantor, and any payments made by DI under the guarantee (including delivery of capital stock of DI pursuant to exercise of conversion privileges) will be treated as repayments by a borrower and not by a guarantor.

In light of the foregoing, records maintained pursuant to §§ 203(c) and 601, and reports filed under § 602, by the DI should include all relevant items attributable to the IFS.

B324—Long-Term Foreign Borrowing

§ B324–1 Introduction.

Section 324 sets forth the rules governing the qualification of borrowing by a DI as long-term foreign borrowing and the amount of proceeds of long-term foreign borrowing that may be used as an offset in calculating direct investment. In addition, § 324 deals with the effect of refinancing and repayment of borrowings. Related provisions of the regulations concerning the use of proceeds and the repayment of long-term foreign borrowing are also discussed in this section of the Bulletin.

A DI may offset positive direct investment by allocating available proceeds of long-term foreign borrowing under § 306 (e). Only proceeds of a borrowing that qualifies under § 324 as long-term foreign borrowing may be used as an offset to direct investment. Prior to July 1, 1972, a DI also offset direct investment through a deduction from net transfer of capital under § 313(d)(1) for expenditure of available proceeds.

Section B324–4 contains a detailed description as to how borrowing qualifies as long-term foreign borrowing. The requirements for qualification depend upon when the borrowing was made.

The gross amount of funds or other property received from long-term foreign borrowing constitutes "proceeds of long-term foreign borrowing" until the borrowing is repaid. Such proceeds are "available proceeds" until allocated to positive direct investment or, prior to July 1, 1972, expended in making transfers of capital to AFNs. Only available proceeds of long-term foreign borrowing are deducted under § 306(e) (or § 313(d)(1)). After deduction for allocation (or expenditure), the amount of the borrowing outstanding still constitutes proceeds of long-term foreign borrowing but ceases to be available proceeds. As provided in § 203(d) (2) and (3), a DI may change the scheduled area to which the offset applies. (See § B324–10.) For example, if a DI expended and deducted (under § 313(d)(1)) available proceeds of long-term foreign borrowing in Schedule A during 1970, those proceeds could be allocated to and deducted from positive direct investment in Schedule B in 1972 (under § 203(d)(2)). Upon such allocation to Schedule B, DI must recognize a transfer of capital to Schedule A, where the previous deduction was taken. Section 203(d)(2) also permits further allocations of the same proceeds while the borrowing is outstanding.

Repayment (in whole or in part) of a long-term foreign borrowing for which a direct investment offset was taken is recognized as a transfer of capital (§ 312(a)(7)) in the last scheduled area in which a deduction was taken, whether under § 306(e), § 313(d)(1), § 203(d)(2), or § 203(d)(3). If deductions were last taken in more than one scheduled area, the charge is made on a proportional basis among the scheduled areas.

The regulations require a DI to keep separate books and records with respect to long-term foreign borrowing and the uses to which the proceeds of such borrowings have been put. Such records must distinguish between deductions taken by reason of the borrowing and the actual flow of funds. (See § 203(b).)

§ B324–2 Related sections.

The following sections of the regulations relate to long-term foreign borrowing:

(i) *Section 1002.*—Even though a transfer of capital is recognized upon repayment of a long-term foreign borrowing the proceeds of which were expended or allocated, positive direct investment resulting from such repayment may be authorized by § 1002 (subject to the provisions of § 1003) if DI has satisfied applicable certification requirements. See § B1002–2.

(ii) *Section 203(c).*—A DI is permitted to hold liquid foreign balances in the amount of available proceeds of long-term foreign borrowing.

(iii) *Subpart N.* Proceeds of an overseas borrowing that are loaned by a qualified overseas finance subsidiary to the DI in proceeds borrowing are deemed available proceeds of long-term foreign borrowing as defined in § 324(d). (See § B1400.)

§ B324–3 Summary of § 324.

Section 324 has been amended with respect to borrowings made on or after May 1, 1970. These amendments were published in final form in the FEDERAL REGISTER on June 13, 1970 (35 F.R. 9248). The following summary compares the structure of § 324 before and after the 1970 amendments.

Prior to amendment the provisions of § 324 were as follows:

(a) Definition of long-term foreign borrowing applicable to (i) borrowings made prior to January 1, 1968, and (ii) borrowings made on or after January 1, 1968.
(b)(1) Effect of refinancing.
(b)(2) Effect of conversion of convertible debt instruments.
(c) Definition of proceeds.
(d) Definition of available proceeds.
(e) Requirements in addition to those of § 324(a) applicable to borrowings made on or after June 10, 1968.

The provisions of § 324 as amended are as follows:

(a)(1) Definition of foreign borrowing (incorporating the conditions of former § 324(e)).
(a)(2) Definition of long-term foreign borrowing applicable to borrowings made on or after May 1, 1970.
(a)(3) Definition of long-term foreign borrowing applicable to borrowings made prior to May 1, 1970 (or reference to former § 324).
(b)(1) Definition of refinancing (amended to conform to new § 324(a)).
(b)(2) [Unchanged]
(c) [Unchanged]
(d) Definition of available proceeds amended by July 1, 1972, to conform to revocation of § 313(d)(1)).
(e) [Revoked]

§ B324–4 Definition of long-term foreign borrowing.

To qualify as long-term foreign borrowing under § 324 a borrowing must be made by a DI from a foreign national, other than an AFN or a Canadian person as described in § 1106. See former § 324(a) and new § 324(a)(1).

The term "borrowing" as used in § 324 refers not only to the typical loan of funds to or sale of debt obligations by a DI, but also to other transactions resulting in acquisition of an equity interest in consideration for a fixed sum or sums (regardless of the medium of payment) for which payment is completely or partially deferred. For example, an installment purchase (including a long-

term lease or charter that is treated, consistent with accounting principles generally accepted in the United States, as an installment purchase) would be a borrowing that might qualify as long-term foreign borrowing under § 324. See Examples 1, 2, and 3 below.

The term "borrowing" involves only issuance of debt obligations, not equity securities, by a DI. See Examples 2 and 6 below. An international finance subsidiary of a DI (see § 323) is considered the same entity as the DI. If such subsidiary issues debentures convertible into stock of the DI, the debentures will be considered debt obligations of the DI; however, if the debentures have detachable warrants entitling the holder to purchase DI's stock, the issue will be considered to be part debt and part equity. (For discussion of the computation of proceeds of long-term foreign borrowing when debentures are issued with warrants attached, see Examples 5 and 24 below.)

For purposes of determining whether a borrowing is from a foreign national, the lender will be considered to be the person extending the credit. With respect to issuance of debt obligations, the first public purchases are generally considered the lenders. Accordingly, sales of debt obligations to underwriters or dealers, United States or foreign, in a public offering are irrelevant in determining whether the debt obligations are sold to foreign nationals. Similarly, if a foreign national does not act for its own account, but for the account of another person, the nationality and residence of the person actually extending credit will determine whether the borrowing is from a foreign national. See Example 7 below.

Example 1. DI purchases all the voting stock of a French corporation from an unaffiliated foreign national. The purchase price is $1 million, $250,000 of which was paid in cash at the closing, the balance being payable (together with interest) in three equal annual installments commencing 1 year from the date of closing. DI has made a transfer of capital of $1 million and a borrowing from a foreign national of $750,000, which will qualify as long-term foreign borrowing if it meets the applicable requirements of § 324. See § B324–4 (i)–(iv).

Example 2. DI acquires all the voting equity of a French corporation from foreign shareholders, in exchange for 20,000 shares of DI's common stock at the closing, 10,000 shares of such stock 3 years after the closing, and an indeterminate number of shares (based on future earnings of the French corporation) 5 years after the closing. DI has not made a borrowing with respect to the obligation to deliver common stock 3 years and 5 years hence. (The value of the transfer of capital will depend on all the facts and circumstances of the acquisition.) If, however, DI had agreed to deliver $10 million worth of its capital stock 3 years after closing (the actual number of shares to be delivered will depend on their market value at the time), DI would be deemed to have made a borrowing of $10 million. The obligation would be for a fixed sum, and the medium of payment may be other than cash.

Example 3. DI enters into a 10-year equipment lease with an unaffiliated foreign national (X). The equipment lease with X is appropriately treated as an installment purchase by DI under accounting principles generally accepted in the United States. An appropriate portion of the aggregate rentals should be treated as borrowing from a foreign national by DI, the remainder being allocated to interest charges.

Example 4. An international finance subsidiary of DI sells abroad $20 million face amount of debentures at par. The debentures have a 12-year maturity and are convertible into common stock of DI after 6 months from date of issue. DI has made a borrowing from a foreign national of $20 million, which will qualify as long-term foreign borrowing if it meets the applicable requirements of § 324. See § B324–4(i)–(iv).

Example 5. An international finance subsidiary of DI sells abroad $20 million face amount of debentures at par. The debentures have a 12-year term and have no required sinking fund payments. Each $1,000 debenture is sold with a warrant attached for five shares of common stock of DI. The warrants are detachable after 6 months, and are exercisable after 12 months from the issue date. DI has made a borrowing from a foreign national of $20 million, less an amount reasonably allocable to the value of the warrants.

Example 6. DI sells abroad 500,000 shares of preferred stock for $50 per share. DI has not made a borrowing for purposes of § 324.

Example 7. DI desires to borrow $1 million from a Swiss bank. The bank states that it would not itself lend the funds, but that it can place the loan with a U.S. resident and national who has an account at the Swiss bank. The loan, if consummated, would not constitute a borrowing from a foreign national within the meaning of § 324(a).

The additional requirements for a borrowing by a DI from a foreign national to qualify as long-term foreign borrowing depend upon whether the borrowing was made (i) prior to January 1, 1968 (the effective date of the Program); (ii) from January 1 through June 9, 1968; (iii) from June 10, 1968 through April 30, 1970; or (iv) on or after May 1, 1970.

(i) *Borrowings made prior to January 1, 1963.*—A borrowing made prior to January 1, 1968, was a long-term foreign borrowing if such borrowing had an original maturity of at least 12 months from the original date of such borrowing, or if no principal payments were, in fact, made within 12 months from the date of the borrowing.

(ii) *Borrowings made on or after January 1, 1968, and prior to June 10, 1968.*—A borrowing made on or after January 1 and prior to June 10, 1968, was a long-term foreign borrowing if such borrowing had an original maturity of at least 12 months from the original date of such borrowing. The same requirements apply to borrowings made on or after June 10, 1968, and prior to May 1, 1970, except that an additional requirement was imposed by former § 324(e) during that period. See § B324–4(iii).

The "original maturity" of a borrowing referred to the date the first principal payment was required. Provisions for acceleration upon default or conversion privileges in convertible debt instruments were disregarded in determining whether a borrowing had an original maturity of 12 months. A borrowing made on or after January 1, 1968, but prior to May 1, 1970, was treated as having an original maturity of at least 12 months if there were express provisions for renewal, extension, or continuance of the debt for a total term of at least 12 months and the DI reasonably expected that no principal payment would be made within 12 months after the date of the borrowing.

The date of a borrowing refers to the date the proceeds are received by the DI. Opening of a line of credit, such as a revolving credit agreement or an overdraft facility, is not itself a borrowing; borrowing under a line of credit occurs on the date of takedown, in the amount of funds so received. On the other hand, a borrowing involving the public offering of debt obligations is deemed to have been made on the date the obligations are issued. See § 1002(e)(1).

Example 8. On July 1, 1969, DI entered into a 5-year agreement with a German bank under which the bank agreed to loan DI up to $10 million, with the loan or loans to be evidenced by 12-month notes. As of that date, DI had not made a long-term foreign borrowing. On September 1, 1969, DI made a takedown of $5 million, evidenced by ten 12-month notes for $500,000 each. Thus, on September 1, 1969, DI made a long-term foreign borrowing of $5 million.

(iii) *Borrowings made on or after June 10, 1968: § 324(a)(1) and former § 324(e).*—As a result of former § 324(e), borrowings made from June 10, 1968, through April 30, 1970, could not qualify as long-term foreign borrowing unless:

The borrowing was from a foreign bank; or

The borrowing was from or was guaranteed by a foreign country or any agency thereof; or

The borrowing had an original maturity of at least 3 years, and (as of the date of the borrowing) acquisition of the debt obligation would have been subject to the U.S. Interest Equalization Tax; or

The lender agreed in writing that, for a period of 3 years from the date of the borrowing or until final maturity, whichever would first occur, it would not sell or otherwise transfer the debt obligations resulting from the borrowing (a) to a resident or national of the United States (other than a foreign bank (as defined in § 317) or to a Canadian person (as defined in § 1101), or (b) to any person who the lender had reason to believe would sell or otherwise transfer the debt obligation to a U.S. resident or national or to a Canadian person.

Section 324(e) was revoked pursuant to the amendments to § 324, published June 13, 1970 (35 F.R. 9248). However, the conditions imposed by § 324(e) have been incorporated into the definition of "foreign borrowing" set forth in new § 324(a)(1) effective with respect to borrowings made on or after May 1, 1970, except that the 3-year original maturity requirement of the third alternative has been eliminated.

In connection with the first alternative (§ 324(a)(1)(i) and former § 324(e)(1)), note that a foreign branch of a U.S. bank is considered a foreign bank under § 317. However, in order for a borrowing to qualify under this category, it is not enough that the borrowing is made through an entity organized or operating as a "bank" under the laws of a foreign country. In addition to meeting that institutional test, the borrowing must meet a functional test. For example, the functional test would not be satisfied if (a) the bank is not itself the obligee on the DI's debt obligation, or (b) the bank acts as agent for a principal other

than a foreign bank (see Example 7 above), or (c) the bank acts as underwriter for the DI with respect to sale of the debt obligations, or (d) the DI has reason to believe that the bank does not intend to hold the debt obligations until maturity but to sell, market or otherwise transfer such obligations. In any of these cases the borrowing will not be from a foreign bank and must qualify under one of the other categories of § 324(a)(1).

Example 9. DI desires to place with Europeans $5 million principal amount of long-term notes convertible into common stock. DI contracts with a French subsidiary of a U.S. investment bank, the subsidiary being organized as a French bank, to underwrite the placement with European nationals. The $5 million borrowing is not from a foreign bank and, therefore, must qualify under another category of § 324(a)(1) if it is to constitute a foreign borrowing.

In connection with § 324(a)(1)(ii), an industrial or commercial enterprise of a foreign government operating essentially in the private business sector shall not be considered as part of the government of that country or as an agency thereof.

Section 324(a)(1)(iii) is intended to permit obligations of a DI or its international finance subsidiary that are subject to Interest Equalization Tax (IET), if purchased by a resident or national of the United States, to qualify as foreign borrowing. Such obligations include short-term commercial paper or other obligations with respect to which an election has been made under § 4912(c) of the Internal Revenue Code of 1954, as amended.

The requirement concerning applicability of the IET does not mean that the tax actually must be imposed on a particular U.S. resident or national. The requirement is satisfied if the nature of the debt obligation is such that under normal circumstances the tax would be imposed upon acquisition by any U.S. resident or national. Accordingly, debt obligations issued by a less-developed country corporation (exempt from the IET under Internal Revenue Code § 4916) will not satisfy the conditions of § 324(a)(1)(iii). On the other hand, a debt obligation the acquisition of which is exempt from tax under Internal Revenue Code § 4918, because previously held by a U.S. person, is not disqualified under § 324(a)(1)(iii).

To satisfy the provisions of former § 324(e)(3) (which applied to borrowings made from June 10, 1968, through April 30, 1970), the borrowing was also required to have an original maturity of at least 3 years. The term "original maturity of at least 3 years," as used in § 324(e)(3), was analogous to the term "original maturity of at least 12 months" in former § 324(a). Thus, a requirement that there be a principal repayment within 3 years disqualified the entire borrowing. Therefore, if mandatory redemption of any debenture fell within 3 years of the issue date, the entire borrowing failed to qualify as a long-term foreign borrowing. The 3-year original maturity requirement of former § 324(e)(3) was eliminated for borrowings made on or after May 1, 1970 (see § 324(a)(1)(iii)). Note also that failure to qualify the full principal amount of a foreign borrowing as long-term foreign borrowing now results only in a pro tanto reduction of proceeds.

An agreement such as described in § 324(a)(1)(iv) is not the typical agreement entered into between underwriters and a DI with respect to issuance of debentures to foreign nationals. Ordinarily, underwriters will agree not to offer or sell the debentures to persons who are nationals or residents of the United States or residents of Canada. Section 324(a)(1)(iv), by contrast, contemplates a more restrictive agreement in which the obligee agrees not to sell or otherwise transfer the debt obligation to any United States or Canadian person or to any person who the obligee has reason to believe will so sell or otherwise transfer the debt obligation.

(iv) *Borrowings made on or after May 1, 1970.*—Borrowings by a DI made on or after May 1, 1970 are subject to the provisions of amended § 324, as published in the FEDERAL REGISTER in final form on June 13, 1970 (35 F.R. 9248). To qualify as long-term foreign borrowing, a borrowing must be a "foreign borrowing" and must be continuously outstanding for not less than 12 months.

Section 324(a)(2) provides that a foreign borrowing (defined in § 324(a)(1)) by a DI will qualify as long-term foreign borrowing if the foreign borrowing (including refinancing thereof as described in § 324(b)(1)) is not repaid within 12 months after its original date. A repayment is made "within 12 months" if made at any time prior to the corresponding month and day in the immediately following calendar year. For example, if a borrowing is made at any time on May 14, 1970, and is repaid at any time before May 14, 1971, the repayment would have occurred within 12 months; however, repayment at any time on May 14, 1971 would not be "within 12 months". The date of a borrowing is defined in § 1002(e)(1).

The definition of foreign borrowing contained in § 324(a)(1) incorporates the requirements formerly set forth in § 324(e) (now revoked), which are discussed in § B324–4(iii). As mentioned above, borrowing that would be subject to the Interest Equalization Tax no longer need to satisfy the 3-year original maturity requirement imposed by former § 324(e)(3). See § 324(a)(1)(iii). As a result, DIs that borrow long-term through issuance of debentures will be able to provide for sinking fund payments to redeem debentures within 3 years after the date of issuance.

Note that borrowings made prior to May 1, 1970 will continue to be governed by the provisions of former § 324(a) and (e) as in effect of April 30, 1970, as to whether or not such borrowings qualified as long-term foreign borrowings. However, see § B324–5(ii).

A DI may qualify a foreign borrowing made on or after May 1, 1970 as long-term foreign borrowing by keeping the borrowing outstanding for at least 12 months or by making another foreign borrowing simultaneously with or prior to repayment of the immediately preceding borrowing, so long as the borrowing as refinanced remains continuously outstanding for at least 12 months. The individual foreign borrowings constituting long-term foreign borrowing may differ as to lender, amount and maturity. Accordingly, a short-term borrowing that is renewed, extended or continued for a total period of at least 12 months will qualify as long-term foreign borrowing despite the absence of express provisions for renewal, extension or continuance. However, a borrowing that is not in fact continuously outstanding for 12 months will not qualify as long-term foreign borrowing, notwithstanding a stated maturity of at least 12 months and notwithstanding provision for renewal, extension or continuance and the DI's expectation not to repay within 12 months.

DI may take a deduction under § 306(e) or § 313(d)(1) for allocation or expenditure (prior to July 1, 1972) of proceeds of long-term foreign borrowing before the required 12-month period has elapsed. A DI that does so, however, should be certain of its ability to keep the borrowing outstanding for the prescribed 12 months because deductions with respect to borrowings that subsequently fail to satisfy § 324(a)(2) are retroactively disqualified. Failure to qualify the full principal amount of a borrowing as long-term foreign borrowing will not result in disqualification of the entire borrowing. Proceeds of the borrowing will qualify as proceeds of long-term foreign borrowing in the principal amount of the borrowing that ultimately satisfies the requirements of § 324(a)(2).

If a DI treats proceeds of a foreign borrowing as proceeds of long-term foreign borrowing on its annual report Form FDI–102F for any year and the borrowing does not thereafter meet the requirements of § 324(a)(2) by reason of a repayment within 12 months, the DI must file an amended Form FDI–102F within 30 days after such repayment showing revised direct investment and liquid foreign balance entries as necessary to reflect the retroactive disqualification of the borrowing. If a borrowing that is retroactively disqualified has not been treated as long-term foreign borrowing on Form FDI–102F for any year but has been so reported on a quarterly report Form FDI–102, the next report on Form FDI–102/102F required to be filed after repayment of the borrowing should show direct investment and liquid foreign balance entries reflecting the disqualification.

Example 10. On May 1, 1970, DI borrows $1 million from a foreign bank (X) on a 3-month note with no provision for renewal or extension. The borrowing is a foreign borrowing under § 324(a)(1)(i). On August 1, 1970, DI repays the note and borrows $1 million from another foreign bank (Y) on a 6-month note. On February 1, 1971, DI repays the loan from Y and borrows $1 million from foreign bank (Z), which DI repays on May 1, 1971. As of May 1, 1970, DI has avail-

able proceeds of long-term foreign borrowing of $1 million, which DI could expend or allocate in accordance with § 313(d)(1) or § 306(e), if reported in accordance with § 324(c). Under amended § 324, the initial 3-month foreign borrowing qualifies as long-term foreign borrowing because such borrowing, as refinanced by successive foreign borrowings, was continuously outstanding for 12 months.

Example 11. On May 1, 1970, DI borrows $200,000 from a foreign bank (X) on a 6-month note. On November 1, 1970, DI repays X and purchases all of the stock of a French corporation from an unaffiliated foreign national (Y) for $300,000, consisting of $100,000 in cash at the closing and DI's 6-month promissory note for the balance as to which Y provides the agreement specified in § 324(a)(1)(iv). On May 1, 1971, DI makes payment on its promissory note. Under § 324, the $200,000 borrowed on May 1, 1970, constituted proceeds of long-term foreign borrowing. The initial borrowing from the bank was not deemed repaid within 12 months because such borrowing, refinanced by the borrowing from Y, was continuously outstanding for 12 months.

Example 12. On May 1, 1970, DI makes a public offering to non-Canadian foreign nationals through its international finance subsidiary of $10 million principal amount of debentures maturing in 1980. Acquisition of the debentures by U.S. residents or nationals will be subject to the Interest Equalization Tax. The financing documents provide for sinking fund payments of $1 million each on November 1, 1970 and November 1, 1971, to be used by a New York trustee to purchase an equivalent amount of the debentures for redemption. The borrowing constitutes a foreign borrowing under § 324(a)(1)(iii). To qualify the entire $10 million as long-term foreign borrowing under § 324(a)(2), DI must refinance the November 1, 1970 sinking fund payment for an additional 6 months in accordance with § 324(b)(1). If DI does not refinance, it will still have $9 million of available proceeds of long-term foreign borrowing. The sinking fund payment on November 1, 1971 will not affect qualification of the portion of the borrowing that was outstanding for 12 months as of such date.

Repayment through conversion of convertible debt instruments or accelerated repayment upon default occurring within the first 12 months of a borrowing will not prevent its qualification as long-term foreign borrowing. A conversion or accelerated repayment is deemed to occur as of the maturity specified in the debt instrument involved. See the proviso in § 324(a)(2). Transfers of capital, repayment charges under § 1003, and reductions of proceeds, on the other hand, are determined in accordance with the rules otherwise applicable to repayment of long-term foreign borrowing. (See § B324–11.)

Example 13. On July 1, 1970, DI issues $5 million principal amount of 5-year convertible debentures through its international finance subsidiary. The entire amount of the issue is converted between February 1 and July 1, 1971. Solely for purposes of determining qualification as long-term foreign borrowing under § 324(a)(2), the conversions are deemed not to have occurred until July 1, 1975, the stated maturity of the debentures. However, transfers of capital are recognized in accordance with the usual rules for repayment. Accordingly, DI could choose to absorb the transfer of capital, if any, under its Subpart E allowables in the year of conversion or the DI may take advantage of the authorization to repay the borrowing by conversion set forth in § 1002(a)(3) and recognize a transfer of capital, for purposes of the repayment charge under § 1003, in the year following conversion.

Example 14. On February 1, 1971, DI makes a public offering of $10 million principal amount of convertible debentures maturing in 1980. Sinking fund payments in the amount of $1 million are due January 15, 1972, and January 15, 1973. In March 1971, DI expends $6 million of the proceeds of the offering in making a transfer of capital, for which a deduction is taken under § 313(d)(1). In December 1971 the entire amount of the offering is converted. Under § 324, $9 million is qualified as long-term foreign borrowing. One million dollars of the borrowing is deemed repaid for purposes of § 324(a)(2) on the due date of the first sinking fund payment (January 15, 1972) and does not qualify under § 324 because such payment is within 12 months. Assuming no other relevant transactions, the conversion will result in a transfer of capital of $6 million, which the DI may choose to recognize in the year of conversion or as a repayment charge under § 1003 in 1972 and a reduction of available proceeds ($3 million) to zero in 1971.

§ B324–5 Refinancing.

Section 324(b)(1) provides that the "refinancing" of a borrowing is deemed not to be a repayment of such borrowing or the making of a new borrowing. Section 324(b)(1) was amended as part of the change in the definition of long-term foreign borrowing applicable to borrowings made on or after May 1, 1970.

Under former § 324(b)(1), refinancing of a long-term foreign borrowing was not deemed repayment of the borrowing or the making of a new borrowing. However, refinancing was possible only for borrowings that already constituted long-term foreign borrowing, and if the refinancing was by means of another borrowing, whether from the same or another lender, the second borrowing also had to be a qualified long-term foreign borrowing. Under amended § 324(b)(1), refinancing is not limited to long-term foreign borrowing. "Foreign borrowings" (defined in § 324(a)(1)), which may be nonrenewable, short-term borrowings, can be refinanced in order to keep them outstanding for the 12 months required to constitute long-term foreign borrowing. Such refinancing, moreover, may be accomplished by means of another "foreign borrowing" from the same or a different lender. As discussed in § B324–5(ii), a long-term foreign borrowing made prior to May 1, 1970 may be refinanced after May 1, 1970 in accordance with amended § 324(b)(1).

(i) *Refinancing under § 324(b)(1).*— Satisfaction of a foreign borrowing will not be deemed a repayment if such borrowing is refinanced in the manner provided in § 324(b)(1). The refinancing borrowing must be made either prior to or simultaneously with the repayment of the initial borrowing. A borrowing drawn down on any day shall be deemed made simultaneously with a repayment occurring on the same day. On the other hand, for example, if DI repaid a foreign borrowing on July 1, 1970, and made a new foreign borrowing in the same amount from the same lender on July 2, 1970, the second borrowing would not constitute a refinancing of the first borrowing regardless of any underlying arrangement relating to the two borrowings.

DI is required to identify borrowings being refinanced and the corresponding refinancing borrowings on its books and records kept under § 203(b). If DI repays more than one initial borrowing and makes more than one refinancing borrowing on the same day, DI must indicate (by appropriate entries on its books and records) the extent to which each new borrowing refinances each of the initial borrowings.

If a refinancing borrowing made within 12 months after the date of the initial borrowing is for a lesser amount than the initial borrowing, the amount of proceeds of long-term foreign borrowing as of the date of the initial borrowing may not exceed the amount so refinanced. The amount of proceeds of an initial borrowing failing to qualify as proceeds of long-term foreign borrowing is not exempt at any time from § 203(c), and any deductions taken for expenditure or allocation of such proceeds are disallowed. If a DI treats proceeds of a foreign borrowing as proceeds of long-term foreign borrowing on its Annual Report Form FDI–102F for any year, and the borrowing does not thereafter meet the requirements of § 324(a)(2) by reason of a repayment within 12 months, DI must file an amended Form FDI–102F within 30 days after such repayment showing revised direct investment and liquid foreign balance entries.

If the refinancing borrowing is for a greater amount than the initial borrowing, DI may treat the excess as an additional foreign borrowing commencing on the date of the refinancing which may qualify as separate long-term foreign borrowing.

DI may refinance a foreign borrowing by making another foreign borrowing prior to and in anticipation of refinancing the initial borrowing and at a time reasonably proximate to the date of repayment of the initial borrowing. The proceeds of the refinancing borrowing in such case may not be treated as available proceeds of long-term foreign borrowing until the refinancing occurs, but the proceeds of the refinancing borrowing are, nevertheless, exempt from the liquid foreign balance restrictions of § 203(c) if the initial borrowing as refinanced qualifies as long-term foreign borrowing under § 324(a)(2).

Example 15. On May 1, 1970, DI borrows $2 million from a foreign bank for 6 months. On November 1, 1970, DI repays the borrowing in full and borrows a total of $1,500,000 from three other foreign banks which DI keeps outstanding for 6 months. Under § 324, DI has made long-term foreign borrowing in the amount of $1,500,000 as of May 1, 1970. If the unrefinanced portion ($500,000) of the May 1 borrowing was held in the form of liquid foreign balances, DI will be required to report such amount as liquid foreign balances for purposes of § 203(c).

If DI had borrowed $2,500,000 on November 1, 1970, for 6 months, DI would have made long-term foreign borrowing of $2 million as of May 1, 1970. The additional $500,000 constitutes a new foreign borrowing which quali-

fies as long-term foreign borrowing if it is not repaid for 12 months, i.e., until November 1, 1971.

Example 16. On May 1, 1970, DI borrows $1 million from foreign bank (W) for 3 months and expends the proceeds in making transfers of capital to Schedule A, for which a deduction is taken under § 313(d)(1). On August 1, 1970, DI repays the borrowing from W and borrows $1 million from foreign bank (X) and $1 million from foreign bank (Y) for 9 months. DI records the borrowing from X as a refinancing of the borrowing from W and the borrowing from Y as a new borrowing the proceeds of which DI expends in Schedule C for which a deduction is taken under § 313(d)(1). On May 1, 1971, DI repays the borrowings from X and Y and borrows $1 million from foreign bank (Z) for 3 months. DI records the borrowing from Z as a refinancing of the borrowing from Y, which is necessary to qualify the borrowing from Y under § 324(a)(2). DI also records a transfer of capital to Schedule A under § 312(a)(7) resulting from the repayment of the borrowing from X which was a refinancing of the borrowing from W. On August 1, 1971, DI repays the borrowing from Z and correctly records a transfer of capital to Schedule C under § 312(a)(7).

Example 17. On May 1, 1970, DI borrows $1 million from a foreign national (X), who provides the agreement specified in § 324(a)(1)(iv). DI expends the proceeds in Schedule B, for which a deduction is taken under § 313(d)(1). On August 1, 1970, DI repays the borrowing from X and borrows $2 million from foreign national (Y), who provides the agreement specified in § 324(a)(1)(iv). DI records $1 million of the borrowing from Y as a refinancing of the borrowing from X and $1 million as a new borrowing which DI expends in Schedule C. On August 1, 1971, DI repays $1 million of the borrowing from Y. In the records that must be kept pursuant to § 203(b), DI should indicate whether such repayment is attributable to the part of the Y borrowing used to refinance the X borrowing (chargeable to Schedule B) or to the part constituting new borrowing (chargeable to Schedule C).

Example 18. On May 1, 1970, DI borrows $1 million from foreign bank (X) on a 3-month note. On July 1, 1970, DI borrows $1 million from foreign bank (Y) for 10 months in anticipation of using the proceeds to refinance the borrowing from X, which must be repaid on August 1, 1970. In this case, DI may not treat the proceeds of the borrowing from Y as available proceeds until used to repay the X borrowing; however, the proceeds of the borrowing from Y are not subject to the limitation of § 203(c). On August 1, 1970, DI repays the borrowing from X and indicates on its books and records that the borrowing from Y is to refinance the borrowing from X as of that date. On May 1, 1971, DI repays the borrowing from Y. Accordingly, the borrowing from X is qualified as long-term foreign borrowing.

Example 19. On September 1, 1970, DI borrows $1 million on a 13-month note from a foreign bank and allocates the proceeds under § 306(e) to Schedule C positive direct investment for 1970 and so reports on its Annual Report Form FDI–102F for such year. DI repatriates the proceeds as of December 31, 1970, and thereafter holds them in accordance with § 306(e)(2). On August 1, 1971, DI repays the borrowing and does not refinance. Since the borrowing was not outstanding for 12 months, DI's deduction under § 306(e) for 1970 is disqualified, and DI must file an amended Form FDI–102F for 1970. Such amended report will show a decrease of $1 million in outstanding long-term foreign borrowing and in deductions for expenditure and allocation of available proceeds. If the proceeds were held in the form of liquid foreign balances, the amended report must also show a corresponding increase in such balances. If the amended Form FDI–102F for 1970 shows positive direct investment or liquid foreign balances in excess of DI's allowables, DI will be in noncompliance for 1970.

(ii) *Refinancing of long-term foreign borrowing made prior to May 1, 1970.*—A long-term foreign borrowing made prior to May 1, 1970 that satisfied the requirements of § 324 as then in effect, refinanced on or after May 1, 1970, with a foreign borrowing as defined in § 324(a)(1), shall not be deemed to have been repaid. See § 324(b)(1). Similarly, a certificate filed with respect to a pre-May 1, 1970, long-term foreign borrowing, as to which category 2 or 3 of Item 8.A on Form FDI–106 (issued May 1969) was checked, will be deemed a certification that DI will refinance such borrowing as provided in amended § 324(b)(1).

Example 20. On July 1, 1969, DI made a $1 million borrowing for 2 years from foreign bank (X), which qualified as a long-term foreign borrowing under § 324 as then in effect. On July 1, 1970, DI prepays the borrowing in full and on the same day makes a $1 million borrowing for 3 months from foreign bank (Y), which constitutes a foreign borrowing under new § 324(a)(1). Under § 324(b)(1), the long-term foreign borrowing from X is deemed not to have been repaid for purposes of the regulations because it was refinanced by a foreign borrowing.

A borrowing made by a DI prior to May 1, 1970 evidenced by a debt instrument containing a stated maturity of at least 12 months will continue to be treated as a long-term foreign borrowing even though repaid on or after May 1, 1970, prior to such maturity, provided that the principal amount repaid is refinanced in accordance with § 324(b)(1) so that the borrowing (as refinanced) will have been continuously outstanding for at least 12 months. Similarly, a borrowing made by a DI prior to May 1, 1970 evidenced by a debt instrument with a stated maturity of less than 12 months but containing express provisions for renewal, extension or continuance for a total period of at least 12 months (which the DI reasonably expected to renew, extend or continue) need not, commencing May 1, 1970, be rolled over in accordance with its terms, provided that the DI refinances such borrowing (with the same or another lender) in accordance with new § 324(b)(1) so that the borrowing (as refinanced) will have been continuously outstanding for at least 12 months.

The amendments to § 324 eliminated the 3-year original maturity requirement contained in former § 324(e)(3) applicable to borrowings that would be subject to the Interest Equalization Tax. See § 324(a)(1)(iii). Although elimination of the 3-year requirement affects only borrowings made on or after May 1, 1970, OFDI will permit DIs to repay within the first 3 years any part of a long-term foreign borrowing that qualified on the basis of former § 324(e)(3), provided that the principal amount repaid is refinanced in accordance with § 324(b)(1) so that the borrowing (as refinanced) will have been continuously outstanding for at least 3 years. Consequently, a DI may now repay (through repurchase of debentures, sinking fund redemptions, etc., during the first 3 years of the borrowing) a long-term foreign borrowing made prior to May 1, 1970, that was subject to former § 324(e)(3), provided that the DI refinances such repayment (valued as the principal amount of the indebtedness surrendered) in accordance with § 324(b)(1).

In determining the amount of foreign borrowing that is outstanding for 12 months or for 3 years, a DI shall disregard the amount of any repayment occurring by person of acceleration upon default or by conversion of convertible debt instruments.

Example 21. On February 1, 1970, DI borrowed $1 million from foreign bank (X) on a 6-month note with express provisions for renewal for a total period of 12 months which DI expected to exercise. On August 1, 1970, DI repays the borrowing from X and borrows $1 million from foreign bank (Y) on terms more favorable than a renewal of the borrowing from X. DI, in this case may continue to treat the $1 million borrowed initially on February 1, 1970, as long-term foreign borrowing if DI keeps the entire amount of the borrowing from Y (which also may be refinanced by other borrowings in accordance with § 324(b)(1)) outstanding until February 1, 1971.

Example 22. On March 1, 1969, DI issued 12-year debentures through its international finance subsidiary in the principal amount of $10 million. The borrowing qualified as long-term foreign borrowing under § 324(a) and (e)(3) as then in effect. Although by the terms of the offering no sinking fund payments are required within 3 years, DI may redeem any or all of the debentures after May 1, 1970, if DI refinances such redemptions by making foreign borrowings as defined in § 324(a)(1) so that $10 million principal amount of indebtedness will have been continuously outstanding for at least 3 years after March 1, 1969.

§ B324–6 Proceeds of long-term foreign borrowing.

The term "proceeds of long-term foreign borrowing" is defined in § 324(c) to mean the gross amount or value received from a long-term foreign borrowing (before deducting discounts, commissions, or fees) less repayment of principal of such borrowing. A borrowing must be reported to OFDI on the DI's first required periodic report following the borrowing (whether quarterly or annual) in order for funds received from the borrowing to qualify as proceeds of long-term foreign borrowing. Therefore, if a DI contemplates using funds received from a borrowing as an offset to direct investment under § 306(e) at any time in the current or succeeding years, the borrowing should be reported on Form FDI–102 or FDI–102F, whichever is first required thereafter. If a borrowing is not reported, the DI will not have available proceeds from such borrowing.

Example 23. On July 1, 1972, DI's international finance subsidiary sells a public offering in Europe of 12-year, $20 million face amount convertible debentures in a form that qualifies as long-term foreign borrowing. The debentures are sold at an aggregate discount of $500,000 and DI pays $500,-

000 in underwriting fees. DI thus receives $19 million net as a result of the borrowing. However, for purposes of § 324(c), the proceeds of the borrowing are $20 million. DI reports this borrowing on Form FDI–102 for the third quarter of 1972. Accordingly, DI has $20 million in available proceeds, including the $1 million representing discount and fees. DI may allocate a full $20 million to positive direct investment under § 306(e) even though only the $19,000,000 received is repatriated before the end of the year. DI may hold liquid foreign balances of $20 million, in addition to the minimum or historical amount, until it reduces available proceeds of the borrowing by allocation.

Example 24. DI's international finance subsidiary issues debentures in aggregate principal amount of $10 million, in a form that qualifies as a long-term foreign borrowing. Attached to each debenture is a warrant entitling the holder to purchase N number of shares of DI's common stock at P price. DI obtains the opinion of its independent financial counsel that the value attributable to the warrants (based on coupon rate of the debentures and the interest-cost saving to the issuer over the life of the issue represented thereby in relation to prevailing market rates for nonconvertible debt issues, or on some other basis acceptable to OFDI) is $1 million. DI has made a long-term foreign borrowing, the proceeds of which are $9 million. The $1 million attributable to the warrants is not proceeds of long-term foreign borrowing.

§ B324–7 Available proceeds.

"Available proceeds" are defined in § 324(d) as proceeds of long-term foreign borrowing that have not been allocated to positive direct investment and deducted therefrom under § 306(e), or expended in transfers of capital prior to July 1, 1972, for which deductions were made under § 313(d)(1), and are, therefore, still available to be allocated by the DI.

Although available proceeds are reduced by expenditure (prior to July 1, 1972) or allocation, DI may subsequently change the scheduled area in which the deduction is taken by allocation or reallocation under § 203(d) (2) or (3). (See § B324–10.) (During 1968, § 324(c) contained a provision whereby the return of proceeds of long-term foreign borrowing to the DI by an AFN, by reason of repayment or other liquidation of debt or equity interests in such AFN acquired with such proceeds, was treated as an increase in available proceeds of long-term foreign borrowing, and not as a transfer of capital under § 312(b).)

Example 25. During 1966, DI made a long-term foreign borrowing of $15 million, and used the entire amount that same year to acquire a debt obligation of a Schedule B AFN (B). During 1967, B repaid $5 million principal amount of the $15 million debt obligation, and during 1968, B repaid another $5 million principal amount of such debt obligation. At the end of 1968, DI allocated $2 million of the $10 million returned (considered to be "available proceeds" under the 1968 regulations) to a positive net transfer of capital to Schedule C. At the end of 1968, DI had proceeds of long-term foreign borrowing of $15 million; $8 million were available proceeds, $5 million were expended in B, and $2 million were allocated to Schedule C.

In March 1969, B repaid the final $5 million principal amount of its debt obligation to DI. This repayment is recognized as a § 312(b) negative transfer of capital from B to DI and does not change the amount of available proceeds. After the March transaction, DI held $8 million of available proceeds, $5 million of returned proceeds and $2 million of allocated proceeds. In June 1970, DI expended the cash received from B in March 1969 to acquire stock of new Schedule A AFN. This constituted a transfer of capital under § 312(a). DI received no deduction with respect to this transfer of capital since the funds expended were not available proceeds. At the end of 1970, DI allocates $4 million of the available proceeds to positive direct investment in Schedule C. At the end of 1970, DI still has $15 million of proceeds of long-term foreign borrowing, $4 million of which are available proceeds, $5 million of which are considered to be expended in B, and $6 million are allocated to C.

§ B324–8 Expenditure of available proceeds and deduction from net transfer of capital.

Prior to July 1, 1972, if a DI expended available proceeds of long-term foreign borrowing in a transfer of capital to an AFN (other than a Canadian affiliate), the amount of such proceeds so expended was deducted from the net transfer of capital to the appropriate scheduled area under § 313(d)(1). The deduction was mandatory when available proceeds were so expended.

Section 313(d)(1) was revoked effective July 1, 1972, thereby removing from the regulations the mandatory deduction for expenditure of available proceeds. Instead, available proceeds that are expended by a DI in making a transfer of capital on or after July 1, 1972, remain available for allocation and may be allocated as required by the DI to achieve compliance with the regulations. Section 306(e) was correspondingly amended to permit proceeds that are so expended and subsequently allocated to remain expended in the AFN to which the transfer of capital was made by the DI. Except for proceeds that are expended in making a transfer of capital, however, the prohibition against holding allocated proceeds in any form of foreign property remains in effect.

DIs are cautioned that deductions under § 313(d)(1) must be made for all transfers of capital made with available proceeds prior to July 1, 1972. Available proceeds that were so expended prior to such date may not be allocated to positive direct investment under § 306(e)(1). Also, the repayment of long-term foreign borrowing at any time will continue to involve a transfer of capital under § 312(a)(7) or § 1404(a)(2) to the extent that a deduction for expenditure of available proceeds of such borrowing was made under § 313(d)(1). Section 203(d)(2) provides for allocation where a deduction for expenditure of available proceeds previously was made under § 313(d)(1). Section 324(d) reduces available proceeds where such proceeds were expended prior to July 1, 1972. Section 1404(a)(2) provides for the recognition of a transfer of capital upon repayment of an overseas borrowing where a deduction for expenditure of available proceeds previously was made under § 313(d)(1).

The following examples apply only to expenditures made prior to July 1, 1972.

Example 26. DI acquires all the stock of an Argentinian company from an unaffiliated foreign national (X). The purchase price is $4 million, $1 million of which is payable in cash at the closing. The balance is to be paid in three equal annual installments of $1 million (together with accrued interest) commencing 1 year from the date of closing. Assuming the borrowing qualifies as long-term foreign borrowing, DI's net transfer of capital to Schedule A is $1 million (i.e., a $4 million transfer of capital under § 312(a)(1) resulting from the stock acquisition, from which is deducted the $3 million available proceeds of long-term foreign borrowing expended in making that transfer of capital pursuant to § 313(d)(1)).

Example 27. DI purchases from unaffiliated foreign nationals all outstanding stock of a closely held German corporation. In exchange therefor, DI delivers to the sellers $5 million principal amount of 1-year debentures convertible into common stock of DI, that qualify as a long-term foreign borrowing. DI has made a $5 million transfer of capital to the German corporation and receives a deduction under § 313(d)(1) in an equal amount. Assuming no other transactions during the year, DI's net transfer of capital to Schedule C during the year will be zero.

Example 28. In December 1968, DI made a $5 million long-term foreign borrowing. In January 1969, DI loans the $5 million to a Schedule A AFN (A) on A's 6-month note. Accordingly, DI made a $5 million transfer of capital and received a deduction under § 313(d)(1), so that its net transfer of capital to Schedule A at the end of the first quarter was zero. In July 1969, A repaid the $5 million, as a result of which there was a § 312(b) transfer of capital from A to DI. In August 1969, DI loaned the $5 million to a Schedule B AFN (B), resulting in a § 312(a) transfer of capital to Schedule B. Assuming no other revelant transactions during the year, DI had made positive direct investment of $5 million to Schedule B. Under § 203(d)(2), DI may allocate the proceeds to such positive direct investment in Schedule B, if DI complies with the reporting and repatriation requirements of § 203(d)(2). If such allocation is made, DI must recognize a transfer of capital to Schedule A of $5 million (thereby effectively cancelling the July § 312(b) transfer from A to DI). Note that a § 313(d)(1) deduction cannot be taken with respect to the 1969 loan to B, but the § 203(d)(2) reallocation has the same effect as a § 313(d)(1) deduction.

Example 29. In November 1968, DI's international finance subsidiary publicly issued convertible debentures in principal amount of $25 million, which qualified as a long-term foreign borrowing. In February 1969, DI purchased machinery with $5 million of available proceeds derived from the public issue and installed the machinery in its Australian branch B. Assuming that the transfer of machinery to B results in a net increase of $5 million in B's assets and there are no other relevant transactions during 1969, DI's net transfer of capital to Schedule B during 1969 is zero, because the $5 million transfer of capital is offset by a deduction in an equal amount of available proceeds of long-term foreign borrowing expended in such transfer of capital, pursuant to § 313(d)(1).

Example 30. In December 1968, DI's international finance subsidiary publicly issued convertible debentures in principal amount of $20 million which qualified as a long-term foreign borrowing. In February 1969, DI expended $10 million of available proceeds of such borrowing to acquire the assets of a German corporation, which DI organized as a direct branch. Upon acquisition, net assets of the branch (disregarding DI's equity interest) were $10 million. During the remain-

der of 1969, DI made no further debt or equity investment in the branch. However, after acquisition by DI, the branch incurred a loss in 1969 of $500,000, so that its net assets at the end of 1969 were $9,500,000. DI has no other Schedule C AFNs. Although DI's net transfer of capital to the German branch during 1969 would normally be $9,500,000 (by operation of § 313(b)), the $10 million expended in acquisition of the branch is offset by a $10 million deduction under § 313(d)(1), because the acquisition was made with available proceeds. Therefore, after taking into account the loss of $500,000, DI has a negative net transfer of capital to Schedule C during 1969 of $500,000.

Example 31. In January 1969, DI borrowed $5 million from a foreign bank, which qualified as a long-term foreign borrowing. During the same month, DI loaned the $5 million to a Canadian AFN. The proceeds so expended are still available proceeds. (See § 324(d).) No deduction with respect to their expenditure was received under § 313(d)(1) because § 1103 excludes Canada from Schedule B for purposes of § 313(a) and (b).

§ B324–9 Allocation of available proceeds.

A DI may reduce positive direct investment during a year by "allocating" available proceeds of long-term foreign borrowing to such positive direct investment. Allocation is accomplished when (a) an entry is made on the books and records maintained by the DI pursuant to §§ 203(b) and 601; (b) the allocation and deduction are reported on Form FDI–102F for the year in which made; and (c) as of the end of the year for which the allocation is made or, alternatively, as of February 28, 1974, with respect to an allocation made for 1973, the allocated proceeds are not held in any form of foreign property. (See § B306–7.)

Thus, a DI may reduce positive direct investment made, during 1973 by allocating available proceeds of any long-term foreign borrowing that is outstanding on February 28, 1974. Such borrowing may be made during January or February 1974, or may have been made by the DI during 1973 or a prior year. The 12-month maturity test for long-term foreign borrowing will, of course, apply to any borrowing of which available proceeds are allocated, i.e., the borrowing, as refinanced, must be continuously outstanding for at least 12 months.

It should be noted by DIs that they may allocate to positive direct investment made during 1973 any proceeds that are available for allocation on December 31, 1973, notwithstanding the repayment of the underlying long-term foreign borrowing during January or February 1974. Such repayment will involve a transfer of capital during 1974.

Example 32. DI has five wholly-owned incorporated AFNs in Schedule B. During 1969, DI is authorized to make positive direct investment of $1 million in Schedule B. In 1969, the Schedule B AFNs have earnings of $1,400,000 and pay no dividends; DI's net transfer of capital to Schedule B is zero; and positive direct investment is, therefore, $1,400,000. In November 1969 (DI makes a borrowing from a foreign bank of $900,000 which qualifies as a long-term foreign borrowing under § 324 and deposits the $900,000 in a demand deposit in a London bank. To reduce Schedule B positive direct investment to the authorized $1 million for 1969:

(a) DI repatriates $400,000 to the United States by December 31, 1969, as required by § 306(e), and invests the $400,000 in bonds of a U.S. corporation.

(b) Thereafter, DI enters an allocation on its books and records and deducts $400,000 from positive direct investment on its FDI–102F for 1969, as required by § 306(e). Accordingly, DI has made positive direct investment of $1 million in Schedule B for 1969. As to 1970 and subsequent years, DI holds $500,000 in available proceeds ($900,000 less $400,000 allocated).

Example 33. DI has three Schedule C AFNs, X, Y, and Z, and a $200,000 Schedule C allowable. In November 1968, DI has secured a commitment for a line of credit from a foreign bank of up to $5 million for a period of 5 years. During 1969, the following transactions take place:

(a) X has $175,000 in earnings and pays no dividends. X repays $100,000 of a loan from DI and thereby satisfies a debt obligation of X held by DI.

(b) Y has $25,000 of earnings and pays no dividends. DI performs services on behalf of Y worth $400,000, for which DI is not paid at the end of 1969.

(c) Z has $50,000 of earnings and pays no dividends. DI leases machinery having a value of $500,000 to Z for a period of 10 years. DI thus has Schedule C reinvested earnings of $250,000 and a positive net transfer of capital of $800,000, resulting in positive direct investment of $1,050,000, only $200,000 of which is authorized. During December 1969, DI takes down $350,000 under its line of credit, repatriates the funds to the United States, and utilizes the funds to make a payment to a U.S. lender on a real estate loan. Thereafter, pursuant to § 306(e), DI records an allocation of $850,000 in its § 203(b) books and reports the allocation on its Form FDI–102F for 1969. DI's positive direct investment in Schedule C after the deduction is $200,000.

Example 34. DI has one Schedule C AFN, a direct branch of the DI, and zero Schedule C allowable. During 1969, DI transfers used machinery of a value of $250,000 to its Schedule C branch, and the branch has $100,000 of earnings, all of which is retained, thereby increasing branch net assets by $350,000. In December 1969, DI makes a long-term foreign borrowing from a foreign bank of $350,000, repatriates the proceeds thereof to the United States and deposits them in a New York bank. Thereafter, DI makes an entry in its § 203(b) books and reports an allocation in its Form FDI–102F for 1969. DI's positive direct investment in Schedule C is zero.

Example 35. In 1968, DI made a long-term foreign borrowing of $10 million and expended or allocated $8 million of the proceeds thereof to transfers of capital in Schedules A and C. In December 1968, DI also loaned $2 million of such proceeds on 6-month terms to a Canadian AFN. In June 1969, the 6-month notes were renewed for another 6 months. During 1969, DI has positive direct investment of $3 million in Schedule B and a $1 million allowable in Schedule B. In December 1969, DI causes its Canadian AFN to repay the loan to the DI, places the funds on deposit in a New York bank, makes an entry in its § 203(b) books and reports an allocation and deduction of $2 million in its Form FDI–102F for 1969. DI's positive direct investment in Schedule B is $1 million.

An allocation that is made under § 306(e) to positive direct investment calculated worldwide by a DI electing § 503 is deemed made in each scheduled area in proportion to the amount of positive direct investment made in each such area. See § B306–7.

§ B324–10 Allocation of expended proceeds and reallocation of previously allocated proceeds.

Section 203(d)(2) has permitted a DI that expended proceeds of long-term foreign borrowing and made a corresponding § 313(d)(1) deduction during the period January 1, 1968, through June 30, 1972, to make unlimited successive deductions, in the same or successive years, from positive direct investment in other scheduled areas. Commencing January 1, 1973, a DI that expended proceeds of long-term foreign borrowing made during 1965 or any succeeding year and made a corresponding § 313(d)(1) deduction during 1965, 1966 or 1967 may make successive deductions, during 1973 and succeeding years, from positive direct investment in other scheduled areas under § 203(d)(2), provided that the borrowing is outstanding at the time the successive deductions are made.

Under § 203(d)(3), a direct investor allocating proceeds of long-term foreign borrowing to positive net transfer of capital during 1968 or to positive direct investment in succeeding years may thereafter reallocate such proceeds to positive direct investment in other scheduled areas.

Whenever a deduction against positive direct investment is made under § 203(d)(2) or (3), a transfer of capital in an amount equal to the deduction must be recognized in the scheduled area in which the last prior deduction was made.

Allocation of expended proceeds under § 203(d)(2) is accomplished in a manner similar to allocation of available proceeds under § 306(e). Both sections require the DI to make appropriate entries in the books and records maintained pursuant to § 203(b), and the allocation must be reported on the DI's next annual report (Form FDI–102F). Allocations under § 203(d)(2) are subject to the repatriation requirements of that section.

Reallocation under § 203(d)(2) and (3) of proceeds previously deducted under § 313(d)(1), § 203(d), or § 306(e) requires appropriate bookkeeping entries. The DI must reflect the reallocation on books and records required to be kept by § 203(b) and the corresponding deduction together with the transfer of capital to the appropriate scheduled area on the next annual report (Form FDI–102F). Reallocations made pursuant to § 203(d)(3) are subject to the proscriptions of § 306(e) with respect to the form in which the underlying proceeds may be held.

No allocation or reallocation under § 203(d)(2) or (3) may take place with respect to any part of a long-term foreign borrowing that has been repaid since proceeds are extinguished by repayment.

Example 36. During 1968, DI made a long-term foreign borrowing of $5 million, and allocated the proceeds to positive net transfer of capital to Schedule A (under § 313(d)(1) of the 1968 regulations). At the end of 1970, DI has positive direct investment of $6 million in Schedule C, and has repaid $1 million of the borrowing. Section 203(d)(3) permits DI to reallocate $4 million (outstanding proceeds) previously allocated to Schedule A

during 1968 to the Schedule C positive direct investment, thereby reducing it to $2 million, by recording the reallocation in the books and records required in § 203(b), by reporting the reallocation and deduction in the annual report (Form FDI–102F) for 1970, and by holding the $4 million of allocated proceeds, as of the end of 1970, in a form permitted by § 306(e). Upon such reallocation, DI must recognize a transfer of capital to Schedule A of $4 million.

Example 37. During 1968, DI made a long-term foreign borrowing of $2 million and used the proceeds to extend a 1-year loan to a Schedule B AFN (B). During 1969, B repays the loan, constituting a § 312(b) transfer of capital to DI, and DI invests the $2 million in bonds of a U.S. corporation. During 1969, DI allocates (pursuant to § 203(d)(2) the $2 million to positive direct investment in Schedule C by making an entry in the books and records required by § 203(b), and by reporting the allocation and deduction on the annual report (Form FDI–102F) for 1969. DI must, as of yearend, continue to hold the $2 million in the U.S. corporate bonds (or in some other form of U.S. property) unless the $2 million is expended in making a further transfer of capital to an AFN. As a result of the allocation, positive direct investment in Schedule C is reduced by $2 million, but DI must recognize a § 312(a) transfer of capital of $2 million to Schedule B.

Example 38. DI makes a long-term foreign borrowing of $3 million in March 1969 and loans the proceeds to a Schedule B AFN (B), recognizing a § 312(a) transfer of capital to B and making a deduction from net transfer of capital to that scheduled area under § 313(d)(1). In October 1969, B repays the loan and DI then loans the $3 million to a Schedule A AFN, resulting in a § 312(b) transfer of capital from B and a § 312(a) transfer of capital to A. On the annual report (Form FDI–102F), however, DI makes a § 203(d)(2) allocation of the $3 million to positive direct investment in Schedule C, resulting in a deduction of $3 million from positive direct investment in Schedule C and a § 312(a) transfer of capital in the same amount to Schedule B. DI is permitted to leave the $3 million proceeds actually invested in Schedule A, notwithstanding the allocation to Schedule C.

Example 39. During 1967, DI made a long-term foreign borrowing of $5 million and, in turn, lent the funds received to a Schedule A AFN for a 3-year term, repayment to be made in full at maturity. Commencing January 1, 1973, DI may allocate such proceeds to positive direct investment in Schedule B or C, pursuant to § 203(d)(2).

§ B324–11 Repayment of long-term foreign borrowing.

Repayment of long-term foreign borrowing occurs whenever the DI reduces its indebtedness created by the borrowing, whether by cash repayment, delivery of equity securities upon conversion, open market purchases of its obligations or by making sinking fund payments to a trustee (domestic or foreign) to be used by the trustee to redeem the DI's obligations. The amount of a repayment is the amount of indebtedness surrendered, regardless of the value of the funds or other property transferred by the DI in making the repayment (see Example 45 below).

Repayment of long-term foreign borrowing reduces the amount of proceeds held by the DI to the extent of the repayment. In addition, a transfer of capital must be recognized by the DI (under § 312(a)(7)) upon repayment of the long-term foreign borrowing to the extent that the proceeds were expended in making (or, during 1968, allocated to) transfers of capital to AFNs prior to July 1, 1972, or were allocated to positive direct investment. The transfer of capital is incurred in the scheduled area in which the deduction from net transfer of capital or positive direct investment was taken. If, as a result of allocation or reallocation, deductions were taken in successive scheduled areas, the transfer of capital is recognized in the last scheduled area in which a deduction was taken. However, if the total deductions with respect to the amount of the borrowing repaid were last taken in two or more scheduled areas, the transfer of capital resulting from repayment will be charged proportionally, based on the last deductions taken in each scheduled area.

The following examples apply to expenditures of available proceeds made prior to July 1, 1972. Since there is no deduction from the net transfer of capital for an expenditure of available proceeds made on or after July 1, 1972 (see § B313–6), the repayment of the underlying borrowing does not involve a transfer of capital unless the available proceeds were subsequently allocated under § 306(e).

Example 40. In 1968, DI made a long-term foreign borrowing of $1 million and loaned the proceeds to a Schedule C AFN, receiving a deduction with respect to such transfer of capital under § 313(d)(1). During 1969, DI repays the long-term foreign borrowing. DI must recognize a $1 million transfer of capital to Schedule C under § 312(a)(7).

Example 41. In 1968, DI made a long-term foreign borrowing of $1 million, and allocated the proceeds to a positive net transfer of capital in Schedule A, thereby receiving a deduction from Schedule A net transfer of capital under § 313(d)(1). In 1969, DI reallocated, under § 203(d)(3), the proceeds to positive direct investment in Schedule C, recognizing a transfer of capital to Schedule A and a deduction from positive direct investment in Schedule C, each in the amount of $1 million. If, in 1970, DI repays the long-term foreign borrowing, DI must recognize a transfer of capital under § 312(a)(7) to Schedule C, since the last deduction with respect to the proceeds was received in that scheduled area.

Example 42. In 1968, DI made a long-term foreign borrowing of $1 million. DI expended $600,000 of the proceeds in a transfer of capital to Schedule B, receiving a deduction under § 313(d)(1) from net transfer of capital in Schedule B, and allocated the remaining $400,000 to a positive net transfer of capital to Schedule C, receiving a similar deduction in Schedule C. During 1969, DI repays the long-term foreign borrowing and DI recognizes a $600,000 transfer of capital to Schedule B and a $400,000 transfer of capital to Schedule C, under § 312(a)(7).

Example 43. In 1968, DI made a long-term foreign borrowing of $1 million. DI expended $500,000 of the proceeds in a transfer of capital to Schedule A, allocated $200,000 to a positive net transfer of capital in Schedule B, and allocated the remaining $300,000 to a positive net transfer of capital in Schedule C. Appropriate deductions were also taken from net transfer of capital in each scheduled area, under § 313(d)(1). During 1969, DI allocated to Schedule C, under § 203(d)(2), $250,000 of the proceeds previously expended in Schedule A, thereby recognizing a transfer of capital to Schedule A and receiving a deduction from positive direct investment in Schedule C in the same amount. If, in 1970, DI repays the long-term foreign borrowing, DI must recognize transfers of capital, under § 312(a)(7), in the amount of $250,000 to Schedule A, $200,000 to Schedule B, and $550,000 to Schedule C.

Example 44. In February 1969, DI makes a long-term foreign borrowing of $1 million and loans the proceeds to a Schedule C AFN (C), receiving a deduction with respect to the transfer of capital under § 313(d)(1). In March 1970, C repays the loan, resulting in a $1 million transfer of capital under § 312(b). In June 1970, DI repays the long-term foreign borrowing. The repayment is recognized as a transfer of capital to Schedule C of $1 million under § 312(a)(7), since the last deduction with respect to the proceeds was received in that scheduled area. Note that the § 312(b) transfer of capital in March 1970 will offset the June 1970 § 312(a)(7) transfer of capital for purposes of calculating the net transfer of capital to Schedule C during 1970.

The transfer of capital to be recognized upon repayment of a long-term foreign borrowing is in the amount of the indebtedness surrendered, which may be different from the value of the actual repayment.

Example 45. In March 1968, DI made a $10 million offering of debentures which qualified as long-term foreign borrowing. DI expended the proceeds in Schedule C and took a deduction of $10 million from net transfer of capital in Schedule C. In 1970, DI purchases all of the debentures at a total cost of $8 million. DI will be charged with a § 312(a)(7) transfer of capital to Schedule C of $10 million for 1970.

Repayment of a long-term foreign borrowing does not result in a transfer of capital if the proceeds of such borrowing are available proceeds at the time of repayment. Generally, available proceeds are those proceeds that have not been expended prior to July 1, 1972, or allocated and with respect to which a deduction under § 313(d)(1) or § 306(e) has not been received. Proceeds expended or allocated during the years 1965 through 1968 will be considered available proceeds if returned to the DI prior to December 31, 1968, and not thereafter expended (prior to July 1, 1972) or allocated.

Example 46. DI makes a $1 million long-term foreign borrowing during 1969 and loans the proceeds to a domestic subsidiary for working capital purposes. Such proceeds are not allocated to positive direct investment at the end of 1969. If such proceeds are not expended in 1970, repayment of the long-term foreign borrowing in 1970 will not be a transfer of capital under § 312(a)(7).

Example 47. During 1968, DI made a $1 million long-term foreign borrowing and lent the proceeds, during May 1968, to a Schedule B AFN (B) on a 6-month note, receiving a deduction with respect to the transfer of capital under § 313(d)(1). In November 1968, B repaid the DI. Under the regulations in effect during 1968, the repayment did not constitute a § 312(b) transfer of capital from B to DI, but did constitute an increase in available proceeds of $1 million. In 1969, without having again expended the $1 million in a transfer of capital or allocated such proceeds, DI repays the long-term foreign borrowing. DI has not made a transfer of capital under § 312(a)(7). If B's note had been for 9 months and repayment occurred

in February 1969, DI would recognize a § 312(b) transfer of capital from B in 1969, the repayment would not have constituted an increase in available proceeds, and repayment of the long-term foreign borrowing in 1969 would be recognized as a $1 million transfer of capital to Schedule B under § 312(a)(7).

Delivery of a DI's equity securities to holders of debt instruments issued by the DI (or its international finance subsidiary) in connection with a long-term foreign borrowing, pursuant to the exercise of conversion or similar rights, is deemed a repayment of the borrowing in the principal amount of indebtedness surrendered. See § 324(b)(2). The conversion will result in repayment of the borrowing (and reduction of proceeds) in the year the delivery of stock occurs. Any positive direct investment resulting from such conversions may be charged against the DI's subpart E allowables during the year of conversion, or such direct investment may authorized under § 1002(a)(3). If the latter alternative is employed, transfers of capital resulting from such repayment by conversion are not recognized until the year following the conversion. Thus, for example, if a DI's international finance subsidiary issues $20 million face amount of debentures convertible into stock of the parent and invests the proceeds in Schedule C AFNs of the parent, conversion by the foreign debenture holders of $1 million face amount into stock in 1970 (the stock being delivered in 1970) results in a $1 million repayment of the borrowing (i.e., a $1 million transfer of capital to Schedule C) in 1970 (see § 324(b)(2)). However, assuming such repayment in 1970 is generally authorized by § 1002(a)(3), reduction in the DI's Subpart E allowables may be postponed until 1971 under § 1003.

Surrender of debentures upon exercise of attached warrants is treated similarly. However, since a portion of the funds received from sale of debentures with warrants attached is attributed to the warrants, the DI did not receive proceeds of long-term foreign borrowing to the full extent of the face amount of the issue. Therefore, where a debenture is surrendered, a ratable portion of the principal amount will not result in repayment of a long-term foreign borrowing. If the warrants are detachable and cash payment is made upon exercise of a warrant, the transfer of stock by the DI is not a repayment of the borrowing or a transfer of capital.

Example 48. During 1968, DI's international finance subsidiary issued $10 million principal amount of debentures with warrants attached, entitling holders to purchase 10 shares of DI's common stock at $100 and to present the debenture, having a principal amount of $1,000, in payment for the stock. DI's independent financial counsel valued the warrants in an aggregate amount of $1 million. Therefore, DI realized $9 million proceeds of long-term foreign borrowing from sale of the debentures with warrants attached. Also during 1968, DI's international finance subsidiary loaned the entire $9 million to DI's Schedule B AFNs, resulting in a § 313(d)(1) deduction. In 1969, upon the presentation of a warrant and debenture, and delivery of common stock to the holder, there is a repayment of the debenture, a reduction of proceeds of long-term foreign borrowing (to the extent such proceeds were received from sale of the debenture), and a transfer of capital under § 312(a)(7). (The transfer of capital occurs because such proceeds were invested in Schedule B and a deduction under § 313(d)(1) had been received during 1968.) However, although the amount of repayment is $1,000, the proceeds of long-term foreign borrowing received from sale of the debenture were $900. Accordingly, the transfer of capital to Schedule B and the corresponding reduction of proceeds will be $900. Recognition of the transfer of capital which is authorized by § 1002(a)(3), will be postponed until 1970, when the reduction to Subpart E allowables occurs (see §§ 1002(a)(3) and 1003).

Generally, whether a transfer of capital or a reduction of available proceeds results from repayment of a long-term foreign borrowing may be ascertained by a DI from the books and records kept pursuant to § 203(b). Accordingly, when a DI repays a long-term foreign borrowing, all proceeds of which have been expended prior to July 1, 1972, or allocated, the DI must report a transfer of capital under § 312(a)(7). If a DI has not so expended or allocated any part of a particular long-term foreign borrowing, repayment of the borrowing (in whole or in part) results in a reduction of available proceeds. However, if a portion of proceeds of a borrowing has been expended prior to July 1, 1972, or allocated, while the remainder has not been so expended or allocated and thus constitutes available proceeds, the effect of partial repayment cannot be ascertained from the DI's books and records. In such case, any repayment shall be treated first as a reduction of available proceeds (until the available proceeds are reduced to zero) and then as a transfer of capital under § 312(a)(7). On the other hand, if a long-term foreign borrowing is in the form of debentures convertible into stock of the DI and a portion of the proceeds has been expended or allocated and the remainder is held as available proceeds, OFDI will permit the DI to elect whether repayments resulting from conversions will be treated as reductions of available proceeds or as transfers of capital under § 312(a)(7).

Example 49. In March 1968, DI made a long-term foreign borrowing from a foreign bank. DI gave the bank 20 notes, each for $1 million. At the end of 1968, DI had expended or allocated $10 million of the proceeds. By June 1969, DI had expended an additional $5 million. Accordingly, there remained $5 million of available proceeds. On October 1, 1969, DI repaid $2 million. The repayment did not constitute a transfer of capital under § 312(a)(7); rather, available proceeds were reduced from $5 million to $3 million.

Example 50. During 1969, DI's international finance subsidiary made a public issue of debentures convertible into common stock of DI. The issue qualified as a long-term foreign borrowing. The proceeds of such borrowing were $20 million. As of the end of June 1970, DI had expended $15 million of these proceeds in transfers of capital to a Schedule B AFN and $5 million remained as available proceeds. During July 1970, $2 million principal amount of debentures was converted into common stock of the DI. DI may treat the conversions either as reductions of available proceeds or as transfers of capital to Schedule B.

§ B324–12 Recordkeeping.

Because funds or property that are proceeds of long-term foreign borrowing have special status under the regulations, it is necessary that special records be kept by DIs showing disposition of such proceeds at any given time. Therefore, § 203(b) requires DIs to identify separately each long-term foreign borrowing and to record each separate use of the proceeds. The term "use" refers not only to actual investments, but also to deductions taken under § 203(d), § 313(d)(1) (prior to July 1, 1972) or § 306(e). For example, proceeds loaned by a DI to an AFN in Schedule C in March 1972 occasioned a deduction from net transfer of capital to Schedule C under § 313(d)(1), and the proceeds were actually invested in the Schedule C AFN. However, if the Schedule C AFN repays the loan and the DI does not thereafter allocate the returned proceeds under § 203(d)(2), the Schedule C deduction will remain in effect until repayment of the underlying long-term foreign borrowing. Upon such repayment, a § 212(a)(7) transfer of capital to Schedule C would have to be reflected. Similarly, proceeds allocated to and deducted from positive direct investment in any scheduled area pursuant to § 306(e) may actually be invested in bonds of a U.S. corporation, or expended in making a transfer of capital to an AFN. Accordingly, the DI must identify actual investment of proceeds as well as record direct investment deductions taken with respect to such proceeds.

Since § 313(d)(1) was revoked effective July 1, 1972, only the actual investment of proceeds, and no direct investment deduction, is recorded in connection with an expenditure of available proceeds in making a transfer of capital on or after such date.

Example 51. During 1969, the international finance subsidiary of a U.S. corporation (DI) sells $25 million face amount of debentures convertible into DI's common stock in a form that qualities the issue as a long-term foreign borrowing. (a) DI sells the debentures at a discount of $1,250,000 and pays the underwriters commissions of $1,250,000, receiving $22,500,000 net from the sale. (b) DI immediately expends $10 million of the proceeds received to acquire a French corporation (C), which then becomes a Schedule C AFN. (c) DI deposits the remaining proceeds of the borrowing ($12,500,000) in a demand account with a London bank. (d) At the end of 1969, DI allocates $3 million of these available proceeds to positive direct investment in Schedule B. (e) In 1970, DI loans $5 million of the funds deposited in the London bank C. (f) Subsequently, in 1970, $2 million face amount of debentures are converted. (g) At the end of 1970, DI allocates $2,500,000 of available proceeds to positive direct investment in Schedule B.

The above transactions should be recorded on the books and records required by § 203(b) in the following manner:

With respect to transaction (a), DI enters proceeds of a long-term foreign borrowing in the amount of $25 million.

With respect to transaction (b), DI enters an expenditure of $10 million in connection with the transfer of capital incident to acquisition of C (§ 312(a)), and a deduction from net transfer of capital with respect to Schedule C (§ 313(d)(1)). After these entries, DI's records will reflect $15,000,000 available proceeds and $10 million expended proceeds (the latter being held in the form of C's stock).

With respect to transaction (c), DI enters the demand deposit of $12,500,000 available proceeds in the London bank; these proceeds are now held in the form of liquid foreign balances. DI would reflect $2,500,000 (the amount of discount and commissions) of available proceeds as being held in the United States.

With respect to transaction (d), the $3 million allocation to Schedule B, DI may use the foregoing $2,500,000 available proceeds deemed held in the United States. Accordingly, only $500,000 need be allocated out of available proceeds held as liquid foreign balances. This $500,000 must be withdrawn from the London bank and repatriated to the United States (§ 306(e)); DI does so, investing the $500,000 in bonds of a U.S. corporation. The allocation, the source of available proceeds used, and the repatriation transaction would be reflected in DI's books and records pursuant to § 203(b).

Accordingly, at the end of 1969, DI has recorded a long-term foreign borrowing, the proceeds of which are $25 million. Of such proceeds, $10 million have been expended, with a deduction in Schedule C, and are held in the form of stock of C; $2,500,000 relate to the discount and commission, are treated as being held in the United States and are allocated, with the deduction in Schedule B; $500,000 are held in the form of bonds of a U.S. corporation and are allocated, with the deduction in Schedule B; and $12 million are held on deposit in the London bank and are available proceeds.

With respect to transaction (e), DI enters an expenditure of $5 million available proceeds to C. Available proceeds in the London bank are decreased by such amount, and DI now has another $5 million deduction in Schedule C under § 313(d)(1), the expended proceeds being held in the form of a debt obligation of C.

With respect to transaction (f), DI is permitted to treat the repayment by conversion of the debentures either as a reduction of available proceeds or as a transfer of capital. DI elects to recognize a transfer of capital. Since total expended and allocated proceeds at the time of conversion are $18 million, with $15 million expended in Schedule C and $3 million allocated to Schedule B, ⅚ of $2 million ($1,667,000) is a transfer of capital to Schedule C and ⅙ of $2 million ($333,000) is a transfer of capital to Schedule B. Simultaneously, proceeds expended in C and allocated to B are reduced in an equal amount. Accordingly, DI treats the proceeds held in the form of debt obligation of C as reduced by $1,667,000, and DI treats allocated proceeds held in the form of corporate bonds as having been reduced by $333,000.

With respect to transaction (g), the allocation of $2,500,000 to Schedule B is entered by DI. The deposit in the London bank is shown as reduced by $2,500,000. Since DI must repatriate these allocated proceeds, the funds are deposited in a New York bank. Accordingly, DI would enter such deposit on its records also.

At the end of 1970, DI has $23 million proceeds of long-term foreign borrowing ($25 million less $2 million repayment). Of such proceeds, $4,500,000 are still available and are held on deposit in the London bank; $2,500,000 (comprising the discount and commission) are allocated to Schedule B and are treated as held in the United States; $167,000 are allocated to Schedule B and are held in the form of U.S. corporate bonds; $2,500,000 are allocated to Schedule B and are held on deposit with a New York bank; and $10 million are expended in C and held in the form of equity securities of C; and $3,333,000 are expended in C and held in the form of debt obligations of C.

Note that if transactions (b) and (e) occurred on or after July 1, 1972, deductions under § 313(d)(1) would not be recorded and available proceeds would not be reduced. Instead, the funds spent to acquire C or loaned to C would remain available proceeds and could thereafter be allocated under § 306(e). Since available proceeds would not be reduced by the expenditures, DI could hold liquid foreign balances in the amount of such proceeds, notwithstanding the transfers of capital to C.

§ B324–13 Borrowings denominated in a foreign currency.

Proceeds of foreign borrowing or long-term foreign borrowing denominated in a foreign currency are valued at the U.S. dollar equivalent prevailing when the borrowing was made, regardless of subsequent exchange rate fluctuations, until the time of repayment or refinancing. A refinancing as described in § 324(b)(1) shall be treated at the U.S. dollar equivalent as of the time of such refinancing.

Example 52. On August 1, 1969, DI made long-term foreign borrowing in a foreign currency valued at $1 million on that date. DI allocated the proceeds under § 306(e) to positive direct investment in Schedule C. In early 1970, the currency involved was revalued by 10 percent. In October 1970, DI repays the borrowing. Although the dollar equivalent of the repayment is $1,100,000, DI is charged with a § 312(a)(7) transfer of capital to Schedule C of only $1 million, the dollar equivalent on the date of the borrowing. The transfer of capital upon repayment would have been in the same amount if, instead, the currency had been devalued.

Example 53. On June 1, 1970, DI makes a 6-month borrowing from a foreign bank (X) denominated in a foreign currency. The dollar equivalent is $2 million. In September 1970, the currency is devalued by 10 percent. On December 1, 1970, DI repays X in full and plans to refinance by borrowing from foreign bank (Y) in the same currency. In order to preserve $2 million of proceeds, DI must borrow additional units of the foreign currency so that the dollar equivalent thereof on December 1 will equal $2 million. If, however, the currency had been revalued, DI would have needed to borrow only $2 million worth of the currency at the rate prevailing on December 1.

B502—Election of Allowables

Section 502 requires a DI to elect for each year one of the following allowables: (a) The § 503 minimum allowable of $6 million; (b) the § 504(a) historical allowable; or (c) the § 504(b) earnings allowable.

The election of allowables must be made on Form FDI–102F or Form FDI–102F/S (Annual Report) filed for the year with respect to which the election is made.

An incremental earnings allowable under § 506 is available in addition to the allowable elected pursuant to § 502.

In the event of a combination of two or more DIs during a year, the resulting entity will be regarded as having been a single DI for the entire year in question, as well as for base-period years. Combination during a year of two DIs will not result in combination for such year of § 503 allowables with respect to the surviving DI. (See § B312–18.)

Note that the special allowable provided in § 1302 of Subpart M for U.S.-flag air carriers is applicable only if a § 504 allowable is elected pursuant to § 502.

B503—Worldwide Minimum Allowable

§ B503–1 Introduction.

Section 503 in effect for 1973 allows any DI electing (under § 502) to be governed by the provisions of § 503 to make positive direct investment not exceeding an aggregate of $6 million in all scheduled areas.

§ B503–2 Summary.

The § 503 minimum allowable of $6 million applies worldwide, as opposed to the schedular allowables provided in § 504.

Election of § 503 in any year operates to eliminate allowables otherwise available during such year under § 504 (including carryforwards from prior years) and to eliminate carryforwards into succeeding years, except for the § 506 incremental earnings allowable.

A DI having positive direct investment of $200,000 or less during 1968 under former § 503 and not electing § 503 thereafter may carry forward the amount of 1968 § 504 allowables, reduced by the amount of positive direct investment actually made in each scheduled area during 1968.

Since the beginning of the program in 1968, § 503 has been liberalized in several respects. In 1968, the § 503 allowable was $200,000 and applied on a schedular basis. In 1969 the allowable was increased to $1 million and the schedular limitations were eliminated. Also in 1968 and 1969, § 503(b) required DIs to exclude certain losses of its AFNs in calculating direct investment under § 503. In 1968, the exclusion applied to negative reinvested earnings of incorporated AFNs in Schedule C, and in 1969, to aggregate annual losses of both incorporated and unincorporated AFNs in all scheduled areas. Section 503(b) was revoked for 1970 and subsequent years. (See § B503–3(ii).) In 1971 the § 503 allowable was increased to $2 million, and in 1973 it was increased to $6 million.

§ B503–3 Calculation of direct investment under § 503.

(i) *Worldwide bases.*—Section 503(a) provides that positive direct investment is authorized on a worldwide basis up to $6 million, in contrast to the schedular limitations imposed by § 504.

Example 1. DI has a wholly-owned incorporated AFN (B) in the United Kingdom and a wholly-owned incorporated AFN (A) in Argentina. During 1973, B has a loss of $500,000, and A has earnings of $6,500,000 all of which are reinvested. There are no other earnings, resulting in worldwide positive direct investment made by DI during 1973 of $6 million, which is authorized by § 503(a).

Example 2. DI has three AFNs: A, a corporation in Brazil; B, a corporation in Australia; and C, a branch in Germany. During 1970, DI makes a positive transfer of capital of $700,000 to A and a negative transfer of capital of $400,000 to B. C earns $500,000, none of which is remitted, so that its net assets increase by $500,000. A has losses of $300,000, and B earns $500,000 and pays no dividends. Positive direct investment in all scheduled areas for 1970 is $1 million which is authorized by § 503(a) in effect for 1970, as shown by the following table ($000 omitted):

	Amount by scheduled area			
	A	B	C	Total
Net transfer of capital	700	(400)	500	800
Reinvested earnings	(300)	500	0	200
Positive direct investment	400	100	500	1,000

As illustrated by Examples 1 and 2 above, all of the positive and negative components of direct investment are taken into consideration without regard to the scheduled area of the particular transactions. In addition, dividends, remittances of branch profits and transfers of capital between AFNs in different scheduled areas (except between Canadian and non-Canadian AFNs) will "net out." Any number of such interschedular transactions may take place without affecting the amount of direct investment for purposes of the regulations.

Example 3. DI has two AFNs: B, a corporation in Schedule B, and C, a corporation in Schedule C. During 1972 DI transfers $2 million to C, and B transfers $2 million to C. Under § 505(a)(3) the transfer from B to C is treated as a transfer of capital from B to DI of $2 million and a transfer of capital from DI to C of $2 million. DI has made positive direct investment of $2 million in all scheduled areas under § 503 (000 omitted):

Net transfer of capital

To Schedule C	$4,000
To Schedule B	(2,000)

Positive direct investment

In Schedule C	$4,000
In Schedule B	(2,000)
Total	2,000

(ii) *Treatment of aggregate annual losses in 1969.*—Section 503(b) is in effect for 1969 provided that in calculating direct investment made under § 503 aggregate annual losses of incorporated and unincorporated AFNs were to be disregarded. This provision was an exception to the general rule, set forth in § 306, that direct investment is the sum of net transfer of capital and the DI's share of reinvested earnings. Section 503(b) has been revoked for 1970 and subsequent years. Accordingly, DIs that elect the § 503 allowable for 1973 will compute direct investment in the manner specified in § 306. However, the revocation of § 503(b) is not retroactive, and DIs should not recalculate their § 503 direct investment for 1969.

The term "aggregate annual losses" as used in former § 503(b) meant the sum, if negative, of the earnings and losses of all the DI's incorporated and unincorporated AFNs for the year in question. To "disregard" aggregate annual losses meant that in calculating worldwide direct investment under § 503 the DI was required to add to direct investment as computed under § 306 the amount of such aggregate annual losses. (For a more detailed analysis of former § 503(b) see 1969 General Bulletin § B503–3(ii).)

The following example illustrates how aggregate annual losses were treated in calculating 1969 direct investment under former § 503(b):

Example 4. DI has two wholly-owned incorporated AFN's (X and Z). X has a wholly-owned subsidiary (Y) in a different scheduled area, and Z has a branch (W) in a different scheduled area. The following takes place during 1969: X has earnings (excluding dividends received from Y) of $2 million and pays a dividend to DI of $1,500,000 (before withholding taxes); Y has losses of $3 million but pays a dividend to X of $250,000 (before withholding taxes); DI makes a positive transfer of capital of $2,500,000 to Z; and W earns $500,000, all of which is remitted to Z, and there is no change in W's net asset position. To compute direct investment under § 503, direct investment under § 306 is first computed (000 omitted):

(a) Net transfer of capital to Z	$2,500
(b) Net transfer of capital to W	0
(c) Reinvested earnings of X [$2,000−($1,500−$250)]	750
(d) Reinvested earnings of Y [−$3,000−($250)]	(3,250)
(e) Reinvested earnings of Z[0−(−$500)]	500
(f) Direct investment under § 306	500

Next "aggregate annual losses" are computed (000 omitted):

(g) Earnings of X	$2,000
(h) Losses of Y	(3,000)
(i) Net earnings of W	500
(j) Aggregate annual losses	500
Direct investment for purposes of § 503 (line (f) plus line (j))	1,000

Thus, positive direct investment under § 503 is $1 million, the sum of direct investment under § 306 of $500 [thousand] and aggregate annual losses of $500 [thousand], as calculated above.

(iii) *Canadian AFNs.*—As a result of §§ 1103 and 1104 of Subpart K, direct investment in Canadian AFNs is not included in calculating direct investment for purposes of § 503. Accordingly, dividend distributions, profit remissions, and transfers of capital between Canadian and non-Canadian AFNs will not net out under § 503. For example, if a Canadian AFN transfers funds or other property to a non-Canadian AFN, the DI will be deemed to have made such transfer if the conditions of § 505 are met. Because of § 1103, the transfer deemed to have been made by the Canadian AFN to the DI (under § 505) will not offset the corresponding transfer deemed made by the DI to the non-Canadian AFN.

§ B503–4 Carryforwards.

Unused § 503 allowables may not be carried forward to succeeding years. In addition, § 503(c) provides that the election of § 503 eliminates all existing § 504 and § 1302 allowables as of the year of electing § 503, including historical and earnings allowables for such year, carryforwards from prior years and carryforwards into succeeding years.

Example 5. In 1969, DI has allowables under § 504 of $50,000 in Schedule C, $500,000 in Schedule B, and $200,000 in Schedule A. A portion of the allowables in Schedules A and B are carryforwards of § 504 allowables not used in 1968. In 1969, DI, in order to make positive direct investment in Schedule C in excess of its § 504 allowable of $50,000, elects § 503 and makes worldwide positive direct investment of $600,000. As a result of this election, the DI permanently loses the § 504 schedular allowables carried forward from 1968, and the unused portion of the 1969 § 503 allowable may not be carried forward into subsequent years.

Section 504 as in effect during 1968 permitted a DI to carry forward any unused portion of the schedular allowables authorized by that section. Present § 504(f) preserves that carryforward for use in 1969 and succeeding years. However, to make clear that positive direct investment authorized by § 503 in 1968 must be taken into account in calculating the amount of such § 504 carryforward, § 503(d) provides that if a DI elects to be governed by § 504 in 1969 and succeeding years, the § 504 allowables carried forward from 1968 must be reduced by the amount of positive direct investment actually made in 1968. The reduction is made first in the scheduled area where the positive direct investment was made under § 503 in 1968 and then in the remaining scheduled areas in the following order: C–B–A.

Example 6. In 1968, DI had allowables under § 504 of $50,000 in Schedule C, $50,000 in Schedule B, and $200,000 in Schedule A. During 1968, DI made positive direct investment of $100,000 in Schedule C and $50,000 in Schedule B under § 503 as then in effect. DI also made negative direct investment of $50,000 in Schedule A, which, under § 504(f), may be carried forward to succeeding years together with any other unused Schedule A allowable. While the investment in Schedule C was not authorized under § 504, DI's overall positive direct investment in 1968 was authorized under § 503, since positive direct investment in each scheduled area, when added together, was $200,000 or less (in this case, $150,000), and positive direct investment in any one scheduled area did not exceed $200,000. If DI does not elect the § 503 minimum allowable for 1969, DI will carry forward to 1969 § 504 allowables not used in 1968 of $200,000, after the reductions provided for in § 503(d), distributed in the scheduled areas as follows: Zero in Schedule C, zero in Schedule B, and $200,000 in Schedule A. The carryforward of $200,000 is in addition to any earnings allowables or historical allowables

which DI may have for 1969 under § 504. The above calculations are set forth in tabular form as follows (000 omitted):

	Amount by scheduled area		
	C	B	A
1968 § 504 allowables	$50	$50	$200
Direct investment under § 503 in 1968	100	50	(50)
Reductions to 1968 § 504 allowables under § 503(d)	50	50	50
§ 504 carryforwards to 1969	0	0	200

If DI elects to make positive direct investment in 1969 under § 503, DI will lose the foregoing $200,000 carryforward in Schedule A for 1969 and succeeding years, by reason of § 503(c).

Assume that DI elected the § 504 allowables in 1969, but did not make any positive direct investment in Schedule A, and again elected the § 504 allowables in 1970. In such a case, DI would carryforward to 1970 all of its unused 1969 § 504 allowables, including the $200,000 in Schedule A that was originally carried forward to 1969 from 1968. However, if DI in 1970 elected either the § 503 or § 507 allowables, it would lose all carryforwards from previous years.

§ B503–5 Related provisions.

(i) *Associated groups and persons owning interests in DIs.*—Section 905(b)(2)(i) limits the use of § 503 by members of an associated group with respect to a group AFN, and § 906(b)(3)(ii) limits the use of § 503 by owners of a principal DI making an election under § 906(b)(1).

(ii) *Apportionment of borrowing deduction.*—DIs electing § 504 for 1973 should see § 306(e)(3) and § B306–7 if they contemplate repayment or reallocation of borrowings deducted from § 503 worldwide positive direct investment under § 306(e) in a previous year.

B504—Schedular and Carryforward Allowables

§ B504–1 Introduction.

Section 504 provides alternative allowables applicable to direct investment in each of the three geographical schedules: An historical allowable (§ 504 (a) and (c)) and an earnings allowable (§ 504(b)). A DI may elect to be governed by either of these § 504 allowables as an alternative to the § 503 allowable.

Unlimited "downstream" utilization of § 504 (a) or (b) allowables is permitted (i.e., from Schedule C to Schedules B and A, and from Schedule B to Schedule A). Provision is also made for "upstream" adjustment of allowables under certain circumstances. Carryforward of unused allowables into succeeding years is also permitted so long as the DI continues electing to be governed by § 504.

§ B504–2 Summary.

A DI electing to be governed by § 504(a) for 1973 and succeeding years may make positive direct investment in Schedules A, B, and C based on a percentage of average annual direct investment in those areas during 1965–66, viz., 110 percent in Schedule A, 65 percent in Schedule B and 35 percent in Schedule C. (The method for computing the Schedule C historical allowable was amended for 1970 and subsequent years to eliminate the reinvestment ratio alternative. See § B504–3.)

Section 504(c) (1) and (2) provide that the § 504(a) historical allowable in Schedule C may be increased if such allowable is less than 40 percent of DI's annual earnings in that scheduled area during the preceding year. The amount of authorized increase will be equal to the full amount of the difference between such 40-percent earnings figure and the basic historical allowable for Schedule C determined under § 504(a)(3), if the sum of the § 504(a) historical allowables in Schedules A and B are sufficiently large. The historical allowable in Schedule A and, if necessary, in Schedule B must be charged with such authorized increase. An "upstream" adjustment for the Schedule B allowable is also authorized by § 504(c)(3) in the same circumstances, to the extent there remains (after increasing the Schedule C historical allowable) any of the Schedule A historical allowable against which such increase can be charged.

A DI electing the § 504(b) earnings allowable is permitted to make positive direct investment in each scheduled area not exceeding 40 percent of "annual earnings" (defined in § 504(b)(4)) for the immediately preceding year in the respective scheduled area.

All or any part of the allowables computed pursuant to § 504 (a) and (c) or § 504(b) may be used "downstream"; i.e., the Schedule C allowable may be used in Schedule B or A instead of Schedule C and the Schedule B allowable may be used in Schedule A instead of Schedule B. A DI may carry forward into succeeding years any portion of a schedular allowable not used during the year. Negative direct investment for a year in any scheduled area may be carried forward and may be used to authorize additional positive direct investment in other areas "downstream" in the same or subsequent years. However, in any year for which a DI elects to be governed by the § 503 allowable, all accrued carryforward of § 504 allowables will be permanently lost (see § 503(c)).

In calculating direct investment in Schedule C for purposes of measuring use of the § 504 allowable elected by a DI, losses of Schedule C incorporated AFNs must be excluded. Such losses may, however, be carried forward to subsequent years to authorize additional reinvestment of earnings of incorporated AFNs in Schedule C.

Carryforwards authorized in 1968 under § 504 as in effect for that year may be used in the same or downstream scheduled areas in 1969 and succeeding years, with the exception that losses of Schedule C AFNs during 1968 may be carried forward only to authorize additional reinvested earnings in Schedule C (§ 504(f)).

§ B504–3 Calculation of historical allowables under § 501(a).

Section 504(a) authorizes annual positive direct investment in Schedule A in an amount equal to 110 percent of a DI's average annual direct investment in that scheduled area during 1965 and 1966, in Schedule B in an amount equal to 65 percent of a DI's average annual direct investment in that scheduled area during 1965 and 1966, and in Schedule C in an amount equal to 35 percent of a DI's average annual direct investment in that scheduled area during 1965 and 1966. The following examples illustrate calculation of historical allowables for Schedule A under § 504(a)(1), Schedule B under § 504(a)(2) and Schedule C under § 504(a)(3):

Example 1. DI made positive direct investment in Schedule A in 1965 of $3 million and in 1966 of $1 million. Average annual direct investment in Schedule A for 1965–66 is $2 million ($3 million plus $1 million divided by 2). The amount of annual positive direct investment authorized under § 504(a)(1) is $2,200,000 (110 percent of $2 million). If Schedule B rather than Schedule A were involved, § 504(a)(2) would authorize $1,300,000 of annual positive direct investment (65 percent of $2 million). If Schedule C, instead, were involved, § 504(a)(3) would authorize $700,000 of annual positive direct investment (35 percent of $2 million).

Example 2. DI made positive direct investment in Schedule A during 1965 of $1 million and negative direct investment in 1966 of $500,000. Average annual direct investment in Schedule A was, therefore, $250,000. DI made positive direct investment of $1 million in Schedule B during 1965 and negative direct investment of $2 million in 1966. Thus, annual average investment in Schedule B was a negative amount (i.e., minus $500,000), treated as zero for purposes of calculating the historical allowable under § 504(a). DI made positive direct investment in Schedule C during 1965 of $800,000 and direct investment in 1966 of zero. Average annual direct investment in Schedule C was therefore $400,000. Accordingly, DI's historical allowable for Schedule A is $275,000; for Schedule B, it is zero; for Schedule C, it is $140,000. (These are DI's basic historical allowables, and the Schedules B and C allowables are subject to upward adjustment by "borrowing" from the Schedule A allowable if the conditions specified in § 504(c) are satisfied. See § B504–4(ii).)

Prior to its amendment in 1970, § 504(a)(3) provided that the historical allowable for Schedule C was to be calculated differently than for Schedules A and B. Under former § 504(a)(3), the Schedule C historical allowable was the lesser of (a) 35 percent of the DI's average annual direct investment in 1965–66 in Schedule C of (b) the DI's share of the current year's earnings of incorporated AFNs in Schedule C multiplied by the percentage of total earnings of such AFNs that were reinvested during 1964–66. (See 1969 General Bulletin § B504–3(ii).) Under former § 503(a)(3) many DIs had a zero Schedule C allowable despite having made substantial direct investment in Schedule C during 1965–66.

The calculation of historical allowables is not affected by the export credit exemption provided under § 312(c).

§ B504–4 Calculation of § 504(b) earnings allowables and § 504(c) adjustment to § 504(a) historical allowables.

The § 504(b) earnings allowable is intended to benefit DIs with small or no historical allowables under § 504(a), and the §504(c) "upstream adjustment" to § 504(a) historical allowables is intended principally to aid DIs with small or no historical allowables in Schedule C. Either the earnings allowable or the upstream adjustment may be advantageous when 40 percent of earnings for the year immediately preceding the year of electing either the § 504 historical or earnings allowable exceeds a DI's historical allowables.

Accordingly, a DI with no Schedule C historical allowable may, nevertheless, be authorized to make positive direct investment in that scheduled area based on Schedule C earnings during the preceding year. Election of the earnings allowable under § 504(b), however, requires its use in all scheduled areas. Where historical allowables in Schedules A and B are substantial, it may not be to a DI's advantage to elect § 504(b) because the historical allowables in Schedules A and B could not then be utilized. Under these circumstances, the DI may benefit from the "upstream adjustment" to historical allowables provided by § 504(c), whereby the historical allowables can be shifted "upstream" to Schedule C from Schedules A and B.

(i) *Section 504(b): 40 percent earnings allowables.*—A DI may elect, under § 504(a)(3), to be governed by the allowable provided in § 504(b), authorizing positive direct investment in each scheduled area equal to 40 percent of the DI's share of AFN earnings in such area during the immediately preceding year.

The earnings allowable is computed on the basis of a DI's annual earnings in a scheduled area, defined in § 504(b)(4) as the DI's share of "total earnings or total losses" of all incorporated AFNs in such scheduled area (determined as provided in § 306(c)) plus the DI's share of "net earnings or losses" of all unincorporated AFNs during the year in such scheduled area. Earnings or losses of Canadian affiliates are excluded from this computation.

Example 3. DI's 1971 share of AFN annual earnings is $10 million in Schedule C and $15 million in Schedule A. DI's Schedule B AFNs incurred losses during 1971 of $2 million. Schedule B "annual earnings" in 1971 are, therefore, a negative $2 million. If DI elects the 40-percent earnings allowable for 1972 under § 502(a)(3), allowables under § 504(b) will be $4 million in Schedule C (40 percent of $10 million), zero in Schedule B (since DI had losses in Schedule B in 1971), and $6 million in Schedule A (40 percent of $15 million).

(ii) *Section 504(c): "Upstream" use of allowables.*—A DI electing under § 502(a)(2) to be governed by the schedular § 504(a) historical allowables obtains the benefit of an "upstream" adjustment of such allowables as required by § 504(c). Section 504(c)(1) and (2) automatically increase the Schedule C allowable if 40 percent of DI's annual earnings in Schedule C in the preceding year exceeds the § 504(a) historical allowable in that scheduled area for the current year and if there are historical allowables in Schedules A and/or B. Section 504(c)(3) will operate in a corresponding manner to increase the Schedule B allowable, if any Schedule A historical allowable remains after the § 504(c)(1) adjustment.

The upstream adjustment is the lesser of (a) the excess of 40 percent of the preceding year's annual earnings in the upstream scheduled area over the historical allowable for that area, or (b) the aggregate amount of the historical allowables in the downstream schedules.

Although the "upstream" adjustment is automatic, § 504(d)(2) and (3) permits a DI to utilize allowables for positive direct investment in a "downstream" schedule.

Unused allowables carried forward from 1968 pursuant to § 504(f), or carried forward from 1969 or later years pursuant to § 504(d), are not available for adjustment upstream; only a current year's historical allowable calculated under § 504(a) may be used for this purpose. On the other hand, the additional allowables in Schedules B and C resulting from an upstream adjustment may themselves be carried forward into succeeding years.

Example 4. In 1972 DI has § 504(a) historical allowables in each of the scheduled areas as shown on line (1) of the table below. DI also has a carryforward of unused allowables from 1971 in Schedule A of $1 million (line (2) below). In 1971 DI's share of annual earnings of AFNs in each scheduled area was as shown on line (3) below. If DI elects, pursuant to § 502(a)(2), to be governed by § 504(a) for 1972, DI's historical allowables under § 504(a) are adjusted pursuant to § 504(c), thereby increasing the Schedule C allowable by $3 million. Of this amount, $2,500,000 is moved upstream from Schedule A and $500,000 is upstreamed from Schedule B, with corresponding reductions in the historical allowables for those schedules, as shown below (000 omitted):

Item	Amount by scheduled area			
	C	B	A	Total
(1) § 504(a) historical allowables	$1,000	$3,500	$2,500	$7,000
(2) § 504(f) carryforward allowable from 1971	0	0	1,000	1,000
(3) 1971 annual earnings	10,000	4,000	2,000	16,000
(4) 40 percent of line (3)	4,000	1,600	800	6,400
(5) 1972 § 504(a) historical allowables after § 504(c) "upstream" adjustments	4,000	3,000	0	7,000

Presumably, DI will elect to use the adjusted historical allowables rather than the 40-percent earnings allowable under § 504(b), since (1) total historical allowables ($7 million) available under § 504(a) exceed total earnings allowables ($6,400,000) available under § 504(b); (2) the Schedule C allowable is as great and the Schedule B allowable greater under § 504(a) than under § 504(b); and (3) under § 504(d), DI may use any portion of the Schedule C adjusted historical allowable downstream in Schedule B or A, and any portion of the Schedule B allowable in Schedule A. While no part of the $1 million carryforward in Schedule A from 1971 can be adjusted upstream, DI may use that as an additional allowable in Schedule A.

Since DI has an unadjusted historical allowable in Schedule C of $1 million, the amount moved to Schedule C from Schedules A and B is $3 million, i.e., the difference between 40 percent of 1971 earnings in Schedule C and the historical allowable in Schedule C. Note, however, that if the aggregate historical allowables for Schedules A and B had been less than $3 million, the Schedule C allowable could have been increased only by such lesser amount of aggregate historical allowables for Schedules A and B. The total adjusted historical allowable of $4 million in Schedule C can be used in Schedules C, B, or A in 1972 or in succeeding years in the same manner as is generally permitted for § 504 allowables in Schedule C.

Example 5. In 1972, DI has § 504(a) historical allowables in each scheduled area as shown in line (1), and DI's share of annual earnings in 1971 is as shown in line (2) of the table below (000 omitted):

Item	Amount by scheduled area			
	C	B	A	Total
(1) § 504(a) historical allowables	$500	$2,000	$4,000	$6,500
(2) 1974 annual earnings	10,000	8,000	10,000	28,000
(3) 40 percent of line (2)	4,000	3,200	4,000	11,200
(4) 1972 § 504(a) historical allowables after § 504(c) "upstream" adjustments	4,000	2,500	0	6,500

Presumably, DI will elect to be governed by the 40-percent earnings allowable provided in § 504(b), since total allowables available to DI under the 40-percent earnings allowable ($11,200,000) exceed total historical allowables ($6,500,000 under § 504(a) and (c)) and since the § 504(b) allowables in each scheduled area are as great or greater than in each schedule under § 504(b). The 40-percent earnings allowables are divided among the scheduled areas to reflect DI's share of 1971 annual earnings in each schedule. Whichever category of allowable is elected, DI may use such allowables "downstream" under § 504(d). For example, all allowables could be used in Schedule A.

§ B504–5 Transfer or carryforward of schedular allowables.

Section 504(d) provides that the unused portion, if any, of the historical or earnings allowables provided in § 504 may be utilized in the same scheduled area in succeeding years to authorize positive direct investment in addition to that otherwise permitted, or may be used in other scheduled areas "downstream" in the same or succeeding years.

Schedule C allowables, to the extent unused in that area during the year, may be used in Schedules A and B in the same year or in Schedules C, B, and A in succeeding years. An unused allowable in Schedule B may be used in Schedule A in the current year or in Schedules B and A in succeeding years. An unused allowable in Schedule A may be used only in Schedule A in succeeding years.

The effect of the downstream and carryforward provisions is that, in addition to the amounts authorized by the basic historical or earnings allowable elected, a DI may make positive direct investment in each scheduled area up to the amount of any allowables that were

available but unused in such area in prior years and that were available but unused in upstream areas in the same and prior years.

Both the historical allowable of § 504 (a) and (c) and the earnings allowable of § 504(b) can be used downstream or carried forward. The amount that may be carried forward is the excess of authorized positive direct investment over direct investment actually made during a given year, whether positive or negative. If no positive direct investment is authorized but negative direct investment is made, then the amount of such negative direct investment may be used downstream or carried forward.

(i) *Schedule A carryforward.*—The following examples illustrate § 504(d)(1), governing the carryforward of unused Schedule A allowables:

Example 7. DI elects the historical allowable for 1969. Under § 504(a)(1), the Schedule A allowable is $5 million, but DI makes positive direct investment of only $2 million. Under § 504(d)(1), DI may carry forward the $3 million difference as an additional Schedule A allowable for use in succeeding years. If the historical allowable is elected again in 1970, DI may make positive direct investment of $8 million, consisting of the $5 million authorized by § 504(a)(1) and the $3 million authorized by § 504(d)(1).

Example 8. DI elects the historical allowable for 1969. Under § 504(a)(1), DI has a zero allowable in Schedule A. In 1969, DI's sole incorporated AFN in Schedule A has earnings of $5 million, pays DI a dividend of $5 million, and transfers $5 million to DI. For 1969, DI has negative direct investment of $5 million in Schedule A. Under § 504(d)(1), this may be used to offset a corresponding amount of positive direct investment in Schedule A in succeeding years.

In 1970, DI elects the 30 percent earnings allowable under § 504(b). Authorized positive direct investment in Schedule A in 1970 will be $6,500,000: $1,500,000 (30 percent of 1969 total earnings) plus $5 million carryforward under § 504(d)(1).

If DI's historical allowable had been $1 million in Schedule A, the carryforward allowable would have been $6 million (the sum of the historical allowable of $1 million and negative direct investment of $5 million).

If a DI had unused allowables in Schedule A in 1968, former § 504(b)(1) in effect for 1968 authorized their carryforward into 1969 and succeeding years. Present § 504(f)(1) specifically preserves these carryforwards.

(ii) *Schedule B downstream or carryforward.*—Unused historical or earnings allowables in Schedule B may be carried forward in the same manner as those in Schedule A, as provided by § 504(d)(2). The unused Schedule B allowables may also be used downstream in Schedule A in the same or succeeding years. Under former § 504(b)(2), unused 1968 Schedule B allowables authorized additional positive direct investment in Schedules B and/or A in 1969 and succeeding years. Present § 504(f)(2) specifically preserves these carryforwards.

Example 9. DI's Schedule B historical allowable is $1 million. Positive direct investment of $500,000 is made during 1968 in that schedule.

In 1969, DI elects the historical allowable and may make positive direct investment in Schedule B of $1,500,000, consisting of the $1 million historical allowable under § 504(a)(2) plus the $500,000 carryforward from 1968 under § 504(f)(2). All or any part of this $1,500,000 not used in Schedule B during 1969 may be used in Schedule A in 1969 or in Schedule B and/or A in succeeding years, under § 504(d)(2).

(iii) *Schedule C downstream or carryforward.*—Unused allowables in Schedule C may be used downstream or carried forward, pursuant to § 504(d)(3).

Section 504(f)(3) preserves the Schedule C carryforwards authorized under former § 504 in effect for 1968 and increases the scope of their use. During 1968, § 504(c)(1) authorized carryforward of Schedule C allowables unused as a result of "excess dividends", and § 504(c)(2) in effect for 1968 authorized carryforward unused as a result of negative net transfer of capital. Under present § 504(f)(3)(i), these 1968 carryforward allowables can be used by the DI to make positive direct investment in Schedules C, B, and/or A in 1969 and succeeding years in addition to that otherwise authorized.

"Total losses" of incorporated AFNs in Schedule C during 1968 may be carried forward to 1969 and succeeding years only as an authorization for additional reinvested earnings in Schedule C. See § 504(f)(3)(ii).

A DI that made direct investment under § 503 in 1968 and had unused § 504 allowables may carry forward such unused allowables to succeeding years subject to the conditions set forth in § 503(d). See § B503–4.

§ B504–6 Total losses of incorporated AFNs in Schedule C.

Section 504(e) provides that total losses (as defined in § 306(c)) of incorporated AFNs in Schedule C must not be taken into account in calculating positive direct investment in that scheduled area under § 504. However, this requirement does not affect the computation of allowables under § 504(a)(3) or § 504(b); it is applicable only in calculating the amount of direct investment made during a year and the extent to which the given allowable for such year has been used up. The principal purpose of § 504(e) is to prevent total losses of incorporated AFNs in Schedule C from being utilized in the current year or succeeding years to authorize transfers of capital to AFNs that result in positive direct investment in any scheduled area. Such losses may, however, be carried forward for use to authorize additional reinvested earnings of incorporated AFNs in Schedule C in subsequent years.

By operation of this section, total losses of incorporated Schedule C AFNs are, in effect assigned a value of zero for purposes of computing direct investment in Schedule C under § 306. Accordingly, the formula suggested in § B306–6(iii) for determining reinvested earnings pursuant to § 306(b) would, if total earnings are zero or a negative amount be:

$$RE = O - [(DP + dp) - (dr + pr)].$$

Example 10. DI has both incorporated and unincorporated AFNs in Schedule C. In 1969 DI elects the earnings allowable under § 504(b). The § 504(b) earnings allowable for 1969 in Schedule C is $500,000.

The incorporated AFNs have losses of $200,000 and pay no dividends. The unincorporated AFNs have earnings of $600,000 and a net increase in assets of $600,000. At this point, DI has made positive direct investment of $600,000 because the $200,000 total losses are disregarded under § 504(e). In order to be in compliance for 1969, DI will have to reduce this positive direct investment by $100,000 through a negative transfer of capital or an offset using proceeds of long-term foreign borrowing. However, DI can carry the $200,000 loss forward into 1970 to authorize additional reinvested earnings of incorporated AFNs in Schedule C.

If the AFNs had been in Schedule A or B, positive direct investment would have been $400,000 ($600,000 net transfer of capital, plus total losses (negative reinvested earnings) of $200,000).

Example 11. DI has only incorporated AFNs in Schedule C, that earn $500,000 in 1969 and pay dividends of $700,000 to the DI. Thus, total earnings are $500,000, while reinvested earnings are negative in the amount of $200,000. If there are no other relevant transactions during the year, DI will have made negative direct investment of $200,000. This can be used to authorize positive direct investment (positive transfers of capital or reinvested earnings) of up to $200,000 in Schedule C in subsequent years, or in Schedules A and B in the same and subsequent years (see § 504(d)(3). (This example illustrates the difference between losses of incorporated AFNs in Schedule C and negative reinvested earnings of such AFNs in terms of permissible use as a carryforward into subsequent years.)

Example 12. DI has a wholly owned incorporated AFN (C) in Schedule C with a branch (A) in Schedule A. DI elects the § 504(b) earnings allowable for 1969, pursuant to which the Schedule C allowable is $700,000. A earns $1 million.

On December 30, 1969, it appears that C will have losses of $200,000. Nevertheless, A may remit no more than $700,000 to C. By operation of § 306(b), profits received by an incorporated AFN from a branch in another scheduled area are considered to be reinvested earnings of the parent. Therefore, if A remits $700,000 to C, net reinvested earnings (and DI's positive direct investment) would be only $500,000. However, in computing positive direct investment in Schedule C under § 306, C's losses must be excluded; in effect, they are treated as earnings of zero. Therefore, positive direct investment in Schedule C would be the full $700,000 permitted under the § 504(b) earnings allowable for 1969.

If the incorporated AFN had been in Schedule B, however, its branch could have remitted $900,000, since the restrictions imposed with regard to losses in calculating positive direct investment apply only to Schedule C.

§ B504–7 Related provisions.

Section 504 allowables will be reduced pursuant to § 1003 in the amount of repayment of borrowing authorized by § 1002. See the discussion in § B1003–1 concerning the order in which allowables are reduced by repayment charges incurred incident to repayment of long-term foreign borrowings.

The acquisition of an AFN by one DI from another DI and the merger of two DIs will affect the allowables of the acquiring or surviving DI as prescribed under § 312(c)(1). (See § B312–18.)

B505—Transfers of Capital Between Affiliated Foreign Nationals

§ B505–1 Introduction.

Section 505 is primarily concerned with the treatment of transactions between AFNs of a DI in calculating the DI's annual net transfer of capital to a given scheduled area under § 313. It should be emphasized that § 505 affects only the calculation of transfers of capital and net transfers of capital under §§ 312 and 313; it has no bearing on the calculation of a DI's share in reinvested earnings of incorporated AFNs under § 306.

§ B505–2 Summary.

As a general rule, a transfer of capital from an AFN in one scheduled area to an AFN in another scheduled area will result under § 505 in (a) a decrease in the DI's net transfer of capital to the scheduled area of the AFN making the transfer and (b) an equivalent increase in the net transfer of capital to the scheduled area of the AFN to which the transfer was made.

Transfers between AFNs are so treated only if at least one of the AFNs is an "affiliate" of the DI. (As defined in §903(a), an "affiliate" is an entity in which the aggregate of direct interests held by the DI and any of its other affiliates exceeds 50 percent.) Transfers between AFNs will effectively "net out" under § 505, if both AFNs are located in the same scheduled area, or if the net transfer of capital is computed worldwide (such as for purposes of the § 503 minimum allowable).

Section 505 provides special rules with respect to treatment of unincorporated AFNs. A transfer to or from an unincorporated AFN is attributed to the immediate parent of such AFN (§ 505(a)(1); and a DI is deemed to have no share in the change in assets of an unincorporated AFN, for purposes of § 313(b), unless the immediate parent of such AFN is either the DI or an incorporated AFN that is an affiliate of the DI (§ 505(a)(4)).

Section 505 excludes from its operation charters of vessels (§ 505(a)(3)) and certain short-term trade credits between AFNs (§ 505(b)). In this connection, the term "time charter" as used in §505(a)(3) is intended to apply to any vessel charter for a period of time however denominated, including "bareboat" and "voyage" charters.

§ B505–3 Transfers by or to unincorporated AFNs attributed to immediate parent.

Section 505(a)(1) provides that for purposes of § 505, a transfer of funds or other property by an unincorporated AFN to the DI or to another AFN is treated as a transfer by the immediate parent of such unincorporated AFN (provided that the transferee is not the immediate parent, and that the immediate parent is the DI or an incorporated AFN). Conversely, a transfer to an unincorporated AFN by the DI or by another AFN is treated as a transfer to the immediate parent of the unincorporated AFN (provided that the transferor is not the immediate parent, and that the immediate parent is the DI or an incorporated AFN). Section 505(c) defines the "immediate parent" of an unincorporated AFN owned directly by a DI as the DI itself, while the "immediate parent" of an unincorporated AFN owned indirectly by the DI is the intervening AFN that directly owns the unincorporated AFN. See also § B505–9.

Example 1. DI has a wholly owned incorporated AFN (A) in Scheduled A that has a branch (B) in Schedule B. DI also has an incorporated AFN (C) in Schedule C. In 1969 B lends $100,000 directly to C. The $100,000 is deemed transferred by A (i.e., the immediate parent of B) to C.

If C loaned $100,000 directly to B, the $100,000 would be deemed transferred by C to A (i.e., the immediate parent of B). Likewise, if the $100,000 loan to B were made by a branch of C located in Schedule A, the $100,000 would be deemed transferred by C (i.e., the immediate parent of the branch in Schedule A) to A (i.e., the immediate parent of B).

Example 2. DI has a wholly owned subsidiary (A) in Schedule A that has a branch (B) in Schedule B. In 1969 DI lends $100,000 to B. The $100,000 is deemed transferred by DI to A, the immediate parent of B.

Section 505(a)(1) does not apply if both the transferor and the transferee are unincorporated AFNs and if both have the same immediate parent. Thus, a transfer from a Schedule A branch of a DI to a Schedule B branch of the same DI is not governed by § 505(a)(1); any net changes in net assets of the branches resulting from this transfer will be taken into account under § 313(b).

§ B505–4 Treatment of transfers deemed made under § 505(a)(1).

Section 505(a)(2) provides that any transfer of funds or other property deemed by § 505(a)(1) to be a transfer between the DI and an incorporated AFN shall be treated as a transfer of capital under § 312 if the transaction would have constituted a transfer of capital under § 312 had the parties actually been the DI and the incorporated AFN and, if the transfer is between AFNs of the DI, either the actual transferor AFN or actual transferee AFN is an "affiliate" of the DI as defined in § 903(a). In determining whether a transaction would have constituted a transfer of capital under § 312 had the parties actually been the DI and the incorporated AFN, the export credit exemption system set forth in § 312(c)(13) and (14) should be disregarded. See § 505(a)(7).

Under § 903(a) an "affiliate" of a person within the United States is any other person (other than an individual) in which the aggregate of direct interests (defined in § 901) owned by such person and any of its affiliates exceeds 50 percent.

Example 3. DI has a branch (A) in Schedule A and a 60-percent owned subsidiary (C) in Schedule C. In 1969 C lends $500,000 to A. The loan from C to A is deemed made by C to DI, the immediate parent of A, under § 505(a)(1)(ii). If the loan had actually been made by C to DI, it would have constituted a transfer of capital from C to DI under § 312(b)(1). Therefore, under § 505(a)(2), C has made a transfer of capital of $500,000 to DI.

If no other transactions take place during 1969, DI will have made a $500,000 negative net transfer of capital to Schedule C, under § 313(a), and a $500,000 positive net transfer of capital to Schedule A, under § 313(b), the latter being the net increase in A's assets as a result of the loan from C. (If A and C had been located in the same scheduled area, DI's net transfer of capital under § 313(c) during 1969 to such scheduled area would have been zero.)

Example 4. DI has a branch (B) in Schedule B and a wholly owned subsidiary (A) in Schedule A. During 1969 B lends A $100,000. Under § 505(a)(1), DI is deemed to have made the loan to A (a transfer of capital under § 312(a)(1)). Therefore, § 505(a)(2) applies, and DI has made a positive net transfer of capital to Schedule A of $100,000 (under § 313(a)) and a negative net transfer of capital to Schedule B (under § 313(b)) of $100,000, the latter being the decrease in B's assets after making the loan to A. (If both AFNs had been in one scheduled area, DI's net transfer of capital under § 313(c) would have been zero.)

Example 5. DI has a wholly-owned subsidiary (A) in Schedule A that has a branch (B) in Schedule B. In 1969 DI lends $100,000 directly to B. The transfer results in a $100,000 transfer of capital from DI to A by virtue of §§ 505(a)(1) and (2). To the extent that the transfer results in a net increase in the net assets of the branch, DI will have made a positive net transfer of capital to Schedule B under § 313(b). However, to the extent that DI's share in the increase in B's assets is not attributable to earnings, A is deemed to have made a transfer of capital to DI, according to § 505(a)(6). Therefore, for 1969, DI will have made a net transfer of capital to Schedule A of zero ($100,000 deemed transferred from DI to A, under §§ 505(a)(1) and (2), less $100,000 deemed transferred from A to DI, under § 505(a)(6)) and a net transfer of capital to Schedule B of $100,000.

§ B505–5 Transfers between incorporated AFNs.

Under § 505(a)(3), a transfer of funds or other property from one incorporated AFN to another incorporated AFN (including a transfer deemed under §505(a)(1) to have been made between incorporated AFNs) is treated as a transfer of capital by the transferor AFN to the DI (equal to the full amount or value of the funds or other property transferred) and as a further transfer of capital in an equivalent amount from the DI to the transferee AFN. The rule applies only if either the transferor or the transferee AFN is an "affiliate" of the DI, as defined in § 903(a), and if the transfer would have constituted a transfer of capital under § 312 if made by the DI. (In determining whether the transfer would have constituted a transfer under § 312 if made by a DI, the export credit exemption system should be disregarded.) If the transferor and transferee are in the same scheduled area, the transaction will "net out" (i.e., result in a net transfer of capital of zero) under § 313(a).

Example 6. During 1969, a wholly-owned Schedule C subsidiary of DI (C) makes a $200,000 3-year loan to A, a wholly owned Schedule A subsidiary of DI. Under § 505(a)(3), the transaction is treated as a $200,000 transfer of capital from C to DI and a $200,000 transfer of capital from DI to A. Accordingly, the transaction reduces by $200,000 the

net transfer of capital made by DI to Schedule C during 1969 and increases by an equivalent amount the net transfer of capital made by DI to Schedule A during the same year. The result would be the same even if neither of the AFNs were wholly owned by DI so long as DI owned more than a 50-percent interest in one of them. Thus, for example, the same result would be reached if DI owned 51 percent of A and only 10 percent of C, or vice versa, the theory being that DI can prevent the transaction if it owns more than a 50-percent interest in either of the AFNs.

Example 7. During 1969 a wholly-owned Schedule A subsidiary (A) of DI leases machinery to B, a wholly-owned Schedule B subsidiary of DI. The machinery has a value of $1 million when leased and the lease expires in 1972. The transaction is treated under § 505(a)(3) as a $1 million transfer of capital from A to DI and a $1 million transfer of capital from DI to B (see § 312(a)(8)).

Current rental payments under the lease will not involve transfers of capital; rather, they will reduce the earnings of B and increase the earnings of A. When the machinery is returned to A at the end of the lease term, there will be a transfer of capital from B to DI (equal to the residual value of the machinery) and an equivalent transfer of capital from DI to A.

If A had originally leased the machinery from DI, the result would be the same. However, if A had leased the machinery from an unaffiliated person the lease from A to B would involve transfers of capital under § 505(a)(3), only to the extent that the rental paid by B to A in any year is less than the rental paid by A to the principal lessor (see § B312-12).

Example 8. During 1969 a wholly-owned Schedule C subsidiary (C) of DI borrows $1 million from a foreign bank. Repayment of the loan is guaranteed by B, a wholly-owned Schedule B subsidiary of DI. In 1971 B is called upon to pay $500,000 under its guarantee and makes such payment. The transfer is treated under § 505(a)(3) as a $500,000 transfer of capital from B to DI and a $500,000 transfer of capital from DI to C. Any resulting positive direct investment in Schedule C would be generally authorized under Subpart J of the regulations if DI had filed an appropriate certificate under § 1002(b) within 10 days after the guarantee was made.

Example 9. DI has a wholly owned subsidiary (A) in Schedule A, that has a branch (B) in Schedule B. DI also has a wholly owned subsidiary (C) in Schedule C, that has a branch (X) in Schedule A. During 1969 X lends $100,000 directly to B. Under § 505(a)(1) and (3), the transaction results in a $100,000 transfer of capital from C to DI and a $100,000 transfer of capital from DI to A. The transfer of funds from X is treated as a transfer from the immediate parent (i.e., C) under § 505(a)(1)(i). The transfer of funds to B is treated as a transfer to its immediate parent (i.e., A) under § 505(a)(1)(ii). Since the transfer is deemed to be from C to A, § 505(a)(3) provides that it is treated as a § 312(b) transfer of capital from C to DI, and then as a § 312(a) transfer of capital from DI to A.

Under § 313(b), DI has made a positive net transfer of capital to Schedule B of $100,000 (the amount of net increase in B's assets) and a negative net transfer of capital to Schedule A (the amount of net decrease in X's assets). Under § 505(a)(5), DI is deemed to have made a § 312(a) transfer of capital to C (the amount of net decrease in X's assets not attributable to losses); and under § 505(a)(6), A is deemed to have made a § 312(b) transfer of capital to DI of $100,000 (the amount of net increase in B's assets not attributable to earnings).

Assuming no other transactions during 1969, DI will report a negative net transfer of capital of $100,000 to Schedule A, a positive net transfer of capital of $100,000 to Schedule B and a zero net transfer of capital to Schedule C.

Example 10. During 1970, DI's AFN (A) in Schedule A deposits $2 million with a German bank as collateral for a $2 million loan by the bank to DI. DI treats the loan as long-term foreign borrowing and allocates the proceeds to positive direct investment in Schedule C in accordance with § 306(e). The deposit, if made by the DI, would have constituted a § 312(a)(9) transfer of capital to Schedule C. By operation of § 505(a)(3), DI should report for 1970 (i) a § 312(b) transfer of capital of $2 million from Schedule A and a § 312(a) transfer of capital of $2 million to Schedule C on account of the deposit by A and (ii) a § 306(e) deduction of $2 million from positive direct investment in Schedule C.

In 1972 DI repays the borrowing, and A withdraws its deposit. For 1972, DI should report (i) a § 312(b) transfer of capital of $2 million from Schedule C and a § 312(a) transfer of capital of $2 million to Schedule A on account of the withdrawal of the deposit and (ii) a § 312(a)(7) transfer of capital of $2 million to Schedule C for repayment of long-term foreign borrowing.

§ B505-6 Purchase and sale of interests in other AFNs.

Section 505(a)(3) also covers the purchase and sale by incorporated AFNs of interests in other AFNs.

The following general rules are applicable to such transactions:

(i) *Purchase of AFN.*—If an incorporated AFN acquires from an unaffiliated foreign national an interest in a foreign national that becomes an AFN of the parent DI as a result of the acquisition, the full purchase price is treated as a transfer of capital by the acquiring AFN to the DI and as a further transfer of capital by the DI to the acquired AFN. However, if the acquisition is made after December 31, 1967, and the acquired AFN has subsidiaries and/or branches in other scheduled areas that become separate AFNs of the DI as a result of the acquisition, the transfer of capital by the DI should be allocated among the different scheduled areas involved in a manner fairly reflecting the respective values of the direct and indirect interests acquired. As a general rule, an allocation based on the respective net asset values of the new AFNs will be acceptable. (See § B312-4.) The result is the same whether the acquiring AFN pays cash or gives a debt obligation in exchange for the interests acquired. If, however, the consideration for the acquisition is stock of the acquiring AFN, no transfer of capital to or from the DI will result.

(ii) *Sale of AFN.*—If an incorporated AFN sells an interest in another AFN to an unaffiliated foreign national, there will be a transfer of capital by such other AFN to the DI in an amount equal to the purchase price and a further transfer of capital by the DI to the selling AFN in an amount equal to the cost or other basis to the selling AFN of the interest sold. Any capital gain or loss realized by the selling AFN from the sale will be included in determining the earnings of the AFN for the period involved. An allocation of the transfer of capital to the DI among different scheduled areas will be required (generally, based on the relative net asset values of the components divested) if the interest sold was acquired after December 31, 1967, and the AFN in which the interest is sold has subsidiaries and/or branches in different scheduled areas that are separate AFNs of the DI. (See § B312-4.) The result is the same whether the selling AFN receives cash or a debt obligation of the purchaser in exchange for the sale. If, however, consideration for the sale is stock in a foreign national that becomes an AFN as a result of the transaction, no transfer of capital to or from the DI will result.

Example 11. During 1969 a wholly owned Schedule B subsidiary (B) of DI purchases from an unaffiliated foreign national, for $1 million in cash, all of the stock of a Schedule C corporation (C). Under § 505(a)(3), the transaction is treated as a $1 million transfer of capital from B to DI and a $1 million transfer of capital from DI to C. Accordingly, the transaction reduces by $1 million the net transfer of capital made by DI to Schedule B during 1969 and increases by an equivalent amount the net transfer of capital made by DI to Schedule C during the same year.

If B had paid only $500,000 in cash and gave a 5-year note to the seller for the $500,000 balance of the purchase price, the result would be the same. No transfers of capital will be involved when B subsequently makes payments on the note.

The result would also be the same even if DI owned only 51 percent of the Schedule B AFN. Note, however, that if DI owned an interest of 50 percent or less in the Schedule B AFN, the transaction would not involve any transfer of capital to or from DI, regardless of the amount of the interest in the Schedule C corporation acquired by the Schedule B subsidiary, since the DI is presumed in this situation to lack control over the transaction. Note also that if the acquiring and the acquired corporations were in the same scheduled area, the transaction would effectively "net out."

Example 12. DI has a wholly-owned Schedule B subsidiary (B) that has a wholly-owned Schedule C subsidiary (C). During 1969, B sells all stock of C, that had been purchased for $500,000, to an unaffiliated foreign national for $1 million in cash. Under § 505(a)(3), the transaction is treated as a $1 million transfer of capital from C to DI and a $500,000 transfer of capital from DI to B. The $500,000 profit (measured by historical cost) realized by B will be taken into account in calculating that subsidiary's 1969 earnings.

If B had received $500,000 in cash and a 5-year note of the purchaser for the $500,000 balance of the purchase price, the result would be the same. No transfers of capital will be involved when B subsequently receives payments on the note.

The result would be the same even if DI owned only 51 percent of the Schedule B AFN. Note, however, that if DI owned an interest of 50 percent or less in the Schedule B AFN, the transaction would not involve any transfer of capital to or from DI, since the DI is presumed in this situation to lack control over the transaction.

Example 13. In 1969, DI's wholly-owned incorporated AFN (C) in Schedule C acquired a 50-percent profits interest in a joint venture (B) in Schedule B from an unaffiliated foreign national for $1 million cash. During 1969 B earned $100,000 which it remitted to C and the other owners. In 1970, C's interest in B is purchased by the local government

for $1,200,000. Assuming no other transactions during 1970, DI should report a negative net transfer of capital with respect to B of $1,200,000, a positive net transfer of capital to C of $1 million and reinvested earnings for C of $200,000 (gain on the sale).

Example 14. DI has a wholly owned incorporated AFN (C) in Schedule C, which has a subsidiary (A) in Schedule A. During 1970, C sells its interest in A (acquired for $2 million) to B, a wholly-owned incorporated AFN of DI in Schedule B for $2 million in cash. By operation of § 505, DI should report a negative transfer of capital from Schedule B of $2 million and a positive transfer of capital to Schedule C of $2 million.

Example 15. In 1969, DI's wholly-owned incorporated AFN (A) in Schedule A acquired a 50-percent profits interest in a joint venture (B) in Schedule B for $1 million, the other 50 percent being held by an unaffiliated foreign national (X). For 1969, DI reported a net transfer of capital of $1 million to Schedule B and a negative net transfer of capital of $1 million to Schedule A.

During 1970, DI's wholly-owned subsidiary (C) in Schedule C acquires A's interest in B for $2 million. B earns $400,000 in 1970 and remits $100,000 each to C and X. B's net assets increase by $200,000. Assuming no other transactions during 1970, DI should report a negative transfer of capital from C of $2 million and reinvested earnings for C of $100,000; a net transfer of capital to Schedule B of $100,000; a positive transfer of capital to A of $1 million and reinvested earnings for A of $1 million (gain on the sale of B to C).

§ B505–7 Transactions between AFNs not involving transfers of capital.

Transfers between AFNs will not involve transfers of capital to or from the DI unless the transfer, if actually made by the DI, would be a transfer of capital under § 312. Consequently, the transactions described in § 312(c), except transactions involving the export credit exemption system described in § 312(c)(13) and (14), will not result in transfers of capital when carried out by AFNs. See § B312–18 and 19.

(i) *Stock for stock transactions and reorganizations.*—As a general rule, a transfer of capital to or from a DI will not be involved under § 505(a)(3) if (a) an AFN of a DI transfers an interest in a lower-tier AFN and receives in exchange stock of a foreign corporation that becomes an AFN of the DI as a result of the transaction or if (b) there is a recapitalization, reorganization, merger or consolidation involving one or more AFNs. Although a foreign enterprise may cease to be an AFN of a DI as a result of the transaction, the transaction does not affect the amount of direct investment made by the DI during the base period years in the scheduled area of such foreign enterprise.

Example 16. B, a wholly-owned Schedule B subsidiary of DI, transfers to an unaffiliated foreign national all of the stock of a wholly-owned Brazilian subsidiary in exchange for all of the stock of a French corporation. The transaction does not result in any transfer of capital to or from DI. However, as a result of the transaction DI becomes a DI in the French corporation and ceases to be a DI in the Brazilian corporation. (The result would be the same if the other party to the transaction were also an AFN of DI.)

Example 17. A wholly-owned German subsidiary of DI is reincorporated in the United Kingdom (or, alternatively, merged into a wholly-owned United Kingdom subsidiary of the DI). Neither transaction results in any transfer of capital to or from the DI. However, the business of the newly created United Kingdom subsidiary (or the United Kingdom subsidiary after the merger) that is conducted in Germany will be a branch of the United Kingdom subsidiary and may, therefore be a separate unincorporated Schedule C AFN of DI by operation of § 304.

(ii) *Transfers of certain intangibles.*—A transfer of property from one AFN to another AFN of the same DI before or after January 1, 1968, in exchange for a debt or equity interest in the transferee AFN does not involve a transfer of capital to or from the DI (regardless of the form of the transfer or the consideration exchanged therefor) if the property transferred consists of patents, copyrights, trademarks, trade names, trade secrets, technology, proprietary processes, proprietary information, or similar intangibles or any rights or interests therein or applications or contracts relating thereto (see § 312(c)(11)). No deduction for amortization or any like charge with respect to such an intangible transferred after Janaury 1, 1968, shall be made against earnings in calculating the earnings of the transferee AFN.

(iii) *Vessel charters.*—Any charter of a vessel for a period of time made or deemed made by an incorporated AFN to another incorporated AFN of the DI is excluded from treatment as a transfer of capital under § 505(a)(3). This exclusion applies to voyage and bareboat charters as well as to time charters.

Example 18. During 1969 a wholly-owned Panamanian subsidiary (A) of DI, charters one of its ships to C, a wholly-owned German subsidiary of the DI, for a period of 6 months. There is no transfer of capital to or from DI under § 505(a)(3).

(iv) *Short-term trade credits between AFNs.*—Section 505(b) provides, in effect, that the extension or satisfaction of a short-term trade credit between non-Canadian AFNs (see § 1103(c)) of a DI will not result in a transfer of capital to or from the DI, or in any net change in the net assets of an unincorporated AFN extending or receiving such credit for purposes of § 313(b). Section 505(b) applies to trade credits that are extended in the ordinary course of business pursuant to arm's-length terms and are in fact paid within 12 months after they are extended.

Example 19. On September 1, 1969, a wholly-owned French subsidiary (C) of DI, sells equipment to A, a Brazilian subsidiary of DI in the ordinary course of business pursuant to arm's-length terms. The $1 million purchase price is payable in full by March 1, 1970. There is no transfer of capital to or from DI. (The result would be the same if the sale of services, rather than the sale of goods, were involved.) If, however, no part of the purchase price is paid by September 1, 1970, there would be a $1 million transfer of capital from C to DI and from DI to A, deemed to have occurred on September 1, 1970, or on such sooner date as it became apparent that A would not be able to make payment prior to September 1, 1970. (The result would be the same if the sale of services, rather than the sale of goods, were involved.)

§ B505–8 Transactions between AFNs and their branches in different scheduled areas.

The net transfer of capital by a DI to unincorporated AFNs in any scheduled area during any period will generally equal the DI's share in the aggregate net increase or decrease, during the year, in such AFNs' aggregate net assets (see § 313(b)). This calculation is based on changes in the net assets of all unincorporated AFNs located in such scheduled area, including those in which DI has an indirect interest, e.g., a branch of an AFN that is headquartered in another scheduled area. However, § 505(a)(4) provides that a DI is chargeable with a net transfer of capital only to unincorporated AFNs the immediate parent of which is either the DI or another AFN that is an "affiliate" of the DI as defined in § 903(a).

While a DI's share of the change in net assets of a § 903(a) affiliate incorporated AFN's branch is automatically included in the DI's net transfer of capital to the scheduled area where the branch is located, certain changes in branch assets also result in a corresponding transfer of capital from or to the parent AFN. Section 505(a) (5) and (6) provides that a corresponding transfer of capital from or to the parent occurs when the net increase or decrease in branch assets cannot be attributed to earnings or losses of the branch.

The same principles apply to transactions involving an incorporated AFN that has a less than 100 percent profits interest in a joint venture or a partnership, rather than a branch (which is presumably 100 percent-owned). See § B313–4(ii), especially Example 8, and § B505–9 below.

Example 20. DI has a wholly-owned AFN in France (Schedule C), that has a branch in Brazil (Schedule A). DI has no other AFNs. During 1969 the branch has earnings of $50,000 but its net assets increase by $100,000 because of a transfer of $50,000 from the AFN to the branch. This results, under § 313(b), in a $100,000 positive net transfer of capital to Schedule A (DI's share of the net increase in branch assets) and, under § 505(a)(6), in a $50,000 negative net transfer of capital to Schedule C (the amount by which DI's share in the net increase in branch assets ($100,000) exceeded DI's share in the branch's earnings ($50,000)).

If DI owned only 60 percent of the French AFN, the result would be a $60,000 positive net transfer of capital to Schedule A (60 percent of $100,000) and a $30,000 negative net transfer of capital to Schedule C (60 percent of $50,000). If DI owned 50 percent or less of the French AFN, no net transfer of capital would be involved.

The following are variations of the facts given above:

(a) *Positive earnings-decrease in assets.* If the branch had 1969 earnings of $50,000 but its net assets decreased by $150,000 because of a remittance of $200,000 to the parent AFN, this would result, under § 313(b), in a $150,000 negative net transfer of capital to Schedule A (DI's share of the $150,000 net decrease in branch assets) and, under § 505(a)(5), in a $150,000 positive net transfer of capital to Schedule C (DI's share of the $150,000 net decrease in branch assets

not attributable to losses). Moreover, the full amount of branch earnings ($50,000) would be treated as having been distributed to the Schedule C parent and would be deducted from dividends paid by the parent to DI (see § B306–6(iii)). If DI owned only 70 percent of the French AFN, the result would be a $105,000 negative net transfer of capital to Schedule A (70 percent of $150,000) and a $105,000 positive net transfer of capital to Schedule C (70 percent of $150,000). Moreover, $35,000 of the earnings of the branch (DI's 70 percent share of the $50,000 branch earnings) would be treated as having been distributed to the Schedule C parent and should be deducted from dividends paid by the parent to DI. If DI owned 50 percent or less of the French AFN, no net transfer of capital would be involved; however, an appropriate percentage of the earnings of the branch would still be treated as having been distributed to the Schedule C parent and would be deducted from dividends paid by the parent to DI.

(b) *Zero earnings-decrease in assets.* If the branch had 1969 earnings of zero and net assets decreased by $100,000 because of a remittance of $100,000 to the parent AFN, this would result, under § 313(b), in a $100,000 negative net transfer of capital to Schedule A (DI's share of the $100,000 net decrease in branch assets) and, under § 505(a)(5), in a $100,000 positive net transfer of capital to Schedule C (DI's share of the $100,000 net decrease in branch assets not attributable to losses).

(c) *Loss-no change in assets.* If the branch incurred a loss of $100,000 during 1969, but there was no change in net assets because of a transfer of $100,000 from the parent AFN, this would result, under § 505(a)(6), in a $100,000 negative net transfer of capital to Schedule C (DI's share of the $100,000 loss).

(d) *Loss-increase in assets.* If the branch incurred a loss of $100,000 during 1969 but had a $50,000 increase in net assets because of a transfer of $150,000 from the parent AFN, this would result, under § 313(b), in a $50,000 positive net transfer of capital to Schedule A (DI's share of the $50,000 net increase in branch assets) and, under § 505(a)(6), in a $150,000 negative net transfer of capital to Schedule C (DI's share of the $50,000 net increase in net assets plus DI's share of the $100,000 loss).

(e) *Decrease in assets smaller than loss.* If the branch incurred a loss of $100,000 during 1969 while net assets decreased by only $25,000 because of a transfer of $75,000 from the parent AFN, this would result, under § 313(b), in a $25,000 negative net transfer of capital to Schedule A (DI's share of the $25,000 net decrease in branch assets) and, under § 505(a)(6), in a $75,000 negative net transfer of capital to Schedule C (the amount by which DI's share of the loss ($100,000) exceeds DI's share of the net decrease in branch assets ($25,000)).

(f) *Decrease in assets greater than loss.* If the branch incurred a loss of $100,000 during 1969 while net assets decreased by $250,000 because of a remittance of $150,000 to the parent AFN, this would result, under § 313(b), in a $250,000 negative net transfer of capital to Schedule A (DI's share of the $250,000 net decrease in branch assets) and, under § 505(a)(5), in a $150,000 positive net transfer of capital to Schedule C (DI's share of the $250,000 net decrease in branch assets not attributable to the $100,000 loss).

§ B505–9 Miscellaneous transactions.

An unincorporated AFN may have two or more immediate parents that are AFNs of the DI. The DI's interest in the unincorporated AFN held through any immediate parent that is not a § 903(a) affiliate of the DI should be excluded in calculating DI's net transfer of capital under § 313(b).

Example 21. DI has a wholly-owned subsidiary (A) in Schedule A and a 50 percent owned subsidiary (C) in Schedule C. A and C each have a 50 percent profits interest in a joint venture (B) in Schedule B. During 1970 B earns $1 million, and its net assets increase by $1 million. DI's net transfer of capital under § 313(b) with respect to B is $500,000. DI's share of the increase in the assets of B attributable to C is excluded because C is not a § 903(a) affiliate of DI. If C were 60 percent owned by the DI, DI's share of B's increase in assets for 1970 would be $800,000: A's share (50% × 1,000,000) × 100%, plus C's share (50% × 1,000,000) × 60%.

During 1971, C (60% owned) makes a $1 million loan to B. For purposes of § 313(b) B has a net increase in its assets of $1 million. C's share of such increase is $1 million, and A's share is zero. See Example 8 in § B313–4. DI's share of the increase in B's assets is $600,000 (60% of C's share). For 1971 DI should report a net transfer of capital under § 313(b) to Schedule B of $600,000 and a negative net transfer of capital to Schedule C under § 313(a) of $600,000.

Example 22. DI has a wholly-owned incorporated AFN (C) in Schedule C and a wholly-owned incorporated AFN (a) in Schedule A. A and C, respectively, have a 40 percent and a 60 percent profits interest in a joint venture (B) in Schedule B. During 1970 DI lends $100,000 to B. Under § 505(a) (1) and (2), DI is deemed to have made a $40,000 transfer of capital to A (40 percent of $100,000) and a $60,000 transfer of capital to C (60 percent of $100,000). B has a net increase in assets of $100,000, which is not attributable to earnings; therefore, under § 505(a)(6), A is deemed to have made a transfer of capital to DI of $40,000, and C is deemed to have made a transfer of capital to DI of $60,000. Consequently, DI's net transfer of capital to each scheduled area for 1970 is as follows: Schedule A, zero; Schedule B, $100,000; Schedule C, zero.

Example 23. Same facts as in Example 22, except that A is 75 percent owned by DI and C is 50 percent owned. In this case, the loan from DI to B would constitute a transfer of capital under § 505(a) (1) and (2) to A of $40,000 and to C of $60,000 as in Example 22. However, since C is not an affiliate of DI, DI's share of B's increase in assets is only $30,000 (A's 40 percent share × 75 percent). Under § 505(a)(6), A is deemed to have made a transfer of capital to DI of $30,000. C, not being an affiliate, is not deemed to have made a transfer of capital to DI under § 505(a)(6). Therefore, DI's net transfer of capital to each scheduled area is as follows: Schedule A, $10,000; Schedule B, $30,000; Schedule C, $60,000.

If A and C were each 50 percent owned by DI, DI's loan to B would still be deemed made to A and C under § 505(a) (1) and (2) in accordance with the percentage interests of A and C in B. But since neither A or C is an affiliate of DI, DI would have no share in B's increase in assets (see § 505(a)(4)) and no transfers would be deemed made under § 505(a)(6). Consequently, DI's net transfer of capital to each scheduled area would be as follows: Schedule A, $40,000; Schedule B, zero; Schedule C, $60,000.

B506—Incremental Earnings Allowable

§ B506–1 Introduction.

In addition to the § 503 or § 504 allowable which is elected under § 502, an incremental earnings allowable is provided by § 506. The incremental earnings allowable is a separate allowable that authorizes the making of positive direct investment in excess of that permitted by § 503 or § 504, whichever is elected by the DI. The § 506 incremental earnings allowable has been available to DIs for use since 1970.

§ B506–2 Summary.

Prior to 1973, the incremental earnings allowable, if any, available to a DI was the amount by which 40 percent of incremental earnings (defined in § 506(a)(3)) for the current year exceeds the greatest amount of positive direct investment authorized in all scheduled areas pursuant to § 503, § 504(a), or § 504(b). For purposes of this calculation, it was immaterial whether the DI elected to be governed by § 503, § 504, or § 507 (when in effect) for the year.

Commencing in 1973, the incremental earnings allowable is the amount by which 40 percent of incremental earnings exceeds the greatest of $2,000,000, the amount of positive direct investment authorized under § 504(a), or the amount of positive direct investment authorized under § 504(b), irrespective of whether the DI elects the § 503, § 504(a) or § 504(b), allowable for 1973. The figure $2 million has been substituted, in § 506(a)(4), for the reference to the § 503 allowable because of the increase of the § 503 allowable from $2 million to $6 million for 1973. This increase of $4 million would have substantially reduced the incremental allowable for many DIs. To avoid that result, the figure $2 million has been substituted for the reference to § 503 in § 506(a)(4).

The additional positive direct investment authorized by § 506 may be made in any or all scheduled areas.

Unused § 506 allowables may be carried forward to subsequent years.

§ B506–3 Calculation of incremental earnings allowable.

The following steps are required to calculate the incremental earnings allowable:

Compute current aggregate annual earnings (annual earnings, as defined in § 504(b)(4)) of all incorporated and unincorporated AFNs for all scheduled areas combined, excluding Canada;

Compute base period aggregate annual earnings; i.e., 50 percent of the sum of aggregate annual earnings for the years 1966 and 1967 (but not less than zero); and

Determine the current year's incremental earnings, if any, by subtracting base period aggregate annual earnings from aggregate annual earnings for the year involved.

For 1973 and subsequent years, the incremental earnings allowable is the amount by which 40 percent of the DI's incremental earnings exceeds the greatest amount of $2 million or the positive direct investment authorized to be made by the DI in all scheduled areas for the current year under § 504(a) or § 504(b) (excluding any carryforward of allowables from prior years, and without regard to any reduction under § 1003, specific authorization or compliance action, or to the § 502 election actually made).

The following examples illustrate calculation of the § 506 allowable:

Example 1. DI has an AFN (A) in Pakistan. In 1966 A had losses of $100,000 and in 1967 earnings of $500,000. DI's base period aggregate annual earnings under § 506(a)(2) is $200,000 ($500,000—$100,000, divided by 2).

Assume that DI's historical and earnings allowables under § 504 (a) and (b) are each less than $2 million. In 1973 A has earnings of $6,800,000.

DI's incremental earnings allowable under § 506 in 1973 is $640,000 calculated as follows (000 omitted):

1968 aggregate annual earnings	$6,800
Deduct: Base period aggregate annual earnings	(200)
Incremental earnings	6,600
40 percent of incremental earnings	2,640
Deduct: Largest of $2 million or § 504(a) or (b) available allowables	(2,000)
Incremental earnings allowable	640

Example 2. DI has six AFNs. Two incorporated in Schedule A, two incorporated in Schedule B and two branches in Schedule C. In 1966 the AFNs had aggregate annual losses of $200,000 and in 1967 aggregate annual earnings of $100,000. DI's base period aggregate annual earnings are, therefore, zero.

Assume that DI's historical allowables in Schedules A and B are, respectively, $300,000 and $400,000. The Schedule C historical allowable is zero. Accordingly, DI's § 504(a) allowables for all scheduled areas are $700,000.

In 1972 the AFNs had annual earnings of $3 million in Schedule A, $2,400,000 in Schedule B, and $2 million in Schedule C. Therefore, DI's 40 percent earnings allowable for 1973 is $1,200,000 in Schedule A, $960,000 in Schedule B, and $800,000 in Schedule C; a total of $2,960,000 worldwide. In 1973, the AFNs have aggregate annual earnings of $8 million.

DI's incremental earnings allowable for 1973 is $240,000, computed as follows (000 omitted):

1973 aggregate annual earnings	$8,000
Deduct: base period aggregate annual earnings	0
Incremental earnings	8,000
40 percent of incremental earnings	3,200
Deduct: largest of $2 million or § 504 (a) or (b) available allowables (i.e., § 504(b))	(2,960)
Incremental earnings allowable	240

§ B506–4 Application of the § 506 allowable.

Unlike the allowables provided in § 504(a) and § 504(b), which are scheduler, the incremental earnings allowable applies on a worldwide basis. In other words, the additional direct investment authorized by § 506 can be made entirely in one scheduled area, or can be divided among two or more scheduled areas. Any unused § 506 allowable may be carried forward to subsequent years for use in any one or more scheduled areas, without regard to the election made under § 502.

Section 506(b) applies to DIs that elect § 503. Positive direct investment is authorized in excess of $6 million to the extent of the incremental earnings allowable. Since § 506 may be used on a worldwide basis, DIs that elect § 503 may treat the incremental earnings allowable as an addition to the $6 million minimum allowable.

Section 506(c) applies to DIs electing the schedular allowables of § 504(a) and § 504(b). In such cases, the incremental earnings allowable may be used to authorize additional positive direct investment in a given scheduled area or distributed among two or all of the scheduled areas. In calculating positive direct investment made under § 506 in Schedule C, a DI electing § 504 must disregard total losses of all incorporated Schedule C AFNs in accordance with § 504(e).

Example 3. In 1973 DI elects to be governed by § 504(a), and has historical allowables of $5 million, $6 million, and $4 million in Schedules A, B, and C, respectively. DI also has an incremental earnings allowable of $1 million.

DI makes positive direct investment of $7,500,000 in Schedule A, $4 million in Schedule B and $4,500,000 in Schedule C, all of which is authorized. In Schedule A, $5 million is authorized by § 504(a), $2 million of the Schedule B historical allowable is carried "downstream" pursuant to § 504(d), and $500,000 of the § 506 allowable is used. In Schedule C, $4 million is authorized by § 504 and the remaining $500,000 is authorized by § 506.

Example 4. During 1973 DI elects § 504 with an allowable in Schedule C of zero. DI also has a § 506 incremental earnings allowable of $200,000. During 1973 DI's Schedule C AFNs have total losses of $100,000. If DI desires to use the incremental earnings allowable in Schedule C, DI may make a positive net transfer of capital not in excess of $200,000; i.e., the losses will not be an offset for purposes of computing positive direct investment made in Schedule C under § 506. (See § 506(c).)

§ B506–5 Carryforward of the § 506 allowable.

Unused § 506 allowables may be carried forward to subsequent years for use in any scheduled area, even though DI may have elected § 503 (or § 507 in a year prior to 1973), which does not authorize carryforwards and eliminates §§ 504 and 1302 carryforwards.

Example 5. DI elects to be governed by § 503 in 1972 and has an incremental earnings allowable of $200,000. During 1972, DI makes positive direct investment worldwide of $2,100,000. DI has a § 506 carryforward of $100,000.

Example 6. In 1972 DI has historical allowables of $7 million in Schedule A and $7 million in Schedule C. DI also has a carryforward allowable of $1 million in Schedule A pursuant to § 504(d)(1) and an incremental earnings allowable under § 506 of $1 million. During 1972, DI makes positive direct investment of $8 million in Schedule A and $7 million in Schedule C.

DI will be permitted to use the $1 million incremental earnings allowable in any scheduled area in subsequent years.

§ B506–6 Miscellaneous.

Repayment charges incurred under § 1003 in connection with repayment of certain borrowings will (starting in 1970) reduce the § 506 incremental earnings allowable to the extent that such repayments exceed the DI's § 503, or § 504 allowables. (See § 1003(c)(2).)

B507—Alternative Minimum and Schedule A Supplemental Allowable [Revoked]

B801—Applications for Specific Authorizations or Exemptions or for Interpretive Opinions

§ B801–1 Introduction.

Section 201 prohibits DIs from making positive direct investment in AFNs in excess of amounts generally authorized by the regulations, or as may be specifically authorized by OFDI. Section 801 provides that DIs may file applications for specific authorizations to effect positive direct investment otherwise prohibited and specific exemptions from complying with particular requirements of the regulations. In addition, DIs may file requests for interpretive opinions concerning particular factual situations, including those involving the possibility that a DI may have to apply for a specific authorization or exemption.

§ B801–2 Procedures.

Applications for specific authorizations or exemptions and requests for interpretative opinions must be submitted in writing and must comply with instructions contained in the Revised Instructions for Submitting Applications for Specific Authorizations, Specific Exemptions, or Interpretations, issued by OFDI on May 24, 1973, as they may be amended and supplemented from time to time.

If a DI is uncertain whether it may or may not require a specific authorization or exemption concerning a particular transaction, a combined request for an interpretative opinion or, in the alternative, a specific authorization or exemption may be submitted.

§ B801–3 Particular authorizations or exemptions.

Note that Part IV of the Instructions sets forth particular requirements concerning applications for specific authorizations or exemptions regarding (a) the borrowing hardship test (paragraph A), (b) reinvested earnings of AFNs (paragraph C), (c) foreign equity financing of direct investment (paragraph D), (d) triangular or parallel financing arrangements (paragraph E), (e) an increase in the amount of liquid foreign balances that a DI can hold (paragraph F), (f) upstreaming to Schedule C of § 504(b) earnings allowable (paragraph G), (g) capitalized exploration expenditures (paragraph H), (h) change in elections (paragraph I), and (i) expropriation of AFN property (paragraph J). In view of the export credit exemption system provided in the regulations for 1973 (§ 312(c)(13) and (14)), export credit specific authorization relief in the form available prior to 1973 is no longer necessary (paragraph B).

B900—Subpart I (§§ 901–907)

§ B900–1 Introduction.

Subpart I of the regulations (§§ 901–907) deals with direct investment by persons within the United States who are related, affiliated or associated with

other persons within the United States. These relationships are described as affiliated groups (§ 903), family groups (§ 904), associated groups (§ 905), and ownership of direct investors (§ 906). Section 907 provides rules for reporting direct investment transactions involving such groups. Sections 901 and 902 define the terms "direct interests" and "indirect interests," which are significant in determining:

Existence of a DI–AFN relationship under §§ 304 and 305;
A DI's share in reinvested earnings of an incorporated AFN under § 306(b);
Whether an AFN is an "affiliate" of a DI, so that transfers made by or to the AFN should be attributed to the DI under § 505;
Existence of an affiliated or associated group under §§ 903 and 905; and
Availability and consequences of an election under § 906(b)(1).

Members of an affiliated group or a family group are treated as a single entity for reporting and compliance purposes under the regulations. An affiliated group consists of a U.S. person and all of such person's U.S. affiliates (see § 903). A family group consists of all family members residing in the same household (see § 904). An affiliated or family group files a consolidated Form FDI–101 (Base Period Report), FDI–102 (Cumulative Quarterly Report), and FDI–102F (Annual Report); members of the group do not file reports individually (see § 907(d)).

Two or more U.S. persons acting in concert to own or acquire an aggregate 10 percent or greater interest in a foreign national constitute an associated group. Each member of an associated group is treated as a separate DI in the AFN acquired (the "group AFN"), and is required to report individually unless certain requirements pertaining to consolidated reporting are met (see §§ 905(b)(3) and 907(c)(2)).

Direct investment transactions of a DI normally will not be attributed to any other person merely because such other person owns an interest in the DI. However, an option under § 906(b)(1) is available to direct owners of a DI, whereby each such owner may elect to be put in the position of the DI as to direct investment, allowables and foreign balances, in accordance with such owner's proportionate interest in the DI.

§ B901–1 Definition of direct interest.

A direct interest in a corporation, partnership, joint venture, trust or other entity is defined in § 901 as an interest that is not owned through an intervening person or chain of persons.

(i) *Direct interest in a corporation.*—The amount of a direct interest in a corporation is determined by the percentage held of total combined voting power (represented by all outstanding voting securities of the corporation). Voting power means the power to vote presently in an election of directors of the corporation or, if the corporation does not have directors, in the election or appointment of persons performing management control functions. Treasury shares and shares reserved for issuance upon the exercise of options, warrants, conversion or other similar rights, and shares owned by a wholly owned subsidiary, are not deemed outstanding for purposes of determining the magnitude of a direct interest.

Example 1. As of January 1, 1969, a corporation (X) has 100,000 outstanding shares of capital stock, 60,000 of which are class "A" common, 20,000 are class "B" common, and 20,000 are preferred. In the election of directors, each class A carries three votes and each class B share carries one vote. Holders of preferred stock are entitled to vote on major matters such as mergers, consolidations, etc., or amendments to the certificate of incorporation affecting the preferred stock; they are not entitled to vote in the election of directors unless four quarterly dividend payments are in arrears. Y, an individual, owns 8,000 shares of class A common stock, 6,000 shares of class B common stock and 500 shares of preferred stock. No dividends on the preferred stock are in arrears as of January 1, 1969. Y's direct interest in X as of January 1, 1969, is 15 percent, since Y owns 15 percent of the total combined voting power of X (30,000 of a total 200,000 votes).

Beneficial ownership of voting stock is ordinarily the test of interest in a corporation for determining whether one is a DI, but ownership of such stock is not necessarily determinative of a DI's share in earnings of an incorporated AFN for purposes of § 306 because a corporation may have two classes of stock outstanding that share equally in earnings but do not have equal voting rights. Examples in this Bulletin involving incorporated AFNs are based on the assumption that the DI's voting interest and interest in earnings of the AFN are coextensive.

(ii) *Direct interest in unincorporated business activities.*—The amount of a direct interest in an unincorporated enterprise, such as a partnership or joint venture, is usually determined by the percentage share of profits to which one is entitled. If one is entitled to a fixed amount rather than a percentage of profits, or the amount is for any reason variable, the direct interest normally should be calculated by reference to the portion of profits actually distributed or distributable at the close of the most recently ended annual accounting period of the organization, assuming there was no change in the interest since that time. If neither of the foregoing rules appropriately reflects the direct interest in an unincorporated entity, the amount of direct interest should be calculated by whatever method will produce a reasonable result.

Example 2. On January 1, 1969, P, a partnership, has three partners (A, B, and C). Under the partnership agreement, A is entitled to the first $100,000 of distributed profits, and if there are additional profits, he is entitled to receive 5 percent of all such additional profits. B is entitled to 50 percent of profits after the first $100,000 up to $500,000 of total profits and to 35 percent of all profits over $500,000. C is entitled to 45 percent of profits after the first $100,000 up to $500,000 and 60 percent of all profits over $500,000. Between January 1 and December 31, 1969, P distributed $1 million to the partners. A received $145,000, B received $375,000, and C received $480,000. As of January 1, 1970, A's interest in the partnership is 14.5 percent, B's interest is 37.5 percent, and C's interest is 48 percent.

The result would be the same if no distribution were made but the profits were retained and added to the capital accounts of the partners in the same proportion.

Example 3. P and Q, two U.S. corporations, enter into a joint venture agreement for the purpose of constructing and owning an apartment house in Rome. The land on which the building is to be constructed is owned by R, an Italian national, who leases it to P and Q for a rental equal to 20 percent of the annual net rental received by P and Q from the tenants of the building. P and Q are to share equally the remaining 80 percent of net rentals received. The apartment house is an AFN of P and Q, and each has a 50 percent direct interest in the AFN.

If R were a person within the United States, the result would be the same. In addition, the real estate would be an AFN of R in which R has a 100 percent direct interest. If, however, R were not only a person within the United States but a party to the joint venture agreement, P, Q, and R would be members of an associated group (see § 905). The land, and building would be an AFN of P, of Q, and of R, in which P and Q each have a 40 percent interest and in which R has a 20 percent interest.

If Z, an Italian corporation, becomes a member of the construction joint venture and will share equally with P and Q net rentals of the apartment house after R has received his share, the apartment house would be an AFN of P and Q, and P and Q each would have a 33⅓ percent direct interest in that AFN.

§ 902–1 Definition of indirect interest.

An indirect interest in a corporation, partnership, joint venture, trust or other entity is an interest owned through an intervening person or chain of persons. The amount of an indirect interest is calculated by multiplying together the direct interests of each person in the chain.

Example 4. DI owns 50 percent of outstanding voting stock of P, a U.S. corporation. P owns 70 percent of outstanding voting stock of C, a French corporation, while C owns 50 percent of outstanding voting stock of B, a United Kingdom corporation. DI has a 50 percent direct interest in P, a 35 percent indirect interest in C (50 percent × 70 percent), and a 17.5 percent indirect interest in B (35 percent of C's 50 percent interest).

Example 5. DI has a 17.5 percent interest in B, a United Kingdom corporation. B has a manufacturing branch in Brazil (A) and is entitled to 80 percent of the profits of C, a partnership organized under the laws of Germany. DI has a 17.5 percent indirect interest in A (17.5 percent × 100 percent) and a 14 percent indirect interest in C (17.5 percent × 80 percent).

§ B903–1 Definition of affiliate.

As defined in § 903(a), an "affiliate" of a person within the United States is any other person in which the aggregate of direct interests (defined in § 901) owned by the former person and its affiliates exceeds 50 percent. An "affiliate" may be a U.S. person or a foreign national.

Example 6. X is a U.S. corporation. X has a 51 percent direct interest in corporation Y. Y is an affiliate of X. X has a 30 percent direct interest in corporation Z, and Y has a 25 percent direct interest in Z. Z is an affiliate of X, since X and Y (affiliate of X) together have more than 50 percent direct interest in Z. The location of Y and Z is immaterial.

Y has a 50 percent direct interest in corporation A. A is not an affiliate of X.

Example 7. An individual resident and citizen of the United States (P) directly owns 51 percent of outstanding voting stock of corporation A, 10 percent of voting stock of corporation C, and all voting stock of corporation Y. Corporation A directly owns 30 percent of outstanding voting stock of corporation B, and corporation B directly owns 45 percent of outstanding voting stock of corporation C. Corporation Y directly owns 60 percent of outstanding voting stock of corporation Z, and corporation Z directly owns 40 percent of outstanding voting stock of corporation B. All corporations are affiliates of P.

(i) *Consequences of being an affiliate.*—A U.S. person and all U.S. affiliates constitute an "affiliated group" (see § 903(b)). When a U.S. person has an AFN that is an "affiliate" under § 903(a), transactions between the affiliate AFN and any other AFN of the U.S. person are subject to § 505.

(ii) *Definition of affiliated group.*—As defined in § 903(b), an "affiliated group" is a person within the United States and all such person's "affiliates" who are persons within the United States. (The acquisition of an affiliate that is a person within the United States is a combination within the meaning of § 312(c)(1)(ii). See B312–18(i).)

Example 8. P is an individual resident and citizen of the United States. P has a 60 percent direct interest in X, a U.S. corporation. X has a 60 percent interest in C, a French corporation. X and C are affiliates of P. P and X are an affiliated group. C is not a member of the affiliated group, because C is not a person within the United States.

(iii) *Treatment of members of an affiliated group as a single person.*—Except for purposes of an election under § 906(b)(1), all members of an affiliated group are treated as a single person (see § 903(c)). Consequently, the foreign balances, direct investment transactions and allowables of each member are attributed to the group. The group files a single report for each period for which a report is required, aggregating reportable items of all members of the group (see § 907(d)). In addition, the group, as a whole, makes one election of allowables under § 502.

Example 9. Since 1963 X, a U.S. corporation, has owned 51 percent of outstanding stock of another U.S. corporation, Y. X and Y are members of an affiliated group, under § 903(b). Since 1963 X has had a wholly-owned subsidiary (B) in Schedule B and Y has had a 10-percent-owned subsidiary (A) in Schedule A. B is X's sole AFN and A is Y's sole AFN. During 1965–66 X made positive direct investment of $1 million in Schedule B and lent $300,000 to A. Y made positive direct investment in Schedule A of $1,300,000. X and Y, as an affiliated group, filed a single Form FDI–101 showing the following § 504(a) historical allowables (000 omitted):

Schedule A:	
Positive direct investment for 1965–66 ($1,300 plus $300)	$1,600
§ 504(a) allowable ($1,600×50%×110%)	880
Schedule B:	
Positive direct investment for, 1965–66	1,000
§ 504(a) allowable ($1,000×50%×65%)	325

In 1969, X and Y elect the historical allowable of § 504 (a) and (c). X and Y make positive direct investment in Schedules A and B in an amount aggregating the amounts authorized pursuant to the foregoing calculations. Unused allowables will be available for carryforward or carryover under § 504 by the affiliated group.

Positive direct investment made during the year by X and Y will be reported on a single Form FDI–102 and Form FDI–102F.

Example 10. A, B, C, and D constitute an affiliated group. During 1965 and 1966, average end-of-month liquid foreign balances subject to § 203(c) held by each member of the group were as follows: A—$100,000; B—$50,000; C—$25,000; and D—none. The Form FDI–101 filed by the group should show an average end-of-month liquid foreign balance of $175,000 (the sum of the monthly 1965–66 averages of each member of the group).

An affiliated group may itself be a member of an "associated group", as defined in § 905, if any member of the affiliated group acts in concert with another U.S. person (not a member of the same affiliated group) in acquiring or owning an interest in a foreign national.

Example 11. X is a member of an affiliated group. X enters into an agreement with an unrelated U.S. corporation, Y, pursuant to which X and Y each acquire 5 percent of the outstanding voting stock of C, a Netherlands corporation, from an unrelated foreign national. C thereby becomes an AFN both of the affiliated group and of Y.

§ B904–1 Definition of family group.

A "family group" is defined in § 904 as an individual within the United States, his spouse (unless legally separated), and all relatives of such individual or his spouse residing with such individual. As with an affiliated group, all members of a family group are deemed a single person within the United States and file one report under § 602 aggregating all foreign balances, direct investment transactions and other reportable items attributable to each member of the group. Members of a family group cannot elect to report separately (see § B907–1(iv)).

Example 12. H, a U.S. citizen and resident, lives in New York City with his wife (W) and two teenage daughters (P and Q). H and W also have two sons (R and S). R is 20 years of age, unmarried, attends undergraduate college in California, and is supported by H and W; S is 28 years of age, married, with a child of his own, is self supporting, and maintains his own home. W's grandfather (G) resides with H and W. H, R, and S each own 5 percent of outstanding voting stock of a French corporation (C). W who is wealthy in her own right, is a joint owner with her grandfather, G, of a substantial parcel of commercial real property (K) in the United Kingdom. H, W, P, Q, R, and G are members of a family group and X and K are AFNs of the group. S is not a member of the family group. The family group should file a single report under § 602 for each reporting period, aggregating the direct investment transactions during the relevant period between each member of the group and X and K.

A family group may itself be a member of an affiliated group as defined in § 903, or of an associated group as defined in § 905.

Example 13. Same facts as in Example 12, except that H owns 100 percent of outstanding voting stock of a U.S. corporation (U), and H and W each own 30 percent of outstanding voting stock of another U.S. corporation (V). The family group (i.e., H, W, P, Q, R, and G), together with U and V, constitute an affiliated group and are subject to the rules governing reporting and other obligations of affiliated groups.

Example 14. Same facts as in Example 12. In 1969, H, a son (S), and T, an unrelated U.S. person, enter into an agreement pursuant to which each purchases 4 percent of outstanding voting stock of a Japanese corporation (J) from an unrelated foreign national for $100,000 in cash, or a total of $300,000. The family group together with S and T, are an associated group under § 905(a). J becomes an AFN of the family group as well as of S and of T, and each has made a $100,000 transfer of capital to J (Schedule B).

Example 15. A U.S. citizen and resident (X) owns all outstanding voting stock of a French corporation (C). In 1967, X establishes an inter vivos trust under New York law and contributes all stock of C to the trust. The trust beneficiaries are X's three minor children, all of whom reside with X. X and a domestic bank are cotrustees of the trust and X expressly retains the right to revoke or amend the trust without consent of the trust beneficiaries. No associated group is involved in this situation. However, X and his children are members of a family group, and the family group and the trust are members of an affiliated group. C is an AFN of the affiliated group.

§ B905–1 Definition of associated group.

An "associated group" is defined in § 905(a) as two or more persons within the United States, including individuals, legal entities, affiliated groups or family groups, if: (a) Such persons act in concert, pursuant to an express or implied agreement or understanding, to own or acquire interests in the same corporation or partnership organized under the laws of a foreign country or in the same business venture conducted within a foreign country; (b) the interests in the foreign enterprise owned or acquired are not owned or acquired through a corporation, partnership (other than a joint venture) or trust within the United States, whether or not such corporation, partnership, or trust is organized or created for the purpose of owning or acquiring the interests; and (c) the aggregate interests in the foreign enterprise owned or acquired would, if owned or acquired by one U.S. person, cause such person to be a DI.

A person owning a direct or indirect interest in a U.S. corporation or partnership is not a member of an associated group merely because the U.S. corporation or partnership directly owns an interest in a foreign enterprise.

Example 16. In 1968, three U.S. citizens and residents (A, B, and X) enter into an agreement pursuant to which they form and capitalize a Delaware corporation (D) and D purchases all outstanding voting stock of a French corporation (C) from an unrelated foreign national (N), for $300,000 in cash. A, B, and X each acquire 33⅓ percent of the voting stock of D. A, B, and X are not members of an associated group although, as a result of the purchase, C will become an AFN of each of A, B, X, and D. Unless an election under § 906(b)(1) is made with respect to D, the transfer of capital to C (Schedule C), resulting from purchase of C's stock, as well

as all subsequent direct investment transactions between D and C, will be charged to and reported by D alone (see § B907-1(iii)).

Example 17. Same facts as in Exemple 16, except that A, B, and X do not organize D, but enter into an agreement pursuant to which each of them directly acquires 8 percent of outstanding voting stock of C from N for $100,000 in cash, or a total of $300,000. A, B, and X are members of an associated group and each will be charged with a $100,000 transfer of capital to C (Schedule C). Moreover, unless A, B, and X exercise the election provided in § 907(c)(2) to report as a group, A, B, and X will each file separate Forms FDI-102 and FDI-102F.

Example 18. In 1969, three U.S. corporations (A, B, and C) enter into a joint venture agreement for the purpose of developing and exploiting an oil concession in Iran. The agreement is made in New York and provides that it is to be governed by New York law. Under the pertinent concession agreement, the Iranian government is entitled to 50 percent of all oil produced, while A, B, and C are to share the remaining 50 percent. A, B, and C are members of an associated group; the joint venture in Iran is an AFN of each.

(i) *Acting in concert pursuant to an agreement or understanding.*—An associated group exists only if two or more persons within the United States act in concert pursuant to an agreement or understanding. The agreement may be oral or written, and an agreement may be implied from the surrounding facts and circumstances even when no express agreement is involved. The most common examples of an express agreement are a joint venture or stockholders' agreements with respect to the stock and management of the foreign enterprise involved. The mere signature, adherence to or acceptance of the articles of incorporation or bylaws of a foreign corporation will not, of themselves, be considered an express or implied agreement or understanding to act in concert within the meaning of § 905(a). The result may be different, however, if the articles or bylaws contain provisions ordinarily contained in a stockholders' agreement. Similarly, the purchase of stock of a foreign corporation by U.S. underwriters and dealers or U.S. investors in connection with a bona fide public offering, and the execution and performance of customary agreements in connection with such offering, will not, of themselves, be considered such an agreement or understanding.

Example 19. In 1969, two U.S. corporations (A and B) each acquire 30 percent of outstanding voting stock of a foreign corporation (F). Simultaneously, A and B enter into a written stockholders' agreement concerning the stock so acquired and the participation of A and B in the management of F. A and B are an associated group.

Example 20. F is a publicly owned foreign corporation. Seventy-five percent of F's outstanding voting stock is owned by foreign nationals, the remaining 25 percent being owned by U.S. citizens and residents no one of whom owns more than 2 percent. In this situation, in the absence of any facts indicating that the U.S. shareholders acted, or are acting, in concert with respect to the purchase of F's stock or the voting of such stock, or with respect to the management of F, the U.S. shareholders are not an associated group.

Example 21. In 1967, a U.S. citizen and resident (A) became interested in purchasing majority control of a foreign corporation (F). A contacted 20 other U.S. citizens and residents with a view toward inducing them to purchase stock of F as an investment. Such persons were unknown to each other, but were informed by A that he was organizing a group of U.S. investors to purchase control of F. A informed such other persons that F was being mismanged and that with proper management F would be a very profitable venture. Thereafter, A purchased 20 percent of outstanding voting stock of F and 10 other U.S. citizens and residents contacted by A each purchased 2 percent of F's voting stock. No express written agreement was entered into among A and the other U.S. shareholders with respect to such purchase or with respect to any other matter concerning F, but each of the U.S. shareholders voted for A's nominees for directors. A and the other U.S. shareholders are an associated group.

(ii) *Aggregate 10 percent interest.*—An associated group exists only if the aggregate of direct and indirect interest in the foreign enterprise acquired or owned by the U.S. persons acting in concert amounts to at least 10 percent.

Example 22. In December 1967, three U.S. citizens and residents (A, B, and C) entered into an agreement pursuant to which each purchased 3 percent of the outstanding voting stock of a foreign corporation (F). A, B, and C are not an associated group, since the aggregate of their interests in F is only 9 percent. In June 1968, in furtherance of the 1967 agreement, A, B, and C each purchased an additional 2 percent of outstanding voting stock of F. Accordingly, A, B, and C became members of an associated group in June 1968. Whether an associated group would have resulted if only one of them had purchased an additional 2 percent of the outstanding voting stock of F, and, if so, as of what date they became members of such group, would depend on all the facts and circumstances surrounding the purchase.

(iii) *Members of associated group as separate DIs.*—Unlike members of an affiliated or family group, members of an associated group are not treated as a single person under the regulations. The principal effect of the associated group rule is to establish a DI-AFN relationship. Each member of an associated group is considered a separate DI in the foreign national (referred to as the "group AFN") owned by the group, with the following consequences:

Allowables must be individually elected under § 502 and calculated separately by each member of the group.

For compliance purposes (§ 201), each member of an associated group must compute direct investment during 1968 and subsequent years without reference to direct investment transactions of other members of the group. Long-term foreign borrowing by one member of an associated group may not be offset against the net transfer of capital or positive direct investment of other members of the group.

However, if two or more members of an associated group elect to be governed by § 503, the amount of positive direct investment that they may make in group AFNs is subject to the limitations of § 905(b)(2)(i). See § B905-1(iv).

Foreign balances held by a member of an associated group are calculated without reference to foreign balances held by other members. Under § 905(b)(1), a U.S. person who is a DI by virtue of the associated group rules, but does not own a 10 percent or greater interest in a foreign national, is not subject to the restrictions on liquid foreign balances of § 203(c) and is not required to report such balances (see § 907(c)(1)).

Separate reports are required from members of an associated group, unless they elect to report as a group under § 907(c)(2). However, even if the members elect to report as a group, compliance is still measured individually. Members of an associated group may be exempt from reporting on Forms FDI-101 (Base Period Report) and FDI-102 (Cumulative Quarterly Report), pursuant to the instructions to such forms, but only if the associated group as a whole would be exempt if an election under § 907(c)(2) had been made.

Example 23. In 1965, three U.S. corporations (A, B, and C) enter into an agreement pursuant to which each purchases 5 percent of the outstanding voting stock of a United Kingdom corporation (K) from an unaffiliated foreign national for $500,000 in cash, or a total of $1,500,000. The following also occurs during 1965 and 1966: A lends $200,000 to K, $50,000 of which is repaid in 1966; B sells $500,000 in merchandise to K on open account, the open account indebtedness of K to B being $300,000 at the end of 1966; C contributes $200,000 of equipment to the capital of K; during 1965 and 1966, K earns an aggregate of $3 million and paya dividends of $2 million, of which A, B, and C each receive $100,000. A, B, and C had no other AFNs during 1965 or 1966, individually or collectively. A, B, and C are an associated group and K is a group AFN of the associated group. Assuming an election to report as a group is not made under § 907(c)(2), A, B, and C will each submit a separate Form FDI-101 showing the following § 504(a)(2) historical allowables in Schedule B (000 omitted):

Corporation A:		
Purchase of stock of K	$500	
Loan to K	200	
Repayment by K	(50)	
Share of reinvested earnings of K (5% of $3,000 earnings minus $100 dividends)	50	
Total positive direct investment	700	
Allowable (65% of 50% of $700)	$227.50	
Corporation B:		
Purchase of stock of K	500	
Open account indebtedness	300	
Share in reinvested earnings of K	50	
Total positive direct investment	850	
Allowable (65% of 50% of $850)	$276.25	
Corporation C:		
Purchase of stock of K	500	
Contribution to capital	200	
Share in reinvested earnings of K	50	
Total positive direct investment	750	
Allowable (65% of 50% of 750)	$243.75	

If A, B, and C had not acted in concert in acquiring the stock of K, none of them would have a historical allowable in Schedule B since a DI-AFN relationship would not have existed. Also, if A, B, and C elected to report as a group under § 907(c)(2), they would file a single Form FDI-101 showing aggregate positive direct investment of $2,300,000 in Schedule B during 1965 and 1966 and an aggregate Schedule B allowable of $747,500. However, since compliance by each member of an associated group is measured separately, the FDI-102F would have to in-

dicate in a supplemental statement the portion of aggregate positive direct investment and the portion of the aggregate allowable allocable to each member of the group (see § B907–1(iii)).

(iv) *Associated group investment under § 503.*—Section 905(b)(2)(i) provides that positive direct investment made during any year by members of an associated group electing to be governed by § 503 is not authorized if the aggregate of direct investment by all such members of the group during the year in all group AFNs exceeds $6 million. Thus, each member of an associated group electing to be governed by § 503 must meet two separate tests: First, aggregate positive direct investment by such member in all AFNs (including, but not limited to, group AFNs of the associated group) may not exceed $6 million; and second, aggregate direct investment in group AFNs by such member and all other members of the associated group electing to be governed by § 503 may not exceed $6 million. Positive direct investment in group AFNs by members of the associated group electing to be governed by § 504 and positive direct investment pursuant to the incremental earnings allowable of § 506 are not included in computing direct investment for purposes of § 905(b)(2)(i).

Example 25. X, Y, and Z are members of an associated group having one group AFN. X, Y, Z have no other AFNs. All elect § 503 for 1972 and report as follows ($000 omitted):

	Direct investment in the Group AFN
X	(200)
Y	500
Z	1,700
Aggregate	2,000

X, Y, and Z are in compliance for 1972 under §§ 503 and 905(b)(2)(i).

Example 26. X, Y, and Z are members of an associated group, each owning a 33⅓-percent interest in a group AFN (B) in Schedule B. During 1973, X and Y elect to be governed by § 503. Z elects to be governed by § 504(a), pursuant to which he has an historical allowable of $400,000 in Schedule B. X transfers $2,600,000 to B; Y transfers $3,400,000, and Z transfers $500,000. B has losses of $300,000. All such direct investment is authorized. X and Y together have made $5,800,000 of positive direct investment in B, an amount authorized by §§ 503 and 905(b)(2)(i). Z has made positive direct investment of $400,000 ($500,000 less Z's share of B's losses ($100,000), an amount authorized by § 504. (Z's investment is not included in applying § 905(b)(2)(i) to direct investment made by X and Y.)

Example 27. X and Y are members of an associated group with respect to a group AFN (G). X has a wholly-owned AFN (A) and Y has a wholly-owned AFN (B). X and Y each elect to be governed by § 503 for 1973. X makes positive direct investment of $3 million in G and $2,600,000 in A. Y makes positive direct investment of $1,700,000 in G and $4,300,000 in B.

All such positive direct investment is authorized. The investment made by X in A and G ($5,600,000) is authorized by § 503. The investment made by Y in B and G ($6 million) is authorized by § 503. The investment made by X and Y in G ($4,700,000) is within the limitation of § 905(b)(2)(i).

(v) *Related AFNs.*—Although U.S. persons acting in concert must ordinarily own or acquire an interest in the same foreign enterprise before an associated group can exist, there may be instances where ownership or acquisition of interests in different foreign enterprises by U.S. persons acting in concert will be sufficient to constitute such persons an associated group. This will be true where the businesses conducted by the different foreign enterprises involved are so related as to justify treating them as a single economic unit for purposes of the regulations.

Example 28. A Danish citizen and resident (D) owns all the stock of two Danish corporations (E and F). E is engaged in the manufacture of widgets, while F markets the widgets produced by E. The management of E and F is substantially identical. Two U.S. citizens and residents (A and B) enter into an agreement with D pursuant to which A purchases all the stock of E from D, while B purchases all the stock of F from D. A and B have an understanding that the businesses of E and F will be operated in the same integrated manner as they have in the past and that the net profits of E and F will ultimately be split equally between them. A and B are an associated group, and E and F are group AFNs of the associated group.

Example 29. Three U.S. citizens and residents (A, B, and C) enter into an agreement to establish a chain of six drive-in restaurants in continental Europe. Each restaurant is to be established as a separate foreign corporation, and A, B, and C will each own 100 percent of two such corporations. A, B, and C are an associated group, and all of the restaurant corporations are group AFNs of the associated group.

(vi) *Effect of § 505.*—Under § 505, certain transfers between AFNs are treated as transfers by the transferor AFN to the DI and as further transfers by the DI to the transferee AFN. This rule applies only if either of the AFNs involved is an "affiliate" of the DI (defined in § 903(a)). An AFN is not considered an "affiliate" of the DI unless the DI (itself or together with other affiliates) owns more than 50 percent of the AFN. If, however, in the case of a group AFN of an associated group (a) no one member of the group (either itself or together with other affiliates of such member) owns more than 50 percent of the AFN, but (b) the members of the group as a whole (either themselves or together with their affiliates) own more than 50 percent of the AFN, then (c) the group AFN will be treated as an affiliate of each member of the group for purposes of § 505.

Example 30. A, B, C, and D are members of an associated group and F, a French corporation, is a group AFN of the associated group. A, B, C, and D each own 25 percent of the outstanding stock of F. F owns all outstanding stock of J, a Japanese corporation. F lends $100,000 to J on a long-term basis. F and J are considered to be affiliates individually of A, B, C, and D for purposes of § 505. Accordingly, under § 505(a)(3), F is deemed to have made a transfer of capital to A, B, C, and D in the amount of $25,000 each and A, B, C, and D are each deemed to have made a transfer of capital to J in the amount of $25,000.

If A were to own 70 percent of F's stock and B, C, and D each held 10 percent, F and J would be considered affiliates of A, but not of B, C, or D, for purposes of § 505. Accordingly, the $100,000 loan from F to J would be treated under § 505(a)(3) as a $100,000 transfer of capital from F to A, and as a further $100,000 transfer of capital from A to J.

(vii) *Reporting.*—Unless an election to report as a group is made under § 907(c)(2), members of an associated group should file separate Forms FDI–101, FDI–102, and FDI–102F reflecting such member's individual direct investment transactions (see § 905(b)(3)). If members of a group file separately, the FDI–102F filed by each member of an associated group should indicate on a supplemental statement the names of all other members of the associated group and the names of group AFNs. Each member of the group electing to be governed by § 503 should submit a supplemental statement indicating the amount of his direct investment and the direct investment of the other members of the group in group AFNs.

§ B906–1 Ownership of DIs.

A U.S. person may be a DI by reason of either a direct or an indirect interest in an AFN (see § 305). For example, if A and B (U.S. corporations) each own 50 percent of C (a U.S. corporation), and C has a wholly-owned AFN (X), all three corporations are DIs with respect to X. C has a 100 percent direct interest, and A and B each have a 50 percent indirect interest in X (see §§ 901 and 902). Unless A and B elect under § 906(b)(1) to be treated separately under the regulations, direct investment made, and liquid foreign balances held, by C will not normally be deemed to be made or held by A or B (see § 906(a)). However, since A and B are DIs by virtue of their indirect ownership of C's AFN, A and B each will be responsible for the liquid foreign balances held by it. Liquid foreign balances held by A and B must be kept within amounts permitted under § 203(c).

Example 31. A, B, C, and D each own 25 percent of E. During 1965–66 E made positive direct investment in Schedule A of $2 million, and A made positive direct investment of $800,000 in Schedule A. In addition, E maintained average end-of-month liquid foreign balances of $100,000. A maintained $50,000, and D maintained $80,000.

Absent an election under § 906(b)(1), E must file a Form FDI 101 (Base Period Report) showing $2 million of positive direct investment, in Schedule A during 1965–66 and a Schedule A historical allowable of $1,100,000 ($2,000,000×50%×110%). E's Form FDI–101 should also reflect base-period average end-of-month liquid foreign balances of $100,000. A would file a Form FDI–101 showing positive direct investment of $800,000 in Schedule A during 1965–66, an historical allowable of $440,000 ($800,000×50%×110%) and average end-of-month liquid foreign balances of $50,000. D would file a Form FDI–101 showing only end-of-month liquid foreign balances of $80,000. B and C would not file a Form FDI–101. B, C, and D would have no Schedule A historical allowables under § 504.

If A were to own 70 percent of E and B, C, and D were each to own 10 percent, A and E would be an affiliated group. Absent an election under § 906(b)(1), A and E would file a consolidated Form FDI–101 showing $2,800,000 of positive direct investment in

Schedule A, an historical allowable of $1,540,000 and liquid foreign balances of $150,000; D would file a Form FDI-101 showing only its balances; and B and C would not be required to file a Form FDI-101. B, C, and D would have no Schedule A historical allowables.

§ B906-2 Person deemed acting for or on behalf of a DI.

Under § 906(a)(2), a person within the United States owning an interest in a DI (whether or not such U.S. person is also a DI) may be deemed to be acting for or on behalf of the DI, if such person transfers funds or other property to an AFN of the DI. Application of the provisions of § 906(a)(2) to particular transactions will depend on analysis of all surrounding facts and circumstances.

§ B906-3 Election under § 906(b)(1).

Under § 906(b)(1), persons within the United States owning direct interests in a DI may, under certain circumstances, elect not to be governed by the rule set forth in § 906(a)(1). The principal effect of this provision is that, whereas direct investment transactions of and foreign balances held by a DI are not ordinarily attributable to or reportable by the stockholders or other owners of the DI, an election under § 906(b)(1) will reverse the ordinary rule and cause such direct investment transactions and foreign balances to be charged pro rata to the stockholders or other owners consenting to the election. An election once made may not be changed without the permission of OFDI.

(i) *Conditions for making election.*—An election under § 906(b)(1) can be made with respect to a DI only if electing U.S. persons own, in the aggregate, a majority interest in such DI and there are not more than 10 persons (including foreign nationals) owning direct interests in the DI. If more than 10 persons own direct interests in the DI, OFDI may nevertheless permit an election if it is demonstrated, upon written application, that the election will not cause substantial administrative difficulties.

(ii) *Procedure for making election.*—An election under § 906(b)(1) is made by filing a written notice thereof with the Program Reports Branch of OFDI. All persons within the United States owning direct interests in a DI must be afforded a reasonable opportunity to join in any election made with respect to such DI. Notice of such election (counterparts of which may be filed in lieu of a single instrument) must be executed by or on behalf of all persons consenting to the election and, if all U.S. persons owning direct interest in the DI do not join in the election, the notice must recite that such persons were in fact afforded a reasonable opportunity to do so.

(iii) *Effect of election.* A DI with respect to which an election is made under § 906(b)(1) is refered to as a "principal DI," while a person consenting to the election is referred to as a "consenting owner." An election under § 906(b)(1) with respect to any principal DI has the following consequences:

Each consenting owner is himself deemed a DI in every AFN of the principal DI, notwithstanding that he may not directly or indirectly own a 10 percent or greater interest in any such AFN (see § 906(b)(3)(i)). Thus, if a U.S. citizen (A) owns 5 percent of outstanding stock of a U.S. corporation (C), and C owns 100 percent of the stock of two foreign corporations (F and G), A will be a DI in both F and G if A consents to a § 906(b)(1) election, even though A's indirect interest in F and in G is merely 5 percent (and A would not otherwise be a DI under § 305). A would also be subject to the liquid foreign balance provisions of § 203(c) if he consented to an election with respect to C.

The entire amount of direct investment made and foreign balances held by the principal DI, the principal DI's share in earnings and losses of its AFNs for purposes of determining annual earnings, and total earnings and reinvested earnings under § 504(a)(3)(ii) and (b)(4) are attributed to each of the consenting owners according to their share of the direct interests in the principal DI held by all consenting owners (see § 906(b)(3)(i)). Thus, if A, B, C, and D each own 25 percent of the principal DI and all consent to an election, they will each be deemed to have made 25 percent of the principal DI's direct investment transactions. If only three consent to the election, their proportionate share would be 33⅓ percent (25 percent/75 percent) of the principal DI's direct investment transactions.

Section 504 and § 506 allowables of the principal DI are also attributed pro rata to the consenting owners. Compliance is then measured individually on the basis of the prorated allowable as well as other applicable allowables of each consenting owner. Each consenting owner may make an independent election under § 502 so that one consenting owner might elect § 504(a), another § 504(b), and another § 503. However, the amount of positive direct investment that consenting owners electing § 503 may make in AFNs of the principal DI is subject to the limitations of § 906(b)(3)(ii). See § B906-2(v).

Each consenting owner files reports under § 602 showing its prorata share of all reportable items of the principal DI, as well as its own direct investment activity. An exemption from filing reports is available to consenting owners only if the principal DI would have been exempt absent the election.

Operation and effect of the foregoing principles are demonstrated in the following examples:

Example 32. A, B, C, and D each own 25 percent of E. All are U.S. corporations. E made positive direct investment in Schedule B during 1965-66 of $2 million and held average end-of-month liquid foreign balances of $80,000. A, B, C, and D consent to an election under § 903(b)(1) with respect to E. A, B, C, and D will each file a Form FDI-101 showing positive direct investment of $500,000 ($2,000,000×25%) in Schedule B during 1965-66, an historical allowable in Schedule B of $162,500 ($2,000,000×50%×65%×25%) and average end-of-month liquid foreign balances of $20,000 ($80,000×25%). A, B, C, and D will also include direct investment made and balances held by them individually during 1965-66. E will not file a Form FDI-101.

If one owner (D) does not consent to the § 906(b)(1) election, A, B, and C will each report 33⅓ percent of E's direct investment and liquid foreign balances, i.e., the direct interest of each consenting owner divided by the aggregate of direct interests of all such consenting owners.

Example 33. During 1972, A, B, and C each own 33⅓ percent of D and consent to an election under § 906(b)(1). D has an historical allowable in Schedule A of $1,200,000 and in Schedule B of zero. During 1971 D's share of annual earnings of Schedule A AFNs was $2 million and of Schedule B AFNs, $1,500,000. As a result, D has a § 504(b) earnings allowable in Schedule A of $800,000 and in Schedule B of $600,000. Should a elect to be governed by § 504(a) for 1969, A would acquire, as a result of § 906(b)(3)(i), a $400,000 historical allowable in Schedule A and zero in Schedule B. If B and C chose to be governed by the § 504(b) allowable, each would acquire an earnings allowable of $266,667 in Schedule A and $200,000 in Schedule B.

Example 34. A, B, C, and D each own 25 percent of E. E has an historical allowable in Schedule A of $800,000. During 1969, E repays a 1967 long-term foreign borrowing (authorized repayment under § 1002) and incurs a repayment charge under § 1003 of $2 million in Schedule A. E has no AFNs in Schedules B or C. A, B, C, and D make a § 906(b)(1) election. For 1969, A elects to be governed by § 504(a) with an historical allowable in Schedule C of $500,000, in Schedule B of $600,000, and zero in Schedule A (other than what is available as A's pro rata share of E's historical allowable). A's pro rata share of the repayment charge ($500,000) reduces A's Schedule A allowable ($200,000, derived from E by virtue of the § 906(b)(1) election) to zero, and the excess ($300,000) reduces A's allowables in Schedule C from $500,000 to $200,000 (see § 1003). The Schedule B allowable is not affected.

Consenting owners may utilize allowables passed on to them by virtue of a § 906(b)(1) election either to make individual positive direct investments in AFNs of the principal DI or in their own AFNs. However, positive direct investment by the principal DI will be charged to consenting owners on the same prorata basis as allowable are "passed on". Thus, if the principal DI makes positive direct investment in any year that exceeds the applicable allowable "passed on" to the consenting owners, such owners might be in violation of § 201.

(iv) *Election by affiliated groups.*—Members of an affiliated group are deemed to be a single person under the regulations, except for purposes of making an election under § 906(b)(1) in which case they are treated as separate persons. However, the purpose of this rule is to make the § 906(b)(1) election available to members of an affiliated group, and not to break up the affiliated group.

Example 35. A, B, and C are U.S. corporations. A owns 51 percent of C and B owns 49 percent. A and C are an affiliated group. Nevertheless, A may elect under § 906(b)(1). If both A and B elect under § 906(b), A will assume 51 percent of C's direct investment position, and B will be accorded 49 percent. However, A and C are still an affiliated group and therefore will be treated as one person with respect to 51 percent of C's direct investment transactions.

Example 36. A, B, C, and D are all U.S. corporations. A owns 80 percent of D, and B and C each own 10 percent of D. B owns 100 percent of C. A and D are an affiliated group, and B and C are another affiliated group. If A, B, and C make a § 906(b)(1) election with respect to D, the A-D affiliated group will report as to 80 percent of D's direct investment and the B-C affiliated group will report as to 20 percent of D's direct investment.

(v) *Limitation on use of § 503 by consenting owners.* If direct owners electing under § 906(b)(1) also elect to be

governed by the § 503 minimum allowable, the $6 million allowable is not divided proportionally among the consenting owners, as are the §§ 504 and 506 allowables. Instead, § 906(b)(3)(ii) provides that the aggregate of direct investment made, and deemed made, by all consenting and nonconsenting owners in AFNs of the principal DI may not exceed $6 million.

Thus, each consenting owner electing to be governed by § 503 must meet two separate tests: First, aggregate positive direct investment made by such member in all AFNs (including, but not limited to, AFNs of the principal DI) may not exceed $6 million; second, aggregate direct investment in AFNs of the principal DI by such owner and all other consenting and nonconsenting owners electing to be governed by § 503 may not exceed $6 million. (This parallels the requirements of § 905(b)(2)(i) applicable to individual members of associated groups.) In computing aggregate direct investment under § 906(b)(3)(ii), direct investment in AFNs of the principal DI by consenting owners electing to be governed by § 504 and positive direct investment made under the § 506 incremental earnings allowable are not included.

Example 37. A, B, C, and D, U.S. citizens and residents, each own a 25-percent interest in E, a U.S. corporation, and consent to an election with respect to E under § 906(b)(1). E owns all outstanding stock of foreign corporations F, G, and H. A, B, C, and D elect to be governed by § 503 for 1973. During 1972 E makes a $4,100,000 long-term loan to F, contributes $200,000 to capital of G, and loans $250,000 to H. F, G, and H earn an aggregate of $50,000 but pay no dividends to E. Also during 1972, A makes a long-term loan of $100,000 each to F and G, while C makes a long-term loan of $1,250,000 to H. E's total positive direct investment is, therefore, $4,600,000, of which $1,150,000 (25 percent) is allocable each to A, B, C, and D because of the election. In addition, A has made positive direct investment of $200,000 and C has made positive direct investment of $1,250,000. The total positive direct investment made and deemed made in all AFNs of E by A, B, C, and D is, therefore, $1,350,000 for A ($1,150,000 plus $200,000), $1,150,000 for B, $2,400,000 for C ($1,150,000 plus $1,250,000), and $1,150,000 for D. To the extent that the total ($6,050,000) exceeds $6 million, A, B, C, and D are all in noncompliance.

Example 38. A, B, and C each own 33⅓ percent of D. A and B elect under § 906(b)(1). C does not consent to the election. A, B, and C each elect to be governed by § 503 for 1973. During 1973 D makes positive direct investment of $4,900,000, and C lends $1,150,000 to D's AFNs. The direct investment deemed made by A and B violates the limitation of § 906(b)(3)(ii), because aggregate direct investment made and deemed made by them and the nonconsenting owner (C) in the principal DI's AFNs exceeds $6 million.

Example 39. A, B, C, and D, each owning 25 percent of E, consent to an election under § 906(b)(1) with respect to E. In addition, they all elect to be governed by § 503 for 1973. In 1973 E makes a $500,000 repayment under § 1002. By operation of § 1003, each consenting owner's § 503 allowable is reduced by $125,000 (25 percent of the total repayment charge) so that each may make only $5,875,000 of positive direct investment in all AFNs (including, but not limited to, AFNs of E). In addition, the aggregate direct investment made by A, B, C, and D in AFNs of E during 1973 may not exceed $4,500,000 (§ 906(b)(3)(ii)).

§ B907–1 Reporting.

Section 907 sets forth a number of rules concerning the responsibility of DIs to file base period, quarterly and annual reports under § 602.

The general rule is that all DIs must file reports unless exempt from reporting as provided by the instructions to the applicable reports or by § 907(b)(3) or § 907(c)(2). It is important to note that persons consenting to an election under § 906(b)(1), and members of an associated group, are not exempt from reporting on Forms FDI–101, FDI–102, and FDI–102F under the provisions of the instructions to such forms, unless the "principal DI" or the associated group as a whole would be exempt.

(i) *Consenting owners.* Section 907(b)(1) provides that if a U.S. person consents to an election under § 906(b)(1) with respect to any principal DI, reports filed by such person should include such person's pro rata share (calculated as provided in § 906(b)(3)(i)) of the amount of foreign balances, direct investment and other items that the principal DI would have included in its reports had the election not been made.

Example 40. A U.S. corporation (D) owns 25 percent of U.S. corporation (E) and 40 percent of U.S. corporation (F). Elections are made under § 906(b)(1) with respect to both E and F with D and all other U.S. stockholders of E and F consenting to such elections. During 1969 E makes positive direct investment of $1 million in Schedule A and $2 million in Schedule B, while F makes positive direct investment of $500,000 in Schedule A and $300,000 in Schedule B. D also has a number of directly owned foreign subsidiaries in Schedules A and B, and D itself makes positive direct investment of $1 million in Schedule A and $800,000 in Schedule B during 1969. The Form FDI–102F filed by D for 1969 should show positive direct investment of $1,450,000 in Schedule A ($1 million plus 25 percent of $1 million plus 40 percent of $500,000) and $1,420,000 in Schedule B ($800,000 plus 25 percent of $2 million plus 40 percent of $300,000).

(ii) *Nonconsenting owners and owners of indirect interests.*—Section 907(b)(2) provides that reports filed by a U.S. person should not include any direct investment or other items attributable to (a) DIs in which the U.S. person owns merely an indirect interest, or (b) DIs in which the U.S. person owns a direct interest but has not consented to an election under § 906(b)(1).

Example 41. A U.S. citizen and resident (D) owns 25 percent of a U.S. corporation (E), which in turn owns 50 percent of another U.S. corporation (F). D also owns 50 percent of U.S. corporation (G) and 40 percent of U.S. corporation (H). No elections are made under § 906(b)(1) with respect to corporation E, F, or G. An election is made under § 906(b)(1) with respect to corporation H, but D does not consent to the election after being given a reasonable opportunity to do so. During 1969, E, F, G, and H, with various AFNs throughout the world make positive direct investment of $1 million, $500,000, $800,000 and $600,000, respectively. Also during 1969, D himself makes positive direct investment of $200,000 by cash purchase of foreign commercial real estate from an unaffiliated foreign national. The Form FDI–102F filed by D for 1969 should include his own positive direct investment of $200,000, but should not include any of the positive direct investment made by E, F, G, or H.

If D had made no positive direct investment of his own during 1969, D would not be required to file reports on Forms FDI–102 and FDI–102F for 1969.

(iii) *Associated groups.* Section 907(c)(1) provides that reports filed by a member of one or more associated groups should include all direct investment made by such person in group AFNs of the relevant associated groups. Although the general rule is that each member of an associated group files a separate report under § 602 showing his own direct investment transactions, § 907(c)(2) permits a majority in interest of an associated group to elect, subject to the approval of OFDI, to have the group file a single report showing direct investment transactions of all members of the group in all group AFNs during the relevant period. The election is made by filing a notice of election with the Program Reports Branch of OFDI, the notice being executed by or on behalf of a majority in interest of the group. Notwithstanding an election under § 907(c)(2), each member of an electing associated group having independent direct investment transactions with respect to AFNs other than group AFNs must file separate reports reflecting such transactions.

Example 42. (a) A U.S. citizen and resident (A) is a member of two different associated groups (G1 and G2). The group AFN of G1 is a French corporation (F) and the group AFN of G2 is an Australian corporation (K). A owns 5 percent of outstanding voting stock of F and 8 percent of outstanding voting stock of K. A also owns all outstanding stock of a Panamanian corporation (P). The following occurs during 1969: A contributes $100,000 to capital of K; F earns $80,000 and pays a dividend of $40,000, of which $2,000 was paid to A; K earns $200,000 and pays a dividend of $100,000, of which $8,000 is paid to A; A lends $300,000 to P on a long-term basis; P earns $50,000 and pays no dividends to A. Neither G1 nor G2 elects to report as a group. A's Form FDI–102F for 1969 should show positive direct investment of $350,000 in Schedule A (the $300,000 loan to P plus $50,000 reinvested earnings of P), positive direct investment of $108,000 in Schedule B (the $100,000 loan to K plus $8,000 reinvested earnings of K) and positive direct investment of $2,000 in Schedule C ($2,000 reinvested earnings of F).

(b) Should G2 elect, with approval of OFDI, to report as a group under § 907(c)(2), the Form FDI–102F filed by A for 1969 will not include the $108,000 of positive direct investment made by A in K (Schedule B). The FDI–102F filed by G2 will include all positive direct investment made by the members of G2 (including A's positive direct investment of $108,000) in K (Schedule B).

(c) If A does not own any stock of P, and G1 and G2 both elect, with approval of OFDI, to report as a group under § 907(c)(2), G1 will file a Form FDI–102F for 1969 showing the positive direct investment made by all members of G1 (including A's positive direct investment of $2,000) in F (Schedule C) and G2 will file a Form FDI–102F for 1969 showing the positive direct investment made by all members of G2 (including A's

positive direct investment of $108,000) in K (Schedule B). A himself will not file a Form FDI-102F for 1969.

It is essential to recognize that compliance by each member of an associated group is measured separately and without reference to direct investment transactions of the group's other members, whether or not the group elects to report as a group under § 907(c)(2). The only exception to this rule is contained in § 905(b)(2), with respect to cumulation of direct investment transactions with group AFNs by members of a group electing § 503. Accordingly, the Form FDI-102F filed by a member of the group under § 907(c)(2) should indicate, on a supplemental statement, the portion of the group's direct investment allocable to each member of the group.

(iv) *Affiliated and family groups.*—Section 907(d) provides that reports filed by an affiliated or family group for any period should aggregate all direct investment transactions and other reportable items attributable to each member during the relevant period.

Example 45. A U.S. corporation (A) owns 60 percent of outstanding voting stock of another U.S. corporation (B), and 80 percent of outstanding voting stock of a third U.S. corporation (C). B owns a 70 percent interest in a U.S. partnership (P). All outstanding stock of A is owned by a U.S. citizen and resident (D). During 1969, A makes positive direct investment of $100,000, B makes positive direct investment of $200,000, C makes positive direct investment of $300,000, D makes positive direct investment of $50,000, and P makes positive direct investment of $150,000. The Form FDI-102F filed by the affiliated group of A, B, C, D, and P for 1969 should show positive direct investment of $800,000, allocated among the appropriate scheduled areas. A, B, C, D, and P need not file a separate Form FDI-102F.

Had A and all other stockholders of B made an election under § 906(b)(1) with respect to B, the Form FDI-102F filed by the affiliated group for 1969 would include only 60 percent of B's positive direct investment, rather than the entire $200,000. Total positive direct investment to be reported by the group will, therefore, be $720,000.

B1000—Subpart J (§§ 1001-1003)

§ B1000-1 Introduction.

Direct investment in AFNs may be offset by the allocation of available proceeds of long-term foreign borrowing (§ 306(e) or, prior to July 1, 1972, by the expenditure of such proceeds in making transfers of capital to AFNs (§ 313(d)(1). The subsequent repayment of long-term foreign borrowing will involve a transfer of capital under § 312(a)(7) to the extent that deductions were taken under § 306(e) or § 313(d)(1), and such transfer of capital will be deemed to have been made to the scheduled area or areas in which such deductions were taken. (See § B324-11.) Also, satisfaction by a DI of the debt obligation of its AFN is a transfer of capital under § 312(a)(6). Thus, repayment by a DI of its own long-term foreign borrowing or of an AFN borrowing may result in positive direct investment that exceeds the amount authorized .under Subpart E. However, § 1002(a) generally authorizes positive direct investment (which may be in excess of Subpart E allowables) attributable to transfers of capital resulting from repayment of certain borrowings by DIs and their AFNs.

It should be noted that repayment of long-term foreign borrowing, proceeds of which were expended in transfers of capital on or after July 1, 1972, is not a transfer of capital unless such proceeds were allocated under § 306(e). (See § B313-6.)

The general authorization under § 1002(a) applies to: (a) repayment of long-term foreign borrowings made prior to January 1, 1968; (b) repayment by a DI, pursuant to a guarantee, of AFN borrowings made prior to January 1, 1968; (c) repayment of AFN borrowings not guaranteed by the DI if the borrowings were made from a bank prior to January 1, 1968; and (d) repayment of AFN borrowings made from a bank after January 1, 1968, pursuant to a fixed loan committment established by the AFN prior to that date. Section 1002(a) thus authorizes repayment of borrowings contracted prior to the effective date of the program.

Section 1002(a) also authorizes repayment by a DI of borrowings made by an AFN and guaranteed by the DI, on or after June 10, 1968, provided that the DI files, with respect to the borrowing, a certificate described in § 1002(b). In the certificate, the DI must state, in light of all facts and circumstances existing at the time of the guarantee that it has reason to believe either that the DI will not make any repayment of the borrowing within 7 years of the guarantee, or that any positive direct investment resulting from repayment within 7 years will not exceed the amount of positive direct investment authorized by Subpart E. The section similarly authorizes repayment of a DI's own long-term foreign borrowing made on or after June 10, 1968, provided that the DI files a similar certificate with respect to the long-term foreign borrowing.

Section 1002(a) further authorizes repayment of a DI's borrowing made during the period from January 1, 1968, through June 9, 1968. During that period the predecessor of Subpart J, General Authorization No. 1, was in effect. General Authorization No. 1 authorized repayment of a DI's long-term foreign borrowing and an AFN borrowing guaranteed by the DI, conditioned upon the filing of a certificate similar to the certificate required by present § 1002(a).

Finally, § 1002(a) authorizes repayment by the DI of a long-term foreign borrowing or a borrowing by an AFN, whether or not guaranteed by the DI, if repayment occurs by issuance of stock of the DI pursuant to conversion by holders of debt obligations issued by the DI (or its AFN) in connection with the borrowing.

Certification in accordance with § 1002 is not required to qualify borrowing by a DI as long-term foreign borrowing under § 324(a). Such certification is solely a requirement for repayment of such borrowing to be authorized under Subpart J, independently of Subpart E or M allowables, and is filed at the opton of the DI.

Although repayments pursuant to § 1002(a) are authorized independently of Subpart E or M allowables, any resulting positive direct investment has the effect of reducing such allowables. Under § 1003, the amount of such positive direct investment constitutes a "repayment charge" which reduces first the allowable in the scheduled area where the transfer of capital is recognized pursuant to § 312(a)(6) or (7), then the allowables in Schedules C, B, and A, in that order, and finally the allowables in future years in the same manner. Total reductions will equal the amount of positive direct investment resulting from repayment, but the charge does not reduce allowables in any scheduled area to less than zero in any year. Reduction of allowables occurs in the year in which repayment is made, except for repayment by means of conversion of debt obligations into stock of the DI, in which case the repayment charge is incurred in the following year (see § 1002(a)(3)).

Section 702 should be read in conjunction with Subpart J. Ths section is intended to make clear that a lender may enforce obligations entered into with DIs and AFNs, whether or not performance by the obligor is authorized by the regulations, absent the lender having actual knowledge at the time the borrowing is made that the use of the proceeds thereof, the repayment thereof, or any other transaction in connection therewith will constitute a violations by the DI of the regulations.

§ B1001-1 Definition of borrowing by a DI and by an AFN.

Section 1001(b) defines the term "borrowing by a DI" as a borrowing by a DI repayment of which would constitute a transfer of capital under § 312(a)(7), which applies to any long-term foreign borrowing (as defined in § 324), the proceeds of which have been expended in making (or, during 1968, allocated to) transfers of capital during the period January 1, 1965, through June 30, 1972, or allocated to positive direct investment. Repayment of borrowings by the DI that are not long-term foreign borrowings, and repayments of long-term foreign borrowings, the proceeds of which have not been expended prior to July 1, 1972, or allocated, do not result in transfers of capital.

Section 1001(a) defines the term "borrowing by an AFN". As is the case with a DI's long-term foreign borrowing, a "borrowing by an AFN" includes not only the typical loan of funds and sale of debt obligations, but may also include other transactions, the practical economic effect of which is that the AFN acquires an interest in property, with all or part of the payment deferred to some future date. Thus, for example, an installment purchase of property by an AFN may involve a "borrowing" for purposes of Subpart J. (See § B324-4.)

Section 1002(e)(1) provides that a borrowing by a DI or by an AFN is deemed to have been made on the date the proceeds are received by the borrower, or, if a purchase of property on credit is

involved, on the date the property is purchased. If, however, the borrowing involves a public offering of securities, the borrowing is deemed to have been made on the date the securities are issued, and if the borrowing involves the use of an overdraft facility, the borrowing is deemed to have been made when the overdraft is used. The date of a borrowing is significant in determining (1) whether the borrowing, if made by a DI, qualifies as long-term foreign borrowing under § 324, and (2) whether any repayments of the borrowing are expected to be made within 7 years from the date thereof.

As is the case with respect to a long-term foreign borrowing under § 324(b)(1), the refinancing of a borrowing by an AFN, by virtue of renewal, extension, or continuance thereof or a subsequent borrowing from the same or another lender, is not a repayment of the borrowing or the making of a new borrowing. (See 1002(e)(2).)

Delivery of equity securities of a DI to holders of debt obligations issued by an AFN, in exchange for the debt obligations of the AFN, constitutes repayment by the DI of the AFN's borrowing (a transfer of capital under § 312(a)(6) in the amount of the debt retired). Such treatment is analogous to the treatment of delivery of equity securities of a DI in exchange for the debt obligations issued in connection with a long-term foreign borrowing. (See § B324–11 regarding repayment by conversion with respect to long-term foreign borrowing.)

There are, however, some significant differences between a borrowing by an AFN (other than borrowings by an AFN covered by Subpart N) and as long-term foreign borrowing by a DI.

First, while a DI's long-term foreign borrowing must be made from a foreign person (other than a Canadian person), a borrowing by an AFN may be made from any person, including a United States or a Canadian person, so long as such person is neither an AFN of the DI nor the DI itself.

Second, expenditure prior to July 1, 1972, or allocation of proceeds of long-term foreign borrowing by the DI will give rise to deductions from net transfer of capital and positive direct investment, under §§ 313(d)(1) and 306(e). Although neither the "borrowing by an AFN" nor a guarantee thereof by the DI constitutes a transfer of capital by the DI, investment by the AFN of funds received from its borrowing in other AFNs of the DI may result in transfers of capital under §§ 505 and 312.

Third, while repayment of a DI's long-term foreign borrowing results in a transfer of capital under § 312(a)(7), if the proceeds thereof have been expended prior to July 1, 1972, or allocated, repayment of a "borrowing by an AFN" by the AFN will not result in a transfer of capital. Repayment of such borrowings by the DI, however, will result in a transfer of capital under § 312(a)(6) to the borrower AFN, since repayment indirectly increases the DI's debt or equity interest in the AFN.

Note that the treatment under Subpart N of an "overseas borrowing" by an AFN that qualifies as an OFS of the DI is substantially different from the normal AFN borrowing. (See §§ B1401–1405.)

§ B1001–2 Borrowing by a business venture AFN.

The identity of a borrower is normally ascertainable by reference to the instrument evidencing the debt obligation. However, when a borrowing transaction is purportedly entered into by a business venture AFN that is a direct branch of a DI (as described in § 304(a)(1)(ii)), identity of the actual primary obligor is difficult to ascertain. Similar difficulty is encountered when a borrowing is purportedly made by a business venture AFN that is a branch of an incorporated AFN (as described in § 304(a)(1)(iii). Since the regulations distinguish between borrowing by a DI and borrowing by an AFN for many purposes, DIs are advised to submit transactions involving questions of this nature to OFDI for an interpretation.

§ B1001–3 Definition of guarantee.

The term "guarantee" is defined in § 1001(c). The written acknowledgement of secondary responsibility referred to in § 1001(c)(1) is confined to acknowledgements given to a bank. Such acknowledgements refer to general assurances of repayment that, in the typical case, are now intended to be legally enforceable against the DI but represent a moral commitment of the DI that the loan will be repaid.

The written guarantee, endorsement, etc., specified in § 1001(c)(2), refers to the customary legally binding commitment whereby the DI guarantees payment of principal and interest by, or collection thereof from, an AFN. It does not include subordination agreements.

The reference to "through-put" agreements, "take or pay" contracts, "keep-well" agreements and similar written agreements in § 1001(c)(3) covers certain types of financial arrangements designed to assure that the AFN will have sufficient funds to repay the relevant borrowing. Generally, a "through-put" agreement is an agreement (typically made by companies in the extractive industries) whereby the DI agrees to put certain types of raw materials through a particular processing, refining or delivery facility of an AFN, while a "take or pay" contract is a supply agreement whereby the DI contracts to pay for production made available by the AFN, whether or not the DI in fact accepts delivery. A "keep-well" agreement refers generally to an agreement whereby the DI agrees to supply sufficient funds to the AFN for working capital to enable repayment of the borrowing in question.

Section 1001(c)(4) provides that mortgages, pledges, or hypothecations of property made by a DI as security for repayment of a borrowing by an AFN will constitute a "guarantee" if the transaction does not involve a transfer of capital by the DI under § 312(a)(9). The guarantees described in § 1001(c)(2)–(4) are not limited to transactions involving banks.

Example 1. DI pledges stock of a domestic "affiliate" to a domestic bank as security for a borrowing by an AFN from such bank. The pledge constitutes a guarantee under § 1001(c)(4).

Example 2. DI pledges equity securities of foreign corporations that are not AFNs to a domestic bank as security for a borrowing by an AFN from a foreign branch of such bank. The pledge constitutes a guarantee under § 1001(c)(4).

Example 3. DI pledges a Deutsche Mark deposit in a German bank as security for a borrowing by an AFN from such bank. The pledge constitutes a transfer of capital under § 312(a)(9) and does not constitute a guarantee under § 1001(c)(4).

Example 4. DI pledges a demand deposit in a domestic bank as security for a borrowing by an AFN from a foreign branch of such bank. The pledge constitutes a guarantee under § 1001(c)(4).

The term "guarantee" includes a guarantee given by one AFN in respect of a borrowing by another AFN of the same DI, if repayment pursuant to the guarantee would result in a transfer of capital by the DI under § 505. A § 312(a)(6) transfer of capital would be charged to the DI by operation of § 505(a)(3) if the guarantor AFN that makes repayment pursuant to the guarantee is an affiliate of the DI under § 903(a).

Example 5. DI has two AFNs: A wholly owned subsidiary in Panama (P) that in turn has a wholly owned subsidiary in Sweden (S). S borrows from a foreign bank. Repayment of the borrowing is guaranteed by P. If P is called upon to repay the borrowing of S, the payment (whether made directly to the lender or to S) is deemed a transfer from Schedule A to the DI and from the DI to Schedule C, pursuant to § 505(a)(3). Any positive net transfer of capital to Schedule C attributable to the transfer deemed made by the DI will generally be authorized under Subpart J if the DI files a certificate (Form FDI–106) within 10 days after the execution of the guarantee by P.

§ B1001–4 DI's guarantee of an AFN borrowing.

Except for certain AFN borrowings from banks made prior to January 1, 1968, and those repaid through conversion into stock of the DI, § 1002(a) authorizes repayment by a DI of an AFN's borrowing only if made pursuant to DI's guarantee of such borrowing. Thus, in most cases, in order for repayment to be authorized, there must be both a "guarantee" and a "borrowing by an AFN", as those terms are defined in § 1001.

Example 6. DI's AFN arranges to borrow $1 million from a New York bank. On June 1, 1970, AFN receives $1 million from the bank and gives the bank a note in that amount, payable in 2 years, and also gives the bank a guarantee of repayment of principal and interest executed by the DI. On June 1, 1970, the AFN has made a borrowing that is guaranteed by the DI.

Example 7. On June 1, 1970, DI's AFN receives machinery purchased from an English manufacturer with a value of $1 million. Under the terms of the purchase agreement, $250,000 is payable upon receipt of the machinery, the remainder being payable in three equal annual installments of $250,000 (plus interest), commencing 1 year from date of receipt of the machinery. Upon receipt of the machinery, the AFN delivers

to the seller a guarantee of repayment of principal and interest executed by the DI. On June 1, 1970, AFN has made a borrowing guaranteed by the DI.

Example 8. On June 1, 1970, DI's Schedule C AFN, pursuant to a purchase agreement previously entered into, acquires all the stock of a corporation in Schedule A for $2 million. The AFN must pay $500,000 at the closing on June 1, the remainder being payable to the selling shareholders of the foreign corporation in five equal annual installments of $300,000 (plus interest), commencing 1 year from the closing date. At the closing, the AFN delivers to the selling shareholders a guarantee of payment of the principal and interest executed by the DI. On June 1, 1970, the AFN has made a borrowing guaranteed by the DI. (Acquisition of the Schedule A corporation will result in a transfer of capital, under §§ 505 and 312(a)(1), of $2 million from the Schedule C AFN to the DI and from the DI to the Schedule A AFN. Since the borrowing is not a long-term foreign borrowing as defined in § 324(a), no deduction with respect to net transfer of capital will be received by the DI. If the DI must repay the borrowing pursuant to the guarantee, a transfer of capital to the Schedule C AFN will result under § 312(a)(6).)

Example 9. DI's AFN arranges with a group of investment banking organizations for the sale of 12-year debentures in face amount of $10 million to be dated September 1, 1970. The debentures will be guaranteed by the DI as to payment of principal, interest and premium (if any). The debentures also will be convertible into common stock of the DI. On September 5, 1970, an underwriting agreement is signed pursuant to which the debentures are to be sold to the underwriters at a discount of 3 percent and sold to the public at par. At the closing on September 25, 1970, AFN issues the debentures and receives a check from the underwriters for $9,500,000, the 3 percent discount and other underwriting commissions, fees and expenses having been deducted. On September 25, 1970, the AFN has made a borrowing of $10 million guaranteed by the DI.

Example 10. DI's Schedule C AFN (C) arranges with a group of investment banking organizations for the sale of $10 million of 12-year debentures to be dated September 1, 1970. The debentures will be guaranteed by DI as to payment of principal, interest, and premium (if any). Attached to the debentures will be warrants which may be detached after a period of 6 months from the date of issuance and which entitle the holder to purchase a certain number of shares of the common stock of DI at a specified price. The warrants are valued by DI's independent financial counsel at $750,000 (a valuation acceptable to OFDI). On September 5, 1970, an underwriting agreement is signed pursuant to which the debenturs are to be sold to the underwriters at a discount of 3 percent and sold to the public at par. At the closing on September 25, 1970, C issues the debentures and receives a check from the underwriters for $9,500,000, the 3 percent discount and other underwriting commissions, fees, and expenses having been deducted. C has made a borrowing of $10 million guaranteed by the DI on September 25, 1970. On the same date DI is considered to have made a transfer of capital under § 312(a) to C in the amount of the value of the warrants ($750,000) that are attached to the debentures.

Example 11. On September 15, 1968, DI's AFN entered into a revolving credit arrangement with a foreign bank, pursuant to which AFN could borrow up to $5 million during a period ending September 15, 1975. The agreement provided that each takedown under the arrangement would be evidenced by a 180-day note, each note bieng renewable by its terms within the overall period of the arrangement. DI executed and delivered to the foreign bank a guarantee of payment of principal and interest of any borrowings made by the AFN pursuant to the revolving credit arrangement. On October 1, 1968, AFN took down $3 million and on February 1, 1969, it took down $2 million. AFN made a borrowing guaranteed by the DI of $3 million on October 1, 1968, and another borrowing guaranteed by the DI of $2 million on February 1, 1969.

The authorization contained in § 1002(a) is limited to repayment of a guaranteed borrowing. Payments made by a DI pursuant to guarantees of performance by its AFN of contractual obligations other than the repayment of debt are not authorized by § 1002(a).

Example 12. DI has a Schedule C AFN (C) that is engaged in the business of road construction. C enters into a contract with a foreign government for construction of a highway that must meet certain specifications. DI guarantees performance by C of the contract according to specifications contained therein. If DI is called upon to pay money to the foreign government or to transfer funds to the AFN to enable performance according to the contract specifications, the payment or transfer is not authorized by § 1002(a).

Example 13. DI has a Schedule C AFN involved in the construction business. From time to time, AFN makes bids on certain construction projects, in connection with which the AFN must file a bond that is forfeited if AFN is let a contract that it cannot perform. AFN has an arrangement with its local bank, in the form of an overdraft whereby the bank will pay any such forfeited amounts. DI has issued a guarantee of payment of principal and interest of any amounts paid by the bank pursuant to its arrangement with the AFN. If the AFN utilizes the arrangement to pay a forfeit which results in an overdraft, the AFN, at that time, will have made a borrowing guaranteed by the DI, and repayment by the DI may be authorized under § 1002(a).

Example 14. On July 1, 1969, DI's AFN entered into a 20-year charter-hire agreement with an unaffiliated foreign national (X) for a ship. The terms of the charter-hire agreement with X are construed by AFN's public accounting firm as an installment purchase under accounting principles generally accepted in the United States, and AFN treats an appropriate portion of the charter-hire payments as return of principal to X and treats the remainder as interest charges. Under the charter-hire agreement, AFN also agrees, among other things, to keep the ship in good repair, to keep it clear of any liens, and to hold X harmless from any liabilities that may arise out of the operation of the ship. At the closing, DI executes and delivers to X a guarantee of payment and performance of all of the obligations of AFN under the charter-hire agreement. At the closing, AFN has made a borrowing guaranteed by the DI in the amount of the aggregate principal portion of charter-hire payments to be made during the term of the charter-hire agreement. The DI's guarantee of any other obligations of AFN under the charter-hire agreement is not a guarantee of a borrowing by the AFN, and any payments or transfers to the AFN to enable it to perform any such obligation cannot be authorized under § 1002(a).

Renewal of a prior guarantee, or execution of a guarantee upon refinancing of a previously guaranteed AFN borrowing, is not considered to be a new guarantee unless the principal amount guaranteed is increased. Moreover, renewal of a guarantee or execution of a new guarantee with respect to an AFN borrowing that is still outstanding is not considered to be the making of a new guarantee.

Example 15. On September 1, 1963 DI's AFN entered into a revolving credit agreement with a foreign bank (X) that permitted AFN to borrow up to $2 million. The borrowing was guaranteed by DI. AFN immediately took down the entire $2 million. On September 1, 1969, AFN makes a $2 million borrowing from another foreign bank (Y), giving Y as 3-year note in the principal amount of $2 million. The $2 million is used to repay AFN's borrowing from X. Even though DI executes a new guarantee of repayment of the 3-year note in favor of Y, DI is not considered to have made a new guarantee.

Example 16. On September 1, 1968, DI's AFN entered into a revolving credit agreement with the foreign branch of a United States bank for a period of 5 years. Under the agreement, AFN could make borrowings of up to $5 million evidenced by 180-day notes renewable by their terms. The agreement also provided that the DI guarantees repayment of each 180-day note as to the payment of principal and interest. On September 1, 1968, AFN immediately took down the full $5 million. On March 1, 1969, AFN executed new 180-day notes for the full $5 million and delivered to the bank a new guarantee of DI with respect to the new notes. DI is not considered to have made a new guarantee.

§ B1002–1 Authorization of positive direct investment attributable to repayment of certain borrowings.

Positive direct investment attributable to a DI's repayment of an AFN's borrowing is authorized by § 1002(a) if:

The borrowing was guaranteed by the DI prior to January 1, 1968 (§ 1002(a)(1));

The borrowing was guaranteed by the DI on or after January 1, 1968, but prior to June 10, 1968, and the DI complied with the certification requirements of § 2(a)(1) of General Authorization No. 1 (§ 1002(a)(1));

The borrowing was guaranteed by the DI on or after June 10, 1968, and the DI complied with the § 1002(b) certification requirements (§ 1002(a)(5));

The borrowing was obtained from a bank prior to January 1, 1968 (§ 1002(a)(2));

The borrowing was obtained from a bank on or after January 1, 1968, pursuant to a fixed loan commitment or line of credit established prior to January 1, 1968, or any renewal or extension thereof (§ 1002(a)(2)); or

The borrowing involved issuance of debt obligations by the AFN convertible into stock of the DI (the date of the borrowing being irrelevant), and repayment by the DI consists of delivery of DI's stock upon exercise of conversion rights § 1002(a)(3)).

Positive direct investment attributable to repayment of a DI's long-term foreign borrowing is also authorized by § 1002(a) if:

The borrowing was made prior to January 1, 1968 (§ 1002(a)(4));

The borrowing was made from January 1, 1968, through June 9, 1968, and the DI complied with the certification requirements of § 2(b) of General Authorization No. 1 (§ 1002(a)(4));

The borrowing was made on or after June 10, 1968, and the DI complied with the § 1002(b) certification requirements (§ 1002(a)(6)); or

The borrowing involved the issuance of debt obligations of the DI convertible into stock of the DI, and repayment by the DI consists of delivery of the DI's stock upon exercise of conversion rights (§ 1002(a)(3)).

Section 1002(a) authorizes not only a DI's actual repayment of the enumerated AFN borrowings, but also transfers of capital by a DI to AFNs to enable direct repayment of such borrowings.

However, § 1002(d) provides that positive direct investment by a DI is not authorized under § 1002(a) if repayment of the borrowing is made at the option of the DI. Repayment pursuant to a call or like provision vesting control of the time of repayment in the DI or an AFN, or the existence of unexercised options to renew, extend or continue the borrowing at the time of repayment, will be deemed to result in repayment at the option of the DI.

(i) *Preprogram guarantee of AFN borrowing.* Repayment by a DI of an AFN borrowing, pursuant to a guarantee made prior to January 1, 1968, is authorized by § 1002(a)(1). A transfer of capital by the DI to an AFN to enable the AFN to repay a borrowing is similarly authorized, if the borrowing was guaranteed prior to the effective date. For the purposes of § 1002(a)(1), a guarantee will be considered to have been made prior to the effective date if it was executed prior to the effective date, even though the AFN might not have actually made its borrowing until after the effective date. Renewal of such guarantee or execution of a new guarantee in connection with the same borrowing of the AFN or the refinancing thereof for which the first guarantee was executed will not be considered a new guarantee.

Example 17. DI has an AFN (C) in Schedule C. On September 1, 1967, C borrowed $300,000 from a foreign bank for a term of 3 years, repayment of the borrowing being guaranteed by DI on the same date. For 1970 DI elects § 504(a) with a zero historical allowable in Schedule C. On August 31, 1970, when the loan becomes due, DI is called upon under the guarantee to repay the loan, plus $20,000 in accrued unpaid interest, C itself being unable to make repayment. DI makes repayment as demanded. Repayment of the borrowing plus accrued interest in the aggregate of $320,000 is authorized by § 1002(a)(1) regardless of the fact that no positive direct investment is authorized to DI under Subpart E during 1970 in Schedule C.

(ii) *Repayment of AFN bank borrowing made or committed prior to January 1, 1968.* A transfer of capital is authorized if made in repayment of, or to enable an AFN to repay, a borrowing by such AFN from a bank made prior to January 1, 1968, or a borrowing by such AFN from a bank made on or after January 1, 1968, pursuant to a fixed loan commitment or line of credit established prior to such date or pursuant to any renewal or extension thereof. Such repayment is authorized, however, only if the liquid assets of the AFN are not sufficient to repay the borrowing at maturity and if the AFN has made every reasonable effort to refinance the borrowing on terms generally available to companies of similar size and financial position. If, on or after January 1, 1968, the amount of such pre-January 1, 1968, fixed loan commitment or line of credit is increased by 10 percent or more, a new fixed loan commitment or line of credit is deemed to have been established at the time of the increase in an amount equal to the amount of the increase (see § 1002(a)(2)); repayments under the new fixed loan commitment or line of credit are not authorized by § 1002(a)(2) but may, if the applicable certification requirements are complied with, be authorized by § 1002(a)(1) or (a)(5).

If an AFN made a pre-January 1, 1968 borrowing from a bank and such borrowing was also guaranteed prior to January 1, 1968, the repayment will be generally authorized under § 1002(a)(1), rather than under § 1002(a)(2). If, however, the borrowing by the AFN was made prior to January 1, 1968, and the guarantee was made after January 1, 1968, § 1002(a)(2) will apply, unless DI, at the time of the guarantee, filed a certificate pursuant to General Authorization No. 1.

Example 18. DI has an AFN (C) in Schedule C. On September 1, 1967, C borrowed $300,000 from a foreign bank (F) for a term of 3 years. Repayment of the borrowing was not guaranteed by DI, but DI repaid the principal and accrued interest of $320,000 voluntarily on August 31, 1970, when the loan became due. At the time of such repayment, C had liquid assets which were just sufficient to meet its current operating expenses, and C had diligently, though unsuccessfully, attempted to refinance the borrowing with F and with other foreign lenders. The repayment by DI is authorized by § 1002(a)(2).

Example 19. DI has an AFN (C) in Schedule C. On December 1, 1967, C entered into a revolving credit agreement with a foreign bank (F) pursuant to which C could borrow up to $1 million over a period ending November 30, 1970. Borrowings under the agreement are to be made against notes with maturities of 90 days which can be renewed within the overall period of the agreement. On January 15, 1968, C took down the entire $1 million and the note was rolled-over until November 30, 1970, at which time the outstanding indebtedness, plus $50,000 in accrued interest, became due. At this time, C had liquid assets which were sufficient to repay only $300,000 of the amount due and C was unable, after diligent effort, to refinance the balance with F or with other foreign lenders. Accordingly, the remaining $750,000 due was paid by DI on November 30, 1970. The payment by DI to F of $750,000 is authorized by § 1002(a)(2).

Example 20. On September 1, 1967, an AFN of DI entered into a revolving credit agreement under which AFN could borrow up to $1 million, and AFN immediately took down the entire amount. On September 20, 1968, the amount available to AFN under the revolving credit agreement was increased to $1,500,000, and AFN borrowed the additional $500,000 in October 1968. As a result, a new $500,000 line of credit is deemed to have been established on September 20, 1968, and repayment by DI of any part of the additional $500,000 borrowing will not, therefore, be authorized by § 1002(a)(2) but would be authorized by § 1002(a)(5) if DI had guaranteed the aditional $500,000 borrowing and had complied with the certification requirements of § 1002(b) of Subpart J.

(iii) *Repayment of AFN borrowing pursuant to guarantee made in the period January 1, 1968, through June 9, 1968.* Repayment by a DI of an AFN borrowing, pursuant to a guarantee made on or after the effective date through June 9, 1968, is authorized by § 1002(a)(1), if the DI filed a certificate described in § 2(a)(1) of General Authorization No. 1. A transfer of capital by the DI to an AFN to enable the AFN to repay such borrowing is similarly authorized.

Section 2(a)(1) of General Authorization No. 1 required the DI to state that the DI "has no reason to believe, under existing circumstances, that the affiliated foreign national will be unable to pay or otherwise satisfy such indebtedness without resort to performance under the guarantee * * *." Although, should the DI be called upon to repay the AFN's borrowing pursuant to the guarantee, positive direct investment would be authorized by § 1002(a)(1) even if in excess of the amount authorized to the DI in the year of repayment, the Office may inquire into the good faith of the statement made by the DI in its certificate.

Example 21. DI elects to be governed by § 503 during 1969. On March 15, 1968, DI executed its guarantee of payment of principal and interest under its AFN's 1-year note in the principal amount of $2 million, executed that same day. DI filed a General Authorization No. 1 certificate, based upon the belief that AFN could renew the borrowing at the time that it came due. During 1968, the AFN experienced financial difficulties, the market for AFN's products diminished, and DI, at the beginning of 1969, was forced to discontinue the AFN's operations. DI therefore repaid the $2 million, pursuant to its guarantee, on the maturity date of the note. The transfer of capital in repayment resulted in positive direct investment in excess of $1 million, but the entire amount of positive direct investment attributable to repayment of the borrowing is authorized by § 1002(a)(1). Upon inquiry by the Office into the basis for DI's statement in the certificate, DI may offer as an explanation the changed circumstances which were beyond its control.

(iv) *Repayment of a long-term foreign borrowing made prior to January 1, 1968.* Repayment of a long-term foreign borrowing (other than a repayment resulting from conversions of debt into equity as described in § 1002(a)(3)) made prior to the effective date is authorized by § 1002(a)(4).

Example 22. In 1967, DI purchased all of the stock of a United Kingdom corporation from an unaffiliated foreign national. The purchase price was $5 million, $1 million being paid in cash at the closing and the balance being payable (together with interest of $480,000) 3 years from the date of closing. The $4 million balance constitutes a long-term foreign borrowing and payment of such balance in 1970 is authorized by § 1002(a)(4). Payment of the $480,000 in interest does not constitute a transfer of capital and thus does not require authorization (see § 312(c)(8)).

(v) *Repayment of a long-term foreign borrowing made in the period from January 1, 1968 through June 9, 1968.* Repayment of a long-term foreign borrowing (other than a repayment resulting from conversion of debt into equity as described in § 1002(a)(3)) made from

the effective date through June 9, 1968, is authorized by § 1002(a)(4), provided that the DI filed a certificate described in § 2(b) of General Authorization No. 1.

Section 2(b) of General Authorization No. 1 required the DI to state that it "has reason to believe that, under existing circumstances, the borrowing will ultimately be repaid or satisfied from sources outside the United States."

Example 23. On March 15, 1968, DI made a long-term foreign borrowing from a foreign bank, the proceeds of which were $2 million. DI gave the bank its note with an original maturity of 12 months and filed a General Authorization No. 1 certificate in the belief that it could either renew the note when it became due or repay the borrowing with proceeds of another long-term foreign borrowing. DI immediately loaned all of the proceeds to a Schedule C AFN. During 1968, the AFN experienced financial difficulties, the market for AFN's products diminished and DI, at the beginning of 1969, was forced to discontinue the AFN's operations. DI was unable to renew the note or refinance the long-term foreign borrowing from another foreign lender, and DI repaid the borrowing from its funds in the United States. The transfer of capital in repayment of the borrowing resulted, at the end of 1969, in positive direct investment in excess of DI's Schedule C allowable and was authorized by § 1002(a)(4). Upon inquiry by the Office into the basis for DI's statement in the certificate, DI may offer as an explanation the changed circumstances beyond its control.

(vi) *Repayment through conversion of debt obligations into stock of DI.* Repayment by reason of the delivery of equity securities of the DI to holders of debt obligations of the DI (including an international finance subsidiary of the DI) or of debt obligations issued by an AFN, pursuant to conversion or similar rights, is authorized by § 1002(a)(3). No certificate is required to be filed in order to authorize such repayment, regardless of when the borrowing was made. A certification must be filed, however, in order to provide authorization for cash payment of principal upon maturity of a convertible debenture offering, under § 1002(a)(5) and (6), since § 1002(a)(3) does not authorize such cash repayment.

For purposes of § 1003, a transfer of capital resulting from a repayment by conversion is deemed to have been made in the year immediately following the year in which the conversion or similar rights are exercised

Example 24. In February 1968, an international finance subsidiary of a DI sold $20 million of 12-year debentures in a public offering, the proceeds of which qualify as long-term foreign borrowing proceeds under § 324. The debentures are convertible into common stock of DI commencing 6 months from the date of issue. The proceeds of the debentures were invested in incorporated AFNs of DI in Schedule A, where DI, during 1968, was authorized under § 504 to make positive direct investment of $3 million. During 1968, DI delivered $5 million worth of its common stock (in aggregate market value at the time of delivery) to holders of the debentures as a result of the conversion of $3,500,000 in principal amount of the debentures. Such delivery resulted in a $3,500,000 repayment of the borrowing in 1968 (i.e., a transfer of capital to Schedule A during 1968 which is deemed to be made the following year for purposes of § 1003). During the same year, DI made additional positive direct investment of $3 million in Schedule A, which was authorized by § 504(a)(1). The positive direct investment resulting from delivery of the stock was authorized under § 1002(a)(3). Pursuant to § 1003, DI's Subpart E allowables are reduced by $3,500,000 in 1969.

Example 25. In November 1968, a Luxembourg AFN of DI (L) sold $20 million of 12-year debentures in a public offering. Attached to the debentures were warrants entitling the holder to purchase a certain number of shares of DI's common stock at a certain price. A holder of the warrants may also exchange a debenture, upon presentation of the warrant, for common stock of DI. DI's independent financial counsel valued the warrants at $2 million (which valuation was acceptable to OFDI), and DI recognized a transfer of capital to L in that amount in connection with issuance of the debt and warrant package. During 1969, an aggregate principal amount of $3 million of debentures was presented along with the warrants, and DI issued common stock in exchange therefor. The exchange constitutes the satisfaction of an AFN debt obligation, resulting in an additional transfer of capital under § 312(a)(6) in the principal amount of the debt surrendered ($3 million). Under § 1002(a)(3), the transfer of capital is deemed to be made in the year following exchange, so that DI's Schedule C allowable is not reduced under § 1003 until 1970.

(vii) *Guarantee made on or after June 10, 1968.* Repayment by a DI of an AFN borrowing, pursuant to a guarantee made on or after June 10, 1968, is authorized by § 1002(a)(5), provided that the DI filed a certificate described in § 1002(b). A transfer of capital by the DI to an AFN to enable the AFN to repay such borrowing is similarly authorized.

Section 1002(b) requires the DI to state that it has reason to believe either that it will make no transfers of capital in repayment of the AFN borrowing within 7 years of the date of the guarantee, or, if it does make transfers of capital in repayment of the borrowing within the 7-year period, positive direct investment resulting therefrom, if any, will be authorized by the DI's Subpart E (or M) allowable in the appropriate scheduled areas.

Example 26. During 1968, DI had § 504 historical allowables of $750,000 in Schedule B and $1,250,000 in Schedule A. DI had two AFNs in Schedule B: F and X. F had existed for a number of years and had maintained a substantial level of earnings for the past 3 years. X had been organized in 1967 and had lost money in that year, but DI expected X to break even in 1968 and perhaps have small earnings in 1969. On July 1, 1968, DI negotiated an overdraft facility for X from a foreign bank, pursuant to which X could make overdrafts of up to $1 million. The term of the facility was 1 year, and DI guaranteed repayment of any amount outstanding at the end of that year. DI filed a certificate under § 1002(b) stating that DI had reason to believe that no transfers of capital would be involved in repayment of the guaranteed borrowing, because renewal of the overdraft facility was anticipated until such time as X would have the financial resources to be able to repay the borrowing itself. DI had reason to believe that, should X not be able to repay at any time, F would be able to loan funds to X out of its substantial cash reserves.

Through the remainder of 1968, X and F encountered unprecedent business reverses, causing X to operate again at a loss, and resulting not only in a loss for F, but also necessitating substantial invasion of capital reserves. During 1968, X took down the full $1 million under the overdraft facility. During June 1969, the bank indicated that it would not renew the overdraft facility for $1 million, but only for $500,000. DI attempted and failed to secure financing from other sources to refinance the $500,000. Therefore, on June 30, 1969, DI repaid $500,000 to the bank pursuant to the guarantee. This repayment was authorized by § 1002(a)(5), and the positive direct investment resulting therefrom had the effect, pursuant to § 1003, of reducing DI's Schedule B historical allowable for 1969 to $250,000. If OFDI should inquire into the inability of DI to perform according to its reasonable expectations at the time of filing the certificate, DI may offer the unforeseen, changed circumstances as an explanation.

(viii) *Repayment of long-term foreign borrowing made on or after June 10, 1968.* Repayment of a long-term foreign borrowing (other than a repayment resulting from conversions of debt into equity as described in § 1002(a)(3)) made on or after June 10, 1968, is authorized by § 1002(a)(6) if the DI filed a certificate described in § 1002(b).

Section 1002(b) requires the DI to state that it has reason to believe either that (a) no transfers of capital will be involved in repayment of the long-term foreign borrowing within 7 years of the date of the borrowing, or (b) if transfers of capital are made in repayment of the borrowing within the 7-year period, positive direct investment resulting therefrom, if any, will be authorized by the DI's Subpart E (or M) allowable in the appropriate scheduled area.

Example 27. On September 1, 1968, DI made a long-term foreign borrowing of $5 million from a foreign bank, giving the bank its 12-month note. DI immediately loaned the funds to its Schedule C AFN (C). Although the terms of the note did not make it renewable, DI was assured by the lender that, if there would be no material change in the DI's business and financial condition and in the prevailing money market, it would give favorable consideration to requests by the DI to roll-over the loan until August 31, 1975. Based on existing circumstances, DI did not anticipate any material adverse change in its business or financial condition and intended to request renewal to August 31, 1975. In this situation, DI filed a certificate under § 1002(b)(1). During the remainder of 1968 and in 1969, however, both C and DI suffered unexpected business reversals, and in August 1969, the lender indicated that it would renew the note only to the extent of $2,500,000. DI attempted and failed to find financing from other sources, and therefore repaid the borrowing to the extent of $2,500,000 from U.S. sources on August 31, 1969. The positive direct investment resulting therefrom is authorized by § 1002(a)(6). If OFDI inquires into the inability of DI to perform according to its reasonable expectations at the time of filing the certificate, DI may offer the unforeseen and changed circumstances as an explanation.

§ B1002–2 Standard Certificate Form FDI–106.

All certificates filed on or after June 10, 1969 must be made on Standard Certificate Form FDI–106. (Prior to June 10, 1969, the format of submission was immaterial so long as the certifica-

tion contained all information and statements required by Subpart J.)

A revised Standard Certificate Form FDI–106 has been issued by OFDI on August 1, 1973, and is applicable to all borrowings made after August 31, 1973.

The certificate must be delivered to OFDI within 10 days after the date of a borrowing by the DI, or the date of DI's guarantee of an AFN borrowing, as the case may be. For puropses of computing the 10-day period, the date of a borrowing by the DI is fixed according to the rules of § 1002(e)(1). The date of a guarantee is not simply the date on which DI executes the guarantee or when the last act necessary to complete a deposit, pledge or hypothecation has taken place. Rather, the date of the guarantee of an AFN borrowing is the first date on which both the guarantee and the borrowing are in existence, under § 1002(e)(1). Thus, if on January 1 DI executes a written repayment guarantee with respect to AFN borrowings up to $1 million and the AFN borrows only $500,000 on that date, then borrows another $500,000 on June 1, DI may file two certificates, each covering a $500,000 guarantee of an AFN borrowing, the first by January 10, and the second by June 10. Alternatively, DI could have filed a single certificate as to the full $1 million on or before January 10.

As noted above, however, if a DI executed a guarantee of an AFN borrowing prior to January 1, 1968, but the AFN did not actually borrow until after that date, OFDI will not require a certificate to have been filed in order for repayment to be authorized. Also, if a DI executed a guarantee in the period January 1 through June 9, 1968, but the AFN borrowing took place on or after June 10, 1968, the DI is not required to replace its General Authorization No. 1 certificate with a Subpart J certificate.

The following sections explain the substantive requirements of Form FDI–106 (as revised August 1, 1973) except for those portions that are self-explanatory. For explanation of Form FDI–106 in effect for borrowings made on or before August 31, 1973, see 1972 General Bulletin § B1002–2.

The certificate should be filed only by the DI (or a duly authorized representative). If an international finance subsidiary of a DI (see § 323) makes a borrowing guaranteed by the DI, the borrowing is treated as if made by the DI itself and only one certificate need be filed. A guarantee by one AFN of a borrowing by another AFN would likewise require a certificate filing only by the DI.

A DI that becomes obligated to repay long-term foreign borrowing, previously certified by another DI, in connection with an acquisition described in § 312(c)(1) must file a new Standard Certificate Form FDI–106 in order to authorize repayment of such borrowing under Subpart J. (See § B312–18.)

When a shareholder guarantees a borrowing by a principal DI, a single certificate should be filed by the principal DI on the basis of its allowable, unless the principal DI is an affiliate of the shareholder or unless the shareholder has consented to an election under § 906(b)(2). Transfers of capital pursuant to such guarantee that result in positive direct investment will reduce the principal DI's allowables as provided in § 1003. If the principal DI is an affiliate of the shareholder guaranteeing the borrowing, the member of the affiliated group filing reports under § 602 should file the certificate. (See § 907(d).) If the shareholder has consented to an election under § 906(b)(2), the shareholder (and any other consenting shareholder guaranteeing the borrowing) should file a single certificate. Positive direct investment attributable to transfers of capital made by a consenting shareholder pursuant to such guarantee will reduce the allowables of such consenting shareholder in accordance with the provisions of § 1003.

When an indirect owner guarantees borrowing by an AFN of the principal DI, the principal DI should file a single certificate, whether or not the election under § 906(b)(1) has been made, unless the principal DI is an affiliate of the shareholder. In this case, the member of the affiliated group filing reports under § 602 should file the certificate. Positive direct investment attributable to transfers of capital made pursuant to such guarantee will reduce the allowables of the principal DI.

(i) *Item I.* DI should check the appropriate box as to whether the certificate relates to (a) "foreign borrowing", (b) a guarantee by DI (or an AFN) of a borrowing by an AFN, or (c) a guarantee by DI (or an AFN) of a borrowing by an overseas finance subsidiary governed by Subpart N.

(ii) *Item II.* If the certificate relates to a borrowing by an AFN (or an overseas finance subsidiary) that is guaranteed by the DI, the name of the borrower AFN and the country where the borrower AFN is located should be included.

(iii) *Item III.* In entry (a), the term "credit facility" refers to an arrangement with a lender (such as a line of credit or revolving credit arrangement) whereby funds may be taken down from time to time over a specified period up to a stated maximum aggregate amounts, as described in § 1002(e)(3). In such cases, a DI may file a single certificate with respect to such credit facility, instead of filing separate certificates for each borrowing by the DI or guarantee of an AFN's borrowing pursuant to the arrangement involved. (Although § 1002(e)(3) provides that a certificate with respect to a credit facility should be filed on or prior to the date of the first takedown, OFDI will treat such certificates as timely filed if they are delivered within 10 days after the first takedown.) A credit facility will be certified only when first made or at the time of its renewal. A DI must file a new certificate upon expiration of a credit facility and the execution of a new credit facility, but only to the extent that borrowings pursuant to the credit facility are not outstanding at the time of renewal. If borrowing are outstanding, the renewal of the credit facility is simply a renewal of the borrowing, and no new certificate need be filed. (The renewal or refinancing, as described in § 1002(e)(2), of a takedown under a credit facility or of an isolated borrowing need not be certified at that time, since the renewal or refinancing is not the making of a new borrowing or guarantee of an AFN borrowing (see § 324(b)(1).)

Entry (b) deals with a new borrowing or a single takedown pursuant to a credit facility if the DI did not file a certificate with respect to the entire credit facility, but is filing separately for each separate takedown pursuant to a credit facility. In a few isolated instances, however, such as where DI desires to change the statement made in a certificate or where changed or additional facts provide a more favorable basis for making a certificate, the DI may desire to file a second certificate for a single takedown under a credit facility for which a certificate has previously been filed. In that event, (b) should be checked.

Example 28. On September 1, 1970, DI enters into a revolving credit arrangement with a foreign bank pursuant to which DI may borrow up to $5 million through August 31, 1974. Borrowings under the arrangement are to be made against notes with maturities of 180 days, renewable within the overall period of the arrangement. Funds, borrowed under this arrangement are to be invested by DI in a Schedule A AFN, where the DI has a historical allowable of $7,500,000. DI believes, as of September 1, 1970, that positive direct investment in Schedule A in 1974, when all outstanding indebtedness will be paid in full, will not exceed $6,500,000. In this situation, DI may file a single Form FDI–106 on the basis that all repayments made within 7 years from the date of each borrowing under the revolving credit arrangement will be authorized by § 504. In completing Item III of Form FDI–106, DI should check (b), entering $5 million as the amount of the credit facility in Item IV and September 1, 1970 as the date of the borrowing.

On August 31, 1974, consider the following alternative possibilities:

(a) All borrowings made under the arrangement have been repaid in full. DI and the bank renew the revolving credit arrangement on the same terms for an additional 2-year period, ending August 31, 1976. Funds borrowed under the arrangement as renewed are also to be invested in Schedule A AFNs. In this situation, DI must file a new certificate stating the belief that all repayments made within 7 years from the date of each borrowing will be authorized by § 504. DI will check (b) of Item III and will also enter the amount of the credit facility ($5 million) and the date, August 31, 1974 in Item IV.

(b) The arrangement is renewed, with $5 million of borrowings under the prior arrangement still outstanding. The funds to be borrowed under the renewed arrangement are to be used to refinance the outstanding indebtedness. Since, by virtue of the provisions of § 1002(e)(2), funds borrowed under the renewed arrangement to refinance existing indebtedness will not constitute new borrowings, DI is not required to file any additional certificates because of the renewal of the arrangement.

(c) The arrangement is renewed, with $3 million of borrowings under the prior arrangement outstanding. Thus, $3 million of borrowing under the renewal will be used to refinance outstanding indebtedness, and does not constitute a new borrowing. The remaining $2 million will constitute a new borrowing, when DI takes down that amount. DI

plans to invest the $2 million in the Schedule A AFN, so that DI may file a single certificate with respect to the $2 million borrowing it may make under the renewal agreement. If DI files a single certificate, entry (b) should be checked. The amount of the arrangement is $5 million and the date is August 31, 1974. However, DI will certify only to $2 million of borrowings ($5 million less $3 million).

Entry (c) is for a borrowing constituting a refinancing of a foreign borrowing or long-term foreign borrowing previously certified. Although a refinancing borrowing as described in § 324(b)(1) need not be certified, there may be instances when a foreign lender may insist on certification.

Entry (d) should be checked if Item I (b) or (c) was checked.

Item IV should show the principal amount and date of the transaction being certified. If an offering with warrants attached is made by a DI, a certain portion of the funds or other property received from the offering will be attributable to sale of the warrants and, therefore, will not constitute proceeds of long-term foreign borrowing. In such case, the DI should indicate the value of the warrants, based upon a valuation by one or more of the principal underwriters or by DI's independent financial counsel. (OFDI reserves the right to review the reasonableness and accuracy of any such valuation.) The value of the warrants should be deducted from aggregate principal amount of the bonds or debentures, and the difference is the amount of potential repayment that must be certified. (See § 324.) If such an offer is made by an AFN of DI, attachment of warrants will not have an effect on the amount of the borrowings. However, DI must reflect, on the appropriate Form FDI–102 or Form FDI–102F, a transfer of capital from DI to AFN in the amount of the value of the warrants. The DI must certify with respect to potential repayment of the full aggregate principal amount of the debt.

Item IV should also show the date of the transaction being certified (see § 1002(e)(1) and §§ B1001–1 and 1002–2 above), the currency in which the borrowing is denominated, and the U.S. dollar equivalent.

(iv) *Item V.* Unless a guarantee of a bororwing by an AFN is being certified, DI must check the box preceding the category of § 324(a)(1) under which a borrowing qualifies as a foreign borrowing.

(v) *Item VI.* Item VI follows the structure of § 1002(b). Statement (a) restates § 1002(b)(1), and Statement (b) restates § 1002(b)(2). In order to obtain authorization to make positive direct investment as a result of repaying borrowing described in § 1002(a)(5) or (6), a DI must make one of the two statements by checking the appropriate box opposite (a) or (b). With respect to either statement, a DI must check at least one of the boxes. If none of the premises expressly stated under Statement (a) or (b) corresponds to the particular facts of the transaction, the DI must check the box marked "Other" and write the particular reason for making the statement. In completing Item VI, each DI must assume that the regulations will be in effect for at least 7 years after the date the certificate is filed and that the amount of positive direct investment authorized to be made by the DI under Subpart E or M of the regulations during each year of such 7-year period will not exceed the amount authorized to be made by the DI in the year during which the certificate is filed.

In order to make Statement (a), a DI must have reason to believe, based on all the facts and circumstances existing at the time the certificate is delivered to OFDI, that there will not be any repayment of the borrowing within 7 years of the date of the borrowing, or the date of the guarantee if the borrowing is by an AFN. For purposes of determining the 7-year period when a guaranteed borrowing by an AFN is involved, the date of the guarantee of the borrowing is considered to be the first date when both the guarantee and the borrowing by the AFN are in existence, e.g., when the guarantee has been executed and the borrowing has been taken down. As to borrowings made under a credit facility, the 7-year period is computed separately for each borrowing made under the facility.

When making Statement (a), a DI need consider only whether repayment of the borrowing can be postponed for a period of 7 years. Whether positive direct investment resulting from repayment at that time will be authorized by the DI's Subpart E allowables is irrelevant. For example, a DI that has only a § 503 allowable may make the statement with respect to a $10 million borrowing made in 1973, even though repayment in 1980 would exceed the present § 503 allowable. (When the borrowing is repaid in 1980, § 1003 requires that positive direct investment resulting from repayment will be a first charge against subpart E allowables.) Similarly, even though a DI would be able to offset any positive direct investment (e.g., by allocating proceeds of other long-term foreign borrowing) resulting from a repayment within 7 years, DI may not certify on the basis of Statement (a). In such case, DI should use Statement (b).

Statement (b) may be made if a DI cannot make Statement (a). In order to make Statement (b) a DI must have reason to believe, based on all the facts and circumstances existing at the time the certificate is delivered to OFDI, that any repayment within 7 years of the borrowing either will not result in positive direct investment in Schedules A, B, or C, or that if such repayment does result in positive direct investment, such positive direct investment will be authorized during the year when repayment is made by the DI's Subpart E (or M) allowables in the scheduled area in which the transfer of capital under § 312(a)(6) or (7) is incurred. Upon the expiration of the 7-year period, any repayment made by DI will be authorized by § 1002, even if resulting in positive direct investment in excess of Subpart E (or M) allowables so long as DI has satisfied the conditions of Statement (b) during the 7-year period. When making such statement, a DI must assume that the § 503 allowable will continue to be the amount in effect during the year when the certificate is filed. Thus, a DI filing during 1973 must assume that the § 503 allowable will continue, in future years, at $6 million. Similarly, a DI must assume that historical allowables will continue, in future years, at the amounts set by § 504 (a) and (c) in the year of filing, that for purposes of § 504(b) earnings allowables will continue to be based on 40 percent of earnings in the appropriate prior year or years, and that the § 506 incremental earnings allowable will continue to be computed in the same manner. On the other hand, where the transaction involved is a borrowing by an AFN with the DI's guarantee, DI must make a reasonable estimate of future AFN earnings, based on facts and circumstances existing at the time the certificate is filed.

When filing each certificate with respect to a borrowing, the DI must also take into consideration the projected use of allowables in the year when repayment falls due. For example, a DI electing to be governed by § 503 during 1973 and expecting to use the § 503 allowable through 1975 could not file certificates in 1973 containing Statement (b) with respect to two borrowings, each for $6 million and each requiring full principal repayment in 1975. Basing certification on the availability of a certain allowable in a future year, however, does not bind the DI to elect such allowable under § 502 for the year in question.

The following examples illustrate situations in which the assurances contained in Statement (a) would be appropriate:

Example 29. DI borrows $1 million from a foreign bank on September 1, 1973, giving the bank a note maturing on September 1, 1980. The DI may file a certificate under § 1002(b) by checking the box opposite Statement (a)(1) of Item VI on Form FDI–106, since no principal payments are required within 7 years.

Example 30. On September 1, 1973, DI's international finance subsidiary issues to non-Canadian foreign nationals debentures in the principal amount of $10 million, maturing on March 1, 1980. DI intends to refinance the borrowing on March 1, 1980, by making a 6-month borrowing from a foreign bank. DI may certify under § 1002(b)(1) by checking the box opposite Statement (a)(2) of Item VI on Form FDI–106, because DI believes that the borrowing can be refinanced for a total period of 7 years.

Example 31. DI's sole AFN in Schedule C borrows $1 million from a foreign bank on September 1, 1973, giving the bank its note maturing on August 31, 1975. The note is guaranteed by DI. DI has reason to believe, under existing circumstances, that the AFN will have sufficient financial resources in 1975 (generated by depreciation, earnings, and borrowings) to repay the loan and to pay all dividends required to satisfy limitations on positive direct investment imposed by the regulations. (See § 1002(c)(3).) DI may file a certificate under § 1002(b)(1) by checking the box opposite Statement (a)(3), because DI does not anticipate being called upon to make any principal repayments of the borrowing pursuant to the guarantee.

The following examples illustrate situation in which the assurance contained in Statement (b) would be appropriate:

Example 32. DI borrows $5,500,000 from a foreign bank on September 1, 1973 using the proceeds to purchase all voting stock of a company in Schedule A on September 1, 1973. The borrowing is repayable in 1975, and DI does not anticipate having any allowable under § 504 or § 506 during 1975. The DI believes, under existing circumstances, that the acquired company will earn $40,000 in 1975, all of which will be reinvested, but (apart from repayment of the loan and such reinvested earnings) does not intend to make any other positive direct investment in excess of $250,000. In this situation, DI may file a certificate under § 1002(b)(2), checking Statement (b). Repayment of the $5,500,000 borrowing in 1975 plus the $40,000 of reinvested earnings in 1975, plus $250,000 of other positive direct investment would result in positive direct investment of $5,790,000 during that year, all of which would be authorized by § 503.

Example 33. During 1972, DI has historical allowables of $400,000 in Schedule C, $5 million in Schedule B and $10 million in Schedule A. The § 504(a) historical allowable is elected and, under the upstream provision of § 504(c)(1), DI has a total allowable in Schedule C of $800,000 for 1972, based on 1971 annual earnings of DI's Schedule C AFNs of $2 million. During September 1972 DI makes long-term foreign borrowing of $1 million which will be repaid in 1974. DI intends to allocate the $1 million to positive direct investment in Schedule C during 1972. DI has reason to believe, based on existing circumstances, that the Schedule C AFNs will have annual earnings in 1973 of $4 million, giving DI a Schedule C allowable during 1974 of $1,600,000. DI further has reason to believe that the AFNs, in 1974, will reinvest no more than $200,000 of their earnings. Under these circumstances, DI may file a certificate under § 1002(b)(2), checking Statement (b) of Item VI on Form FDI-106, because there is reason to believe that repayment of the borrowing in 1974 will be authorized within the Schedule C allowable for that year. (Note that DI cannot base certification on the allowable available in Schedule B or A, even though such allowables would be reduced in 1974 (pursuant to § 1003) if the Schedule C allowable is not sufficient to absorb the charge when the debt is repaid.)

Example 34. For 1970, DI elects the historical § 504(a) allowable, with a Schedule B allowable of $1,200,000. During 1970, DI's Schedule B AFNs have earnings of $2 million, all of which DI desires to reinvest (resulting in positive direct investment of $2 million). DI makes long-term foreign borrowing in October 1970 of $800,000, which will be repaid in November 1971, and allocates the proceeds to positive direct investment in Schedule B at the end of 1970. DI has reason to believe that the AFNs in Schedule B will again have $2 million of earnings during 1971, but that they will be able to declare $800,000 of dividends. DI further plans, during 1971, to liquidate certain Schedule B holdings, which liquidation will result in a negative net transfer of capital during 1971 of $900,000. Under these circumstances, DI may file a certificate under § 1002(b)(2), checking Statement (b) of Item VI on Form FDI-106, because there is reason to believe that positive direct investment resulting from repayment of the borrowing in 1971 will be authorized under the Schedule B allowable.

§ B1002–3 Certification with respect to convertible debt.

Section 1002(c)(2) provides that, under certain circumstances, a DI may exclude potential transfers of capital resulting from conversion of debt instruments into equity securities of the DI in determining (for purposes of Subpart J) whether positive direct investment resulting from repayment will be authorized by Subpart E (or M) allowables. No certificate is required with respect to positive direct investment resulting from the conversion itself (§ 1002(a)(3)). Accordingly, § 1002(c)(2) is applicable to certification as to (i) repayment by a DI pursuant to guarantee of an AFN's convertible debt (under § 1002(a)(5)), (ii) cash repayment of a DI's convertible long-term foreign borrowing (under § 1002(a)(6)), or (iii) repayment (under § 1002(a) (1) or (4)) of a borrowing unrelated to the convertible debt at a time such debt is outstanding.

The effect of § 1002(c)(2) is that, in the stated circumstances, a DI may rely on future allowables and their availability for cash repayment of borrowings, without having to take into consideration the potential charge to such allowables resulting from a conversion. For example, if a DI which elects § 503 has made a public offering of 20-year convertible debentures in principal amount of $20 million, and subsequently makes $6 million of long-term foreign borrowing to be repaid in 5 years, a § 1002(b)(2) certificate may properly be executed as to the $6 million borrowing notwithstanding that potential conversions of the outstanding convertible debt could use up DI's § 503 allowable for the year the $6 million borrowing is repaid (assuming the conditions in the proviso to § 1002(c)(2) are satisfied).

On the other hand, if convertible debt fails to meet either of the two conditions in the proviso to § 1002(c)(2), potential conversions must be taken into account when filing certificates. If the convertible debt does not have an original maturity of 7 years, potential charges to positive direct investment resulting from conversions must be considered by the DI in determining whether sufficient allowable will exist during any year to authorize cash retirement of the convertible debt or of any other borrowing by the DI or an AFN. Similarly, potential charges against allowables must also be taken into account by the DI if a nonpublic debt issue is convertible within 3 years of the date of issuance. Potential charges against allowables resulting from conversion need not be taken into account, even if the debt is convertible within 3 years of the date of issuance, if the convertible debt is a public offering.

The term "public offering" for purposes of the second condition in the proviso to § 1002(c)(2) means generally that at least half of the issue must be distributed through normal investment banking channels abroad, or sold to foreign purchasers engaged in the business of dealing in securities, in a manner affording reasonable prospects of an effective secondary market for the securities.

If, in connection with a convertible debt issue, DI certifies under § 1002(b)(1) that no principal repayments will be made within 7 years, DI need not consider potential conversions even though the issue does not satisfy the proviso of § 1002(c)(2). However, whenever DI files a certificate under § 1002(b)(2), and convertible debt is outstanding that falls into either of the conditions of the proviso to § 1002(c)(2), potential conversions must be considered by the DI.

Example 35. DI has no § 504 allowables. In September 1968, DI purchased all stock of a Brazilian corporation from an unaffiliated foreign national (X) in exchange for a $5 million debenture issue maturing in 10 years and convertible (in whole or in part) into common stock of DI commencing 3 years from date of issuance. Interest on the debentures is payable semiannually, but in the event of default on payment of any interest installment, X has the right to declare the entire principal sum to be immediately due and payable. However, DI was in good financial condition and did not anticipate default in interest payments. DI filed a certificate under § 1002(b)(1), since no principal repayments are required to be made within 7 years from the date of issue. (Repayment by reason of conversion would be authorized by § 1002(a)(3), without regard to the Subpart J certification requirements.) In 1970, DI desires to make long-term foreign borrowing of $4 million, to be repaid in 1972, and to allocate the proceeds thereof to positive direct investment in Schedule A. Without regard to any charge against the § 507(a)(2) allowable resulting from conversion of the debenture, DI may file a certificate with respect to the long-term foreign borrowing under § 1002(b)(2) if there is reason to believe that the entire § 507(a)(2) allowable will be available to authorize repayment in 1972.

Example 36. In 1968, DI made a public offering of $2 million principal amount of convertible debentures, maturing in 1988 and convertible after 6 months from the date of issue. The proceeds were immediately invested in Schedule C, DI filed a certificate under § 1002(b)(1) with respect to the borrowing. In 1970, DI makes a $5 million long-term foreign borrowing from a foreign bank, repayable at the rate of $1 million annually for the next 5 years, and DI allocates the proceeds thereof to Schedule C positive direct investment. In 1970, DI has a § 504(b) Schedule C allowable of $2,500,000, and has reason to believe that (except for any positive direct investment resulting from conversion of the convertible debt) repayment of the bank loan can be accomplished within this allowable over the next 5 years. (DI expects to have annual earnings of $6 million in Schedule C, to cause Schedule C AFNs to declare dividends of $4,500,000 per year, and does not expect to make any positive net transfer of capital for the next 5 years.) DI does not have to make allowance for positive direct investment resulting from potential conversions of the debenture issue when analyzing its ability to file a certificate with respect to the bank borrowing under § 1002(b)(2).

Example 37. On September 1, 1970, DI publicly offers $20 million principal amount of debentures with maturity of 25 years, convertible into stock of DI at any time after 6 months from the date of issue. The offering qualifies as long-term foreign borrowing, and DI immediately invests the pro-

ceeds in Schedule C, where DI has a historical allowable of $2 million. Under the underwriting agreement, DI must make mandatory sinking fund payments to be used by a trustee to redeem debentures in the principal amount of $1 million in each of the years 1975 through 1993. Because original maturity of the debenture issue is only 5 years, and not 7 years, consideration must be given to whether the $1 million repayment of principal that will be charged to DI's Schedule C allowable during the years 1975–77, together with potential conversions, can be made within the allowable for that schedule. While DI cannot certify under § 1002(b)(2) in these circumstances, a certificate under § 1002(b)(1) could still be executed if DI has reason to believe that any cash principal repayments or conversions in excess of the Schedule C allowable could be refinanced so that the full amount of the borrowing would have been continuously outstanding for at least 7 years.

§ B1003–1 Effect of transfers of capital in repayment of borrowings.

Section 1002 provides that positive direct investment attributable to transfers of capital in connection with repayments of certain borrowings are generally authorized, subject to § 1003. Such repayments are authorized even though positive direct investment resulting therefrom exceeds a DI's available allowables during the year of repayment. However, to the extent DI has allowables, § 1003 requires that such allowables be reduced by the amount of the repayment. If the amount repaid exceeds the allowables available in the year of repayment, the excess will be carried over and charged against allowables in succeeding years until reductions equal the amount of repayment. Accordingly, repayment of a borrowing is permitted but a DI's allowables are correspondingly reduced in the year of repayment and, if necessary, in succeeding years.

Under § 1003, a repayment charge is incurred by the DI in the year of repayment (except for conversions) in the amount of positive direct investment authorized under § 1002. The allowables elected by DI under Subpart E (and Subpart M, if applicable) are reduced, but not to less than zero, until such reductions equal the repayment charge. Of the Subpart E allowables, the § 506 incremental earnings allowable is the last to be reduced. Subpart M allowables are reduced after Subpart E allowables, unless the repayment charge is incurred in connection with the DI's foreign air transportation operations (see §§ 1301–1302), in which case the Subpart M allowable is reduced first. Reductions of § 504 allowables in Schedule C are made first to § 504 (a) and (c) or (b), (d)(3), and (f)(3)(i), and then to § 504 (e) and (f)(3)(ii).

Section 1003(c)(1) provides that Subpart E allowables are reduced first in the scheduled area where positive direct investment was made under § 1002 and, to the extent the repayment charge exceeds allowables available for that scheduled area, then in Schedules C, B and A, in that order. If Subpart E allowables are insufficient to absorb the repayment charge, Subpart M allowables are then reduced.

Section 1003(c)(5) has been revoked for 1973 and subsequent years. It dealt with the reduction of the § 507 allowables by providing that the $4 million Schedule A supplemental allowable (§ 507(a)(2)) would be reduced only to the extent that the DI had repaid a long-term foreign borrowing the proceeds of which were expended in Schedule A or were allocated to positive direct investments in Schedule A, or to the extent that the DI has made payments on a guarantee of a Schedule A AFN borrowing or to enable a Schedule A AFN to repay its borrowing. (See § B1003–1(IV) for the effect of the revocation of § 1003(c)(5).)

To the extent that the repayment charge in any year exceeds all applicable Subpart E and M allowables, § 1003(d) provides that allowables in the following year or years are reduced in the same manner. However, prior to 1973 a DI could elect under § 1003(d) not to have its § 507(a)(2) Schedule A supplemental allowable reduced in any year by a carryforward (from 1969 or a subsequent year) of a repayment charge attributable to Schedule A.

(i) *The repayment charge.* A repayment charge is incurred in the amount of positive direct investment resulting from transfers of capital enumerated in § 1002(a)(1)–(6), namely, (a) those to repay or enable the AFN to repay certain borrowings of the AFN; (b) those consisting of the delivery of equity securities of the DI upon conversion of certain debt obligations of the DI or an AFN; or (c) those made in repayment of long-term foreign borrowings of the DI.

Although the repayment charge is generally incurred in the year that positive direct investment is made, transfers of capital resulting from conversion of debt obligations are deemed (solely for purposes of § 1003) to occur in the year immediately following the year of conversion. (See § 1002(a)(3).)

Repayment of a long-term foreign borrowing by a DI (including delivery of equity securities upon conversion) results in a transfer of capital to the scheduled area where the proceeds were expended or allocated at the time of repayment and with respect to which a deduction was taken under § 203(d), § 306(e), or § 313(d)(1). If proceeds of the borrowing were utilized to offset positive direct investment in more than one scheduled area at the time of repayment, the transfer of capital resulting from repayment will be charged proportionally, based on the deduction taken in each scheduled area. (See § 312(a)(7).) Note that when there is repayment of a long-term foreign borrowing that was not expended prior to July 1, 1972, or allocated, no transfer of capital will result.

Transfers of capital to repay or to enable an AFN to repay a borrowing made by the AFN are charged against the DI's allowables in the scheduled area of the AFN.

(ii) *Reduction of allowables.* Section 1003 (c) and (d) prescribes the manner in which allowables under Subparts E and M are reduced because of a repayment charge incurred pursuant to § 1002.

A special rule applies to reduction of Schedule C allowables under § 504. Section 1003(c)(3) provides that the allowables authorizing positive direct investment in Schedule C (§ 504 (a) and (c) or (b), (d)(3), and (f)(3)(i)) are reduced before those authorizing reinvested earnings (§ 504 (e) and (f)(3)(ii)). If DI has total losses in Schedule C during the year, the amount of such losses does not constitute an allowable under § 504(e) until the following year, at which time it would be subject to reduction under § 1003.

Example 38. In 1970 DI elects § 504(b) with an allowable in Schedule C of $2 million. DI also has a carryforward from 1969 in Schedule C under § 504(d)(3) of $300,000 and a reinvested earnings allowable of $200,000 under § 504(f)(3)(ii) as a result of losses in Schedule C during 1968. During 1970 DI incurs a repayment charge of $2,400,000 in Schedule C. After making reductions as provided by § 1003(c)(3), DI will have left only $100,000 of the reinvested earnings allowable under § 504(f)(3)(ii).

A special rule also applies to U.S.-air carriers engaged in international air transportation. Section 1003(c)(4) provides that where a transfer of capital resulting in a repayment charge is primarily related to operations in foreign air transportation (as defined in § 1302(a)), the Subpart M allowable shall be reduced first. If the repayment charge is not related to operations in foreign air transportation, the Subpart E allowables will be reduced first, in accordance with § 1003(c)(1).

Example 39. In 1969, DI, a U.S.-flag airline, has a foreign air transport allowable of $1 million and § 504(a) allowables of $500,000 in Schedule A, $600,000 in Schedule B and $400,000 in Schedule C.

In 1969 DI repays a $1,500,000 borrowing made in connection with its operations in foreign air transportation, resulting in a repayment charge of $1,500,000 under §§ 1002 and 1003.

First, DI's foreign air transport allowable is reduced to zero and the excess of $500,000 is charged against its § 504(a) allowables in Schedules C, B, and A, in that order. Therefore, DI's Schedule C allowable is reduced to zero and its B allowable is reduced to $500,000. The $500,000 allowable in Schedule A is not affected.

Example 40. During 1969, DI repays a $1 million long-term foreign borrowing, the proceeds of which had been expended in Schedule A. Under § 1002, DI has made positive direct investment in Schedule A of $1 million constituting the "repayment charge" for purposes of § 1003. DI's allowables under § 504(a), which is elected for 1969, are $600,000 in A, $300,000 in B and $300,000 in C.

Under § 1003(c)(1), the Schedule A allowable ($600,000) is first reduced to zero; then, to the extent the repayment charge exceeds the reduction in A, the excess reduces allowables first in C (by $300,000 to zero) and then in B (by $100,000 to $200,000). Therefore, in 1969 DI may make no positive direct investment in C, no additional positive direct investment in A, and positive direct investment in B is limited to $200,000.

Example 41. During 1968, DI, with allowables of $2 million in Schedule A and zero in Schedules B and C, repaid a $1 million 1967 borrowing used to acquire all outstanding shares of a German corporation. Since the "repayment charge" was incurred during 1968 (see § 1003(a)), no reduction of any allowables could be made under the applica-

ble 1968 regulations, which did not provide (as does § 1003(c)(1) of the 1969 and 1970 regulations) for reducing allowables in other scheduled areas.

Although the $1 million repayment charge may be applied in subsequent years (under § 1003(c)(3) as in effect for 1968), only Schedule C allowables or the worldwide § 503, § 507(a)(1), or § 506 allowables may be charged.

Example 42. In 1970 DI's § 504(b) earnings allowable is $600,000 in Schedule C, $1 million in Schedule B and zero in Schedule A. DI's § 1302 (Subpart M) foreign air transport allowable is $700,000. DI also has a $200,000 § 506 incremental earnings allowable. During 1970 DI repays a long-term foreign borrowing, the proceeds of which had been expended in making a transfer of capital in the amount of $2,100,000 to construct a resort hotel in Schedule B. Assuming the repayment is authorized by § 1002, DI has incurred a repayment charge of $2,100,000 under § 1003, which first reduces DI's § 504(b) allowable in Schedules B and C to zero. DI's § 506 allowable is then reduced to zero, and the Subpart M allowable is reduced to $400,000. (See § 1003(c)(1) and (2).)

The § 506 incremental earnings allowable is the last Subpart E allowable to be reduced under § 1003 (see § 1003(c)(2)).

Example 43. DI elects to be governed by § 503 in 1972 and has a § 506 allowable of $100,000. DI makes a $2,050,000 repayment under § 1002.

After the reductions under § 1003, DI has $50,000 of its § 506 allowable left. (See also Example 46 below.)

In general, all allowables (including accrued carryforwards) for the year are reduced under § 1003(c) to the extent of the repayment charge. If the repayment charge exceeds the reductions in allowables for any year, the difference is carried forward to the following year, and the same procedure for reducing allowables is repeated.

Example 44. DI elects § 503 in 1972 and repays a $2,500,000 borrowing, of which $900,000 had been expended in Schedule C and $1,600,000 in Schedule A.

In 1972, DI's § 503 allowable is reduced to zero. The remaining $500,000 repayment charge is carried to 1973.

In 1973, DI elects § 504(a) with allowables of $500,000 in Schedule A, $400,000 in Schedule B and $1,200,000 in Schedule C.

Since the underlying borrowing had been expended in more than one scheduled area, the repayment charge must be allocated between Schedules A and C. Accordingly, under §§ 1003 and 312(a)(7) a repayment charge of $320,000 is incurred in Schedule A (64 percent of $500,000) and a repayment charge of $180,000 is incurred in Schedule C (36 percent of $500,000).

(iii) *Use of negative direct investment made by § 503 DIs to reduce carried forward repayment charges.* Where the DI elected the § 503 allowable in a year in which the repayment charge carried forward from a prior year exceeded that allowable, § 1003 did not permit the DI to use worldwide negative direct investment during that year to satisfy any of the repayment charge. Such a DI therefore could not reduce the amount of the repayment charge to be carried forward into the following year, nor could it carry forward the benefit of its negative direct investment to offset the repayment charge in that year.

Commencing January 1, 1973, paragraph (c)(1) of § 1003 permits a DI electing the § 503 allowable and making negative direct investment during 1973 to use such negative direct investment to satisfy, in whole or in part, a repayment charge carried forward from a prior year. For example, if a DI electing § 503 in 1973 has carried forward $8 million of repayment charge from 1972, its 1973 § 503 allowable is reduced from $6 million to zero. Prior to 1973, the additional $2 million of repayment charge would be carried over into the following year. In 1973, however, if the DI makes negative direct investment of $2 million (resulting from aggregate AFN losses of $1 million and a negative net transfer of capital of $1 million), the $2 million of negative direct investment may be used to satisfy the repayment charge in 1973.

(iv) *Reduction of allowables under § 507.* Prior to 1973, the § 507(a) $4 million Schedule A supplemental allowable was reduced only if the repayment was related to direct investment in Schedule A. Also, if there was a carryforward of the repayment charge attributable to Schedule A, the DI could elect in the year (or years) of the carryforward not to have its § 507(a)(2) allowable reduced.

Also, prior to 1973, § 1003(c)(5) (i) and (ii) provided that the § 507(a)(2) allowable could be reduced only to the extent that the repayment was of a long-term foreign borrowing the proceeds of which were expended in or allocated to Schedule A at the time of repayment, or to the extent that the payment was pursuant to a guarantee of a Schedule A AFN borrowing or was to enable a Schedule A AFN to repay its borrowing. Unless the § 1002 transfer of capital fell within one of these categories, the Schedule A supplemental allowable was not reduced, and the repayment charge was absorbed entirely by the § 507(a)(1) $2 million allowable in Schedules B/C.

A repayment charge attributable to Schedule A reduced the $4 million Schedule A supplemental allowable of § 507(a)(2) before reducing the $2 million allowable of § 507(a)(1).

The following examples illustrate the special treatment of repayment charges for DIs that elected the § 507 allowable prior to 1973.

Example 45. DI elected § 504(a) during 1971 with allowables of $1 million in Schedule A and $1 million in Schedule B. In 1971 DI made $7 million of positive direct investment in Schedule A and $5 million in Schedule B, calculated as provided by § 306(a). To comply with the regulations, DI made a long-term foreign borrowing of $10 million and allocated $6 million of proceeds to Schedule A and the remaining $4 million to Schedule B under § 306(e). In 1972 DI elects § 507 and repays $5 million of the borrowing. DI thus incurs a repayment charge of $3 million in Schedule A and $2 million in Schedule B, apportioned as provided by § 312(a)(7). Under § 1003, DI's allowable under § 507(a)(2) in Schedule A is reduced to $1 million by the $3 million attributable to Schedule A. The $2 million attributable to Schedule B reduces the § 507(a)(1) allowable to zero.

Example 46. For 1972 DI elects § 507 and also has an incremental earnings allowable of $200,000 under § 506. DI has a repayment charge of $6,100,000 in Schedule A. Under § 1003, the $4 million allowable in Schedule A is reduced to zero; then the $2 million allowable in Schedules B and C is reduced to zero. The § 506 allowable is then reduced to $100,000.

Example 47. DI elects § 507 for 1972 and transfers $5 million to its Schedule C AFN to enable it to repay a borrowing. Under § 1003, the repayment charge will reduce DI's $2 million allowable under § 507(a)(1) to zero in 1972, but the § 507(a)(2) $4 million Schedule A allowable will not be reduced. The remaining $3 million of the repayment charge will be carried forward to future years. If DI continues to elect § 507, the $2 million § 507(a)(1) allowable for Schedules B/C will be reduced to zero in 1973 and to $1 million in 1974.

Example 48. DI in 1972 has § 504 (a) and (c) allowables of $3 million in Schedule A, $3 million in Schedule B and $2 million in Schedule C, and a § 506 incremental earnings allowable of $1 million. During the year, DI repays a long-term foreign borrowing of $8 million, the proceeds of which had been expended in Schedule C (prior to July 1, 1972). If DI elects the § 504 allowables, all of DI's § 504 allowables will be reduced to zero, pursuant to § 1003(c) (1) and (2), and the only remaining allowable will be the $1 million § 506 incremental earnings allowable. If DI elects the § 507 allowables, its § 507(a)(1) $2 million allowable for Schedules B/C will be reduced to zero, as will the § 506 $1 million incremental earnings allowable. The $5 million remaining of the repayment charge will be carried forward to future years, and the § 507(a)(2) $4 million allowable will not be reduced.

If a DI allocated proceeds of long-term foreign borrowing to positive direct investment under § 503 and elects in any year in which it incurs a repayment charge, the DI shall apportion the allocated amount to the appropriate schedules in the manner provided by § 306(e)(3). (See § B306-7.)

Example 49. DI elected § 503 for 1969 and reported on its annual report Form FDI-102F for the year as follows ($000 omitted):

Line 11 (Reinvested earnings)	$2,000
Line 12 (Transfers of capital)	3,000
Line 13 (Use of proceeds)	4,000
Line 15 (Program direct investment)	1,000

In section VIII (Use of proceeds) of Form FDI-102F, DI reported as follows:

Line 40 (Expenditure of proceeds)	1,000
Line 41 (Allocation of proceeds under § 306(e))	3,000

The proceeds expended as reported on Line 40 were from the same borrowing as that allocated under § 306(e). The expenditures were: Schedule A–$850,000, and Schedule C—$150,000.

In 1973, DI elects § 504 (a) or (b) and repays $2 million of the borrowing. DI must first apportion the 1969 § 306(e) deduction (line 41) to each scheduled area, in accordance with § 306(e)(3). Assume that DI recalculates positive direct investment under § 306 (a) (which must include the effect of deductions under § 313(d)(1) for expended proceeds) and apportions the § 306(e) deductions as follows ($000 omitted):

	Scheduled area		
	A	B	C
(a) Direct investment under § 306(a)	1,000	2,000	1,000
(b) Proportionate share	25%	50%	25%
(c) Share of § 306(e) deduction	750	1,500	750

Therefore, DI's total deductions under §§ 306(e) and 313(d)(1) in 1969 for purposes of § 312(a)(7) are: Schedule A—$1,600,000; Schedule B—$1,500,000; and Schedule C—$900,000.

Consequently, DI's repayment of $2 million in 1973 will be charged as follows: Schedule A (40 percent)—$800,000; Schedule B (37½ percent)—$750,000; and Schedule C (22½ percent)—$450,000. Under § 1003, DI's § 504 allowables will be reduced by these amounts.

Prior to 1973, there was also a special rule regarding treatment of a carryforward repayment charge of DIs that elected § 507. As discussed above, § 1003(c)(5) provided that in the year in which a repayment charge was incurred, the § 507(a)(2) Schedule A allowable would be reduced only to the extent that repayment was of a borrowing attributable to positive direct investment in Schedule A. Under § 1003(d) prior to 1973, dealing with repayment charges carried forward to future years, the same rule applied, so that the § 507(a)(2) Schedule A allowable was reduced by a carryforward repayment charge only if the repayment charge resulted from a borrowing attributable to positive direct investment in Schedule A. However, § 1003(d) also stated that where the carryforward repayment charge is attributable to positive direct investment in Schedule A, a DI could elect not to have its § 507(a)(2) allowable reduced. Thus, in the year in which a DI incurred a repayment charge attributable to positive direct investment in Schedule A, DI's § 507(a)(2) allowable was reduced. But, if the repayment charge was carried forward to future years, DI could have elected in those years (unless the repayment charge was incurred in 1968) not to have its § 507(a)(2) allowable reduced. During 1973, however, the alternative minimum allowables of § 503 and § 507 were consolidated by increasing the minimum allowable of § 503 from $2 million to $6 million and revoking § 507. Section 1003(c) and (d) was also revised to conform to the revocation of § 507. Accordingly, the special treatment set forth in § 1003(c) and (d) to minimize the effect of a repayment charge on the Schedule A supplemental allowable is no longer applicable. However, any DI adversely affected by the revocation of § 507 and the conforming changes to § 1003 may request a specific authorization.

B1100—Subpart K (§§ 1101–1107)

§ B1100–1 Introduction.

While retaining the Schedule B classification for Canada, Subpart K permits unlimited positive direct investment in Canada and excludes direct investment in Canada from the base period and post-January 1, 1968 direct investment calculations for Schedule B. Borrowings by a DI from a Canadian person, however, do not qualify as long-term foreign borrowings under § 324.

§ B1101–1 Canadian AFNs and non-Canadian Schedule B AFNs.

Paragraph (a) of § 1101 defines a "Canadian affiliate" as an AFN in Canada, and paragraph (b) defines a "non-Canadian Schedule B affiliate" as an AFN in a Schedule B country other than Canada. The term "Canadian affiliate" should not be confused with the definition of "affiliate" in § 903(a). Thus, a "Canadian affiliate" will include a corporation organized under the laws of Canada (or any province thereof) in which the DI has a 10 percent or greater voting interest, and a partnership organized under the laws of Canada and a business venture conducted in Canada in which the direct investor has a 10 percent or greater profit interest (see §§ 304, 305, 901, and 902). Such "Canadian affiliates" are referred to in this Bulletin as "Canadian AFNs."

Example 1. DI has a wholly-owned subsidiary (S) organized under the laws of Canada and a wholly-owned subsidiary (T) organized under the laws of the United Kingdom. DI also owns 100 percent of an apartment house complex (U) in Canada and is a 50-percent participant in a partnership (V) organized under Canadian law engaged in the real estate business. T has an 80-percent interest in a subsidiary (X) organized under the laws of Canada, and T also has a branch sales office (W) in Montreal. S has a 60-percent interest in a subsidiary (Z) organized under the laws of Australia. S and X are incorporated Canadian AFNs of DI. T and Z are incorporated non-Canadian Schedule B AFNs of DI. U, V, and W are unincorporated Canadian AFNs of DI.

§ B1102–1 Authorized positive direct investment in Canadian AFNs.

Section 1102 authorizes a DI to make positive direct investment in Canadian AFNs in an unlimited amount during any year.

Example 2. In 1969, DI acquires all the stock of a Canadian corporation (C) from its sole stockholder, an individual citizen and resident of Germany, for $1 million in cash. The transfer of capital is made to Canada and is generally authorized under § 1102.

Example 3. In 1969, DI acquires all the stock of a German corporation (C) from an individual citizen and resident of Canada for $1 million in cash. The transfer of capital is made to Germany (Schedule C) and thus does not fall within the scope of § 1102.

Example 4. During 1969, DI purchases, for $2 million, the stock of a Canadian corporation (C) that owns a subsidiary (A) located in Panama. This transaction results in a transfer of capital both to Canada (authorized under § 1102) and to Schedule A. The purchase price must be apportioned between C and A in a manner that will fairly reflect the relative values of the interests acquired in the two corporations. (See § B312–4.)

Example 5. In 1969, DI acquires, for $1 million in cash, all the stock of a German corporation (C) from a Canadian corporation in which DI has a 10-percent voting interest. The transfer of capital is made to Canada and is generally authorized under § 1102.

Example 6. In 1969, DI acquires, for $1 million in cash, all the stock of a German corporation (C) from a Lebanese corporation (A) in which DI has a 10-percent voting interest. C has a wholly-owned Canadian subsidiary. DI has made a $1 million transfer of capital to Schedule A, and no apportionment is made since the acquisition is from another AFN.

The authorization for unlimited positive direct investment in Canada does not constitute an exemption from the reporting requirements of § 602. Accordingly, even DIs with only Canadian AFNs are nevertheless required to file Forms FDI–101, FDI–102, and FDI–102F (or FDI–102F/S), absent an exemption from reporting.

(i) *Calculation of positive direct investment in Canada (§§ 1103–1104).*—Although Canada is technically a Schedule B country, the direct investment in Canadian AFNs is excluded from the calculation of direct investment in Schedule B during the base period years and during 1968 and succeeding years. Accordingly, § 1103 (a) and (b) provide that in computing a DI's net transfer of capital to all AFNs in Schedule B during any year under § 313(c), the only factors considered are transfers of capital between the DI and incorporated non-Canadian Schedule B AFNs and the DI's share of the aggregate net change in net assets of unincorporated non-Canadian Schedule B AFNs. Similarly, § 1104 provides that, in determining a DI's share in reinvested earnings of incorporated AFNs in Schedule B during any year, only the DI's share in reinvested earnings of incorporated non-Canadian Schedule B AFNs is taken into account.

In calculating positive direct investment, Canada is treated, in effect, as being in its own separate scheduled area. For example, a transfer of capital by an incorporated Canadian AFN to an incorporated United Kingdom AFN is treated under § 505(a)(3) as a transfer of capital to the DI from Canada in calculating positive direct investment in Canadian AFNs and as a transfer of capital from the DI to Schedule B in calculating positive direct investment in non-Canadian Schedule B AFNs; if the transferee AFN is in Schedule A or Schedule C, the transfer of capital from the DI would be charged to Schedule A or C, respectively.

Similarly, in calculating a DI's share of an incorporated Canadian AFN's reinvested earnings, Canada is also treated as a separate scheduled area. Consequently, the gross amount of a dividend paid by a Canadian AFN to a non-Canadian AFN effectively reduces the DI's share in reinvested earnings of all incorporated AFNs in Canada, while the net amount of the dividend (i.e., net of foreign withholding taxes) effectively increases the DI's share in reinvested earnings of all incorporated AFNs in the payee's scheduled area.

The provisions of §§ 1103 and 1104 are thus designed to permit computation of direct investment separately for Canada, Schedule A, Schedule B (excluding Canada) and Schedule C. Such provisions are also designed, in conjunction with § 505, to prevent Canadian AFNs from being used as a "pass-through" for direct investment in foreign countries other than Canada.

Example 7. DI owns an incorporated AFN (X) in Canada and another incorporated AFN (B) in the United Kingdom. In 1969, B makes a 3-year loan to X in the amount of $500,000. Under § 505(a)(3), B is treated as having made a $500,000 transfer of capital to DI, thereby reducing DI's net transfer of capital to incorporated AFNs in Schedule B

in 1969 by $500,000, and DI is treated as having made a transfer of capital in the same amount to X, thereby increasing DI's net transfer of capital to incorporated Canadian AFNs in 1969 by $500,000. All resulting positive direct investment in Canada is authorized by § 1102. If the loan had been from X to B, the DI would be deemed to have made a $500,000 transfer of capital to B.

Example 8. DI has branch sales operations in Canada (X) and Australia (B), and no other AFNs in Schedule B. In 1969, X's net assets increase by $150,000 and B's branch assets increase by $400,000. DI's net transfer of capital to B in 1969 is $400,000. DI's net transfer of capital to X during 1969 is $150,000.

Example 9. DI has a wholly-owned subsidiary in Canada (X) and a wholly-owned subsidiary in Japan (B). In 1969, X has earnings of $50,000 and B has earnings of $100,000. X pays a dividend of $25,000 to DI. B pays no dividend. DI's share in reinvested earnings of the incorporated non-Canadian Schedule B AFN is $100,000, the earnings and dividend paid by X not being taken into account. DI's share in reinvested earnings of the incorporated Canadian AFN is $25,000.

Example 10. DI has a wholly-owned subsidiary in Canada (X) that, in turn, has a wholly owned subsidiary in the United Kingdom (B). During 1969 X earns $500,000 and pays a dividend of $400,000 to DI; B earns $500,000 and pays a dividend of $300,000 to X. DI's share in reinvested earnings of B is $200,000 and in reinvested earnings of X is $400,000 (the $400,000 dividend paid by X is reduced by the $300,000 dividend received from B).

The exemption provided in § 505(b) for short-term trade credits extended by one AFN to another does not apply if either of the AFNs involved in the transaction is a Canadian AFN (see § 1103(c)). Therefore, if a wholly-owned Canadian AFN extends a 6-month trade credit of $100,000 to a French AFN on September 1, 1969, the transaction results in a $100,000 transfer of capital from the Canadian AFN to the DI, and a $100,000 transfer of capital from the DI to the French AFN. Similarly, if the French AFN extends a 6-month trade credit of $100,000 to the Canadian AFN, the transaction results in a $100,000 transfer of capital from the French AFN to the DI, and a $100,000 transfer of capital from the DI to the Canadian AFN.

§ B1105–1 Canadian foreign balances.

Section 1105 provides generally that, for purposes of § 203(c), "Canadian foreign balances" shall not be included in computing a DI's average end-of-month liquid foreign balances. Accordingly, the regulations do not restrict the amount of liquid foreign balances held by a DI in Canada, and the amount of Canadian foreign balances are excluded for purposes of calculating the amount of liquid foreign balances subject to limitation under § 203(c).

"Canadian foreign balances" are defined in § 1105(a) to include: (a) money on deposit in a Canadian bank (as defined in § 1101(c)), including fixed interest deposits, without regard to the currency deposited and without regard to the terms of such deposits; and (b) negotiable instruments, nonnegotiable instruments and commercial paper of Canadian persons.

The term "Canadian bank," as defined in § 1101(c), includes Canadian branches and offices within Canada of banks organized outside Canada and banks organized under the laws of Canada or of any province of Canada; the term does not include offices of Canadian banks located outside Canada.

§ B1106–1 Long-term foreign borrowing from Canada.

Section 1106 provides, in general, that a DI's borrowing from a Canadian person, whether before or after January 1, 1968, cannot be a "long-term foreign borrowing," as defined in § 324.

A "Canadian person" is defined in § 1101(d) as an individual resident of Canada, a Canadian bank, or a corporation or other entity (other than a bank) organized under the laws of Canada or any political subdivision thereof. The term "Canadian person" includes foreign branches of Canadian corporations (other than Canadian banks), and also includes pension, profit-sharing and other similar trusts organized under or governed by the laws of Canada or any political subdivision thereof. For example, the pension fund of a Canadian corporation and the London branch of a Canadian insurance company are each considered a "Canadian person."

(i) *Public offerings prior to April 1, 1968.*—A borrowing prior to April 1, 1968, involving the public offering of a DI's instruments of indebtedness is considered long-term foreign borrowing for purposes of § 324 if less than 25 percent of the aggregate principal amount of such instruments was sold to "Canadian persons" during the original offering. In the event 25 percent or more of the aggregate principal amount of such debt instruments was sold to Canadian persons during the original offering, the portion proved by the DI (to the satisfaction of OFDI) to have been sold to non-Canadian and non-U.S. persons will be considered a long-term foreign borrowing for purposes of § 324.

Example 11. On March 1, 1968, DI organized an international finance subsidiary (IFS) (see § 323) in the United States for the principal purpose of borrowing funds from nonaffiliated foreign nationals and investing such funds in debt or equity securities of AFNs. On March 15, 1968, IFS made a public offering outside the United States of $50 million in 20-year convertible debentures, $10 million of which were purchased by Canadian persons for investment. The entire $50 million constitutes proceeds of long-term foreign borrowing.

Example 12. If $15 million of the foregoing debentures had been purchased by a Canadian insurance company for investment during the original offering, only the remaining $35 million would constitute proceeds of a long-term foreign borrowing.

Example 13. If, in Example 12, in addition to the $15 million purchased by the Canadian insurance company, $5 million of the debentures had been acquired by a Canadian nominee of a person within the United States during the original offering, only $30 million of the proceeds would constitute proceeds of a long-term foreign borrowing.

(ii) *Public offerings on or after April 1, 1968.*—A borrowing on or after April 1, 1968, involving the public offering of a DI's instruments of indebtedness is considered a long-term foreign borrowing in its entirety if such instruments are sold through underwriters in accordance with agreements limiting such sales to persons other than Canadian or U.S. persons, and if the borrowing otherwise qualifies under § 324. It should be noted that sales to Canadian underwriters or securities dealers for resale to non-Canadian and non-U.S. persons will not disqualify the borrowing from being treated in its entirety as a long-term foreign borrowing. Similarly, sales to Canadian agents or fiduciaries acting on behalf of non-Canadian and non-U.S. persons will not affect the status of the borrowing under § 324.

Following is an example of a provision in the agreement between the DI and Canadian underwriters that would be considered acceptable by OFDI for purposes of preserving the long-term foreign borrowing status of an offering:

> Each Underwriter [agrees] [has agreed] that it will not directly or indirectly sell any Debentures to Canadian persons except for (i) sales to Underwriters or securities dealers who are Canadian persons but who agree that they are purchasing Debentures as principals for resale to persons who are not Canadian or United States persons, and (ii) sales to agents of fiduciaries who are Canadian persons but who are acting for the benefit of persons who are not Canadian or United States persons. For the purpose of this paragraph, a Canadian person includes an individual who is a resident of Canada, a corporation, pension, profit-sharing or other trust or other entity (other than a bank) organized under or governed by the laws of Canada or any political subdivision thereof (including the foreign branch of any Canadian corporation other than the foreign branch of a Canadian bank), and any branch or office within Canada of any of the following: Any bank or trust company organized under the banking laws of Canada or any province thereof, or any private bank or banker subject to supervision and examination under the banking laws of Canada or any province thereof.

B1300—Subpart M (§§ 1301–1303)

§ B1300–1 Introduction.

Subpart M applies to direct investment activities of DIs that are U.S.-flag air carriers, including scheduled and supplemental air carriers and air taxi operators.

Under § 1301, such DIs may elect to exclude from transfers of capital the transfer to foreign inventory of certain categories of equipment related to the DIs' operations in foreign air transportation.

Sections 1302 and 1303 provide a 40-percent foreign air transport earnings allowable for U.S.-flag air carrier DIs electing to be governed by § 504, based upon financial reports required by the Civil Aeronautics Board with respect to

U.S.-flag carriers' international and territorial operations.

§ B1301–1 Exclusions from transfers of capital.

Under § 1301, a U.S.-flag air carrier may elect to exclude from net transfers of capital (as determined under § 313) any increases in certain equipment accounts of incorporated or unincorporated AFNs: *Provided*, That the equipment is necessary to the carrier's own operations in foreign air transportation, as distinguished from any separate operations in air transportation of an AFN or the operations of third perons to whom the DI or an AFN may be providing support or selling parts and services. If the election is made, related charges for depreciation or other expenses must also be excluded in determining earnings of the AFNs.

A DI electing under this section must do so with respect to all applicable AFNs in all scheduled areas. Once made, the election is thereafter binding on the DI and may not be changed for subsequent years without permission from OFDI.

§ B1302–1 Earnings allowable for foreign air transport operations.

Section 1302 authorizes U.S.-flag air carriers to make positive direct investment, in connection with their foreign air transport operations, of up to 40 percent of aggregate annual foreign air transport earnings for the immediately preceding year. The § 1302 allowable is not subject to schedular limitations, but it may be used only for positive direct investment that is primarily related to the DIs' own operations in foreign air transportation.

Section 1302 applies automatically to foreign air transport operations of any DI that elects to be governed by § 504 for the year involved. If, § 1302 is applicable, both transfers of capital related to the DI's foreign air transport operations and aggregate annual foreign air transport earnings will be excluded from the computation of DI's allowables under § 504 (a) or (b).

A U.S.-flag air carrier's choices are, therefore, as follows:

The § 503 allowable for all operations;

An adjusted § 504(a) historical allowable for all operations plus a § 1302 allowable for foreign air transport operations only; or

An adjusted § 504(b) earnings allowable for all operations plus a § 1302 allowable for foreign air transport operations only.

(i) *Aggregate annual foreign air transport earnings.*—The § 1302 allowable is based upon "aggregate annual foreign air transport earnings", defined in § 1302 (b) largely in terms of Civil Aeronautics Board income statement accounts. For this purpose, there is excluded from territorial and international operating profits reported to the Civil Aeronautics Board all related air transport interest and amortization charges, substantially all net operating revenues not directly attributable to air transport (such as profits or losses from hotels, income from foreign-flag air transport operations and other corporate investments) and relevant foreign taxes.

(ii) *Relation of § 1302 to § 504.*—Investments not related to a carrier's foreign air transportation operations are treated separately for all years (including the base period years). Accordingly, a carrier may make positive direct investment, as provided in § 504, in the same manner and subject to the same limitations as other DIs, except that the historical and earnings allowables under § 504 are adjusted by § 1302(d) to exclude consideration of the carrier's foreign air transport operations.

While § 1302 allowables may not be used to authorize positive direct investment in activities other than foreign air transport operations, § 504 allowables may, if the direct investor so chooses, be added to the § 1302 allowables for use in such operations (see § 1302(c)(1)).

(iii) *Carryforwards.*—Unused foreign air transport allowables may be carried forward to subsequent years (see § 1302 (c)(2)). However, if the DI elects § 503 in a later year, the § 1302 carryforward will be lost.

The following examples illustrate the effect of § 1302:

Example 1. During 1971, a U.S.-flag air carrier (DI) has foreign air transport earnings of $25 million and unrelated investment earnings in Schedule A of $5 million. DI has Schedule A historical allowables under § 504 (a) of $3 million as a result of equity investment in and loans to hotels, and ground transportation operations associated therewith, in the base period years of 1965 and 1966. Under § 1302, DI would have a worldwide air transport earnings allowable of $10 million (40 percent of $25 million). During 1972, the carrier may make worldwide positive direct investment related to air transport activities of $10 million and, assuming that the historical allowable under § 504 (a) is elected, unrelated positive direct investment in Schedule A of $3 million. Any unused nonair transport allowable may be used by DI worldwide for air transport activities, as well as on a schedular basis for operations not related to foreign air transport. Any unused air transport allowable may only be used in succeeding years for foreign air transportation operations. Any unused carryforward of allowables under § 504(f) may be used worldwide if devoted to foreign air transportation, or in the appropriate scheduled areas if used for other operations.

Example 2. A U.S.-flag air carrier has allowables under § 504, unrelated to air transport activities, of zero. For 1972, the carrier elects § 503 and during 1972 transfers $2 million to Schedule C as a contribution to the capital of a wholly-owned hotel corporation in that scheduled area. No other relevant transactions occur. Such investment is authorized by § 503. No further positive direct investment is authorized during 1972 either in air transport or nonair transport activities.

(iv) *Repayment charges under § 1003.*—Section 1302 allowables are, like the allowables of Subpart E, reduced by repayment charges incurred under § 1003 (see § 1003(c)(1) and, in particular, § 1003 (c)(4)).

§ B1302–2 Reporting.

Each DI that is a U.S.-flag air carrier engaged in foreign air transport operations and elects § 504 is required to file separate Forms FDI–102/102F for air transport investment and earnings and for other investment and earnings (see § 1302(e)).

If a U.S.-flag air carrier DI commences foreign air transport activity after June 30, 1969, a revised Form FDI–101 should be filed within 30 days after such status is established indicating air transport and nonair transport direct investment experience.

§ B1303–1 Coordination of §§ 504, 506 and 1302.

Section 1302(d) provides that foreign air transport earnings are to be excluded from "annual earnings" computed under § 504(b)(4). However, since "aggregate annual earnings" under § 506 are derived from the § 504(b)(4) computation, § 1303(a) provides that foreign air transport earnings excluded from § 504(b)(4) should be taken into account for purposes of computing aggregate annual earnings under § 506.

Section 1303(b) provides that all reference to § 504 in § 506 (a)(4) and (c) shall be deemed to include reference to § 1302(a).

The following example illustrates the operation of §§ 1302 and 1303:

Example 3. During 1971, DI, a U.S.-flag air carrier, has $2 million in earnings from hotel operations in Schedule B and $6 million of foreign air transport earnings. During 1972, DI has $4 million in earnings from its hotel operations and $8 million of foreign air transport earnings. DI has no § 504(a) historical allowable, and hotel and foreign air transport earnings during 1966–67 were zero.

In 1972, DI elects § 504(b). DI's § 504(b) annual earnings for 1971 were $2 million (since foreign air transport earnings were excluded under § 1302(d)). DI's § 504(b) allowable for 1972 is $800,000 ($2 million × 40 percent). DI's § 1302 foreign air transport allowable is $2,400,000 ($6 million × 40 percent). In 1972, DI also has a § 506 allowable of $1,600,000, computed as follows (000 omitted):

§ 506(a)(4) aggregate annual earnings for 1972 (Under §§ 1303(a) and 504(b)(4), earnings of $4 million are added to § 1302(b) foreign air transport earnings of $8 million.)	$12,000
Less base period aggregate annual earnings	0
Incremental earnings	12,000
40 percent of incremental earnings	4,800
Less the largest of the allowables available under § 503 ($2 million), §§ 504(a) and 1302 ($2,400), and §§ 504(b) and 1302 ($3,200), as required by § 1303(b)	3,200
§ 506 allowable	$1,600

During 1972, DI makes positive direct investment of $2 million in connection with hotel operations, and positive direct investment of $2,500,000 in connection with foreign air transport operations. Such positive direct investment is authorized by §§ 504(b), 1302, and 506. DI then has a carryforward of $300,000 under § 506 because, under § 506(c), positive direct investment to the extent authorized by § 504 (and § 1302 as provided by § 1302(b)) is deemed made pursuant to those sections and not under § 506. Only the excess of $1,300,000 is charged against DI's § 506 allowable.

B1400—Subpart N (§§ 1401–1405)

§ B1400–1 Introduction.

Subpart N of the regulations, which deals with "overseas finance subsidiaries" (OFSs), was published in the FEDERAL REGISTER in final form on May 7, 1970 (35 F.R. 7228), effective as of January 1, 1970.

In general, Subpart N accords special status to funds acquired in certain borrowings from sources outside the United States and Canada by an AFN which has been qualified as an OFS. When such funds are lent by the OFS to the DI, they become available proceeds of long-term foreign borrowing and may offset positive direct investment. Such funds may also be transferred between the OFS and other AFNS of the DI without involving a net transfer of capital. Repayment by the DI or the OFS of an OFS's qualified foreign borrowing has much the same effect as repayment of long-term foreign borrowing by a DI. All other subparts of the regulations apply to all OFS transactions except to the extent specifically modified by Subpart N.

Subpart N was amended on July 1, 1972, to permit the interchange of DI and OFS borrowing (§ 1406) and facilitate the assumption by a DI of obligations incurred by its OFS (§ 1407).

The Office has previously issued specific authorizations, under § 801, which, in effect, treat certain borrowing made through an OFS as if the borrowing were a long-term foreign borrowing by the DI. Adoption of Subpart N has made it unnecessary for a DI to obtain such a specific authorization. Any such specific authorizations issued in 1968, 1969, or 1970 are superseded by Subpart N beginning January 1, 1970, and, consequently, transactions involving OFSs occurring during 1970 and thereafter are governed by Subpart N.

§ B1401–1 Definitions.

The definition of an OFS is contained in § 1401(a). Section 1401(a) (1) and (2) require that an OFS be a wholly-owned, non-Canadian AFN of the DI.

Section 1401(a)(3) provides that an AFN may qualify as an OFS only if the AFN's principal business is to borrow funds from foreign nationals, other than AFNs or Canadian persons, on terms which would qualify such borrowing as long-term foreign borrowing if made by a DI (see § 1401(b)) and to lend such borrowed funds to the DI or to use such funds in loans to or acquisition of equity interests in other AFNs. The principal business requirement is satisfied if the OFS is at all times a financing company (i.e., does not engage in manufacturing, sale of goods or services, or other similar operations); does not deal or trade in securities; and substantially all of its borrowed funds are held, at all times, in the form of debt obligations of the DI, debt obligations of AFNs or equity interests in AFNs. However, pending commitment of borrowed funds, or in the interval between changes in the commitment of such funds, an OFS may temporarily hold such funds in the form of government securities; or in the form of debt obligations (including, without limitation, negotiable and nonnegotiable instruments, commercial paper, demand and time deposits and certificates of deposit) having a maturity of less than 12 months.

Section 1401(a)(4) provides that a DI may claim the benefits of the special rules contained in Subpart N only if its OFS is formally qualified in accordance with the procedures set forth in § 1402.

Note that contributions of funds or other property by the DI or AFNs to the equity capital of the OFS constitute transfers of capital to the OFS, and such transfers are not affected by Subpart N.

Section 1401(b) defines "overseas borrowing" as borrowing by an OFS which would be long-term foreign borrowing, under § 324, if made by a DI.

Section 1401(c) defines "overseas proceeds" as the funds or other property received by the OFS in overseas borrowing. Overseas proceeds invested by the OFS or the DI in debt obligations of or equity interests in other AFNs of the DI remain overseas proceeds until repayment of the overseas borrowing or proceeds borrowing. See § 1404.

Section 1401(d) defines "available overseas proceeds" as overseas proceeds held by the OFS. Notwithstanding § 505, overseas proceeds may be transferred by the OFS to AFNs of the DI without being included in the computation of net transfer of capital under § 313. See § 1403(a)(2).

In addition, overseas proceeds transferred to the DI in proceeds borrowing, as defined in § 1401(e), are thereafter treated as available proceeds of long-term foreign borrowing. See § 1403(a)(1). The proceeds borrowing must be continuously outstanding for at least 12 months after the original date of the loan, and any debt instrument evidencing such loan may not be sold or otherwise transferred by the OFS prior to repayment or cancellation. If the OFS ceases to hold any such debt instrument, the loan of overseas proceeds to the DI will fail to qualify as proceeds borrowing, and the Office may revoke the OFS's qualification, as provided in § 1402(c).

§ B1402–1 Qualification.

As provided in § 1402(a), OFS qualification is conditioned upon the filing of a certificate in letter form, addressed to the Director, Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230, identifying the AFN to be qualified as an OFS, setting forth sufficient information to demonstrate that the AFN has been organized, is owned and is operating, and that the DI intends that the AFN will continue to operate, in accordance with provisions of § 1401(a) (1), (2), and (3). If the person signing the certificate is not an officer of the DI, evidence of authority to file such certificate must be attached.

Any certificate filed with the Office is effective for the compliance year in which it is filed and thereafter, unless withdrawn by the DI with the permission of the Office or revoked by the Office, as provided in § 1402(c). The Office will not revoke any certificate unless it determines that the AFN was not organized, is not owned, or is not operating in accordance with the provisions of § 1401(a) (1), (2), and (3), or that the DI failed to comply with the record-keeping requirements of § 1402(b).

As provided in § 1402(d), all specific authorizations previously issued by the Office deeming certain financing AFNs to be persons within the United States or unaffiliated foreign lenders are of no further effect beginning January 1, 1970. Each such AFN is deemed to have qualified as an OFS under § 1402(a), and transactions involving such OFS are governed by Subpart N during 1970 and thereafter and not by the terms of such specific authorization.

§ B1403–1 Transfers of overseas proceeds; foreign balances.

Pursuant to § 1403(a)(1), the loan of overseas proceeds to the DI in proceeds borrowing is not a transfer of capital under § 312(b), but does result in such overseas proceeds being treated as available proceeds of long-term foreign borrowing, as defined in § 324(d). If in connection with an overseas borrowing the OFS issues debentures convertible into stock of the DI with detachable warrants entitling the holder to purchase stock of the DI, the DI will be deemed to have made a transfer of capital to the OFS in the amount of the value of the warrants; however, the amount of proceeds of overseas borrowing will not be reduced because of the warrants.

Pursuant to § 1403(a)(2), transfers of overseas proceeds by the OFS to AFNs of the DI in exchange for debt obligations or equity interests in such AFNs do not involve net transfers of capital notwithstanding §§ 505 and 313. Pursuant to § 1403(a)(3), overseas proceeds can also be returned by AFNs to the OFS without involving net transfer of capital, notwithstanding §§ 505 and 313, and such overseas proceeds in the hands of the OFS again become available overseas proceeds. The exemption from §§ 505 and 313 provided for in § 1403(a)(3) does not apply to the return of invested overseas proceeds by an AFN to the OFS to the extent there has been repayment of the overseas borrowing or the proceeds borrowing (see § 1404(a)). Note that overseas proceeds transferred by an OFS to an AFN in exchange for equity interests in such AFN are not affected by changes in the value of the securities.

Example 1. DI desires to make a transfer of capital to Schedule C in 1972 in the amount of $10 million. DI causes a wholly-owned incorporated Schedule C AFN to organize a Schedule A OFS in the Netherlands Antilles (for which a certificate under § 1402(a) is properly filed in due course) and to contribute $2 million to such OFS as original equity capital. OFS receives $10 million from an overseas borrowing which has been fully guaranteed by the DI as to repayment of principal and payment of interest. OFS lends $10 million to DI in return for a promissory note continuously outstanding for at least 12 months. DI makes a $10 million transfer of capital to an AFN in Schedule C and allocates the $10 million available proceeds (of proceeds borrowing) to the resulting positive direct investment. The capitalization of the

OFS results in a § 312(b) transfer of capital of $2 million from Schedule C and a § 312(a) transfer of capital of $2 million to Schedule A, pursuant to § 505. The loan of $10 million by the OFS to its DI is a proceeds borrowing and does not constitute a § 312(b) transfer of capital. However, the $10 million of overseas proceeds in the hands of the DI are treated as available proceeds of long-term foreign borrowing. The transfer of the $10 million to an AFN in Schedule C is a § 312(a) transfer of capital offset by allocation of available proceeds to the resulting positive direct investment.

Example 2. In 1970 an OFS in Schedule C receives $10 million of overseas proceeds and invests $9 million thereof in debt obligations of an AFN in Schedule B. In 1971 the DI directly repays $3 million of overseas borrowing, resulting in a transfer of capital to Schedule B of $3 million, under § 1404(a)(3). Later in the same year, the AFN repays to the OFS $3 million of the $9 million borrowed. Under § 1403(a)(3), the DI may treat the repayment by the AFN to the OFS either as being a return of $3 million of overseas proceeds (and hence not subject to §§ 505 and 313) or as a return of funds which have lost their status as overseas proceeds by virtue of the $3 million repayment of overseas borrowing (and hence subject to §§ 506 and 313).

Example 3. Schedule A OFS invests $6 million of overseas proceeds in equity securities in a Schedule B AFN. Prior to repayment of the overseas borrowing, the equity interest is sold by the OFS to an unaffiliated foreign national for $7 million, which constitutes a transfer of capital of $7 million to DI from Schedule B under § 312(b) and a transfer of capital of $7 million from DI to Schedule A under § 312(a). (See § B505-6(ii).) Under § 1403(a)(3), this transaction is not recognized for purposes of §§ 505 and 313 to the extent of the overseas proceeds of $6 million. Therefore, DI will have a positive transfer of capital of $1 million to Schedule A and a negative transfer of capital of $1 million to Schedule B.

Pursuant to § 1403(b)(1), foreign balances of an OFS (other than available overseas proceeds and funds contributed as equity capital) held in liquid form are deemed to be liquid foreign balances of the DI and are subject to limitation under § 203(c).

Example 4. DI borrows $5 million in long-term foreign borrowing under § 324. The $5 million are contributed by DI to an AFN as original equity capital. The AFN places such funds in a demand deposit account in a foreign bank. The AFN is thereafter qualified as an OFS. The $5 million are not considered liquid foreign balances of the DI under § 203(c). (See § 1403(b).)

§ B1404–1 Repayment of overseas borrowing and proceeds borrowing.

Repayment by the DI or the OFS of overseas borrowing and repayment by the DI of proceeds borrowing result in transfers of capital (and corresponding reduction of overseas proceeds) and/or reduction of available proceeds of long-term foreign borrowing (and corresponding reduction of overseas proceeds). Repayment by the DI of overseas borrowing means both direct repayment by the DI or indirect repayment by the DI whereby the DI provides funds to the OFS to enable it to repay. When the DI repays proceeds borrowing for the purpose of enabling the OFS to repay the overseas borrowing, the repayment by the DI is deemed for purposes of § 1404(a) to be of overseas borrowing and not of proceeds borrowing. In other words, for purposes of § 1404(a), repayment of proceeds borrowing occurs only when the OFS does not use the funds or other property repaid to it by the DI to repay overseas borrowing.

Repayment by the DI of overseas borrowing or proceeds borrowing results in the following charges:

(1) Pursuant to § 1404(a)(1), there is a reduction of available proceeds of long-term foreign borrowing resulting from proceeds borrowing. There is also an equal reduction in the amount of overseas proceeds.

(2) Pursuant to § 1404(a)(2), if the amount of repayment exceeds the reduction of available proceeds under § 1404(a)(1), transfers of capital are charged proportionately to the scheduled areas where the DI has expended (prior to July 1, 1972) or allocated available proceeds of long-term foreign borrowing resulting from proceeds borrowing. There is also an equal reduction in the amount of overseas proceeds.

(3) Pursuant to § 1404(a)(3), if the amount of repayment exceeds the aggregate reductions of available proceeds and transfers of capital to AFNs under § 1404(a) (1) and (2), transfers of capital will be charged proportionately to the scheduled areas where the OFS has transferred overseas proceeds pursuant to § 1403(a)(2). There is also an equal reduction in the amount of overseas proceeds held by such AFNs.

(4) Pursuant to § 1404(a)(4), any repayment in excess of reductions of available proceeds and transfers of capital pursuant to § 1404(a) (1), (2), and (3) is a transfer of capital to the scheduled area in which the OFS is incorporated. There is also an equal reduction in the amount of overseas proceeds held by the OFS.

In the event of repayment of overseas borrowing by reason of debt holders' exercise of conversion or similar rights, transfers of capital, but not reduction of available proceeds, are deferred until the year following such conversion. (See § 1404(a)(5).)

The total amount of overseas proceeds received by an OFS may, due to discounts, commissions, or fees, be less than the amount of the OFS's indebtedness to its lenders. Under these circumstances, the aggregate amount of transfers of capital and reductions of proceeds pursuant to § 1404 cannot exceed the amount of overseas proceeds. (See § 1404(a)(6).) The amount repaid attributable to discounts, commissions or fees is deemed to be the last amount repaid. Note that repayment of proceeds borrowing after repayment of the underlying overseas borrowing is a transfer of capital to the scheduled area in which the OFS is incorporated. However, repayment by the OFS of overseas borrowing after repayment of proceeds borrowing does not result in a transfer of capital.

Example 6. In 1972 a Schedule A OFS issues $10 million of debentures which are sold at a discount, and the OFS receives $9,500,000 as available overseas proceeds. The OFS transfers $1 million to Schedule C AFNs and $2 million to Schedule B AFNs. Then $6 million is transferred in proceeds borrowing to the DI, which allocates $4 million to positive direct investment in Schedule C and $1,500,000 to positive direct investment in Schedule A. In 1974, $7 million of the debentures are redeemed and, in 1975 $3 million of the debentures are redeemed. In 1974 the transfers of capital and reductions would be: Under § 1404(a)(1), a $500,000 reduction in available proceeds; under § 1404(a)(2), transfers of capital of $4 million to Schedule C and $1,500,000 to Schedule A; and under § 1404(a)(3), transfers of capital of $333,000 to Schedule C and $667,000 to Schedule B. In 1975, the transfers of capital would be: Under § 1404(a)(3), transfers of capital of $667,000 to Schedule C and $1,333,000 to Schedule B; and then, under § 1404(a)(4), a transfer of capital of $500,000 to Schedule A. Although repayment of overseas borrowing equalled $10 million, the aggregate transfers of capital and reduction under § 1404(a)(6) equal only $9,500,000, the original amount of overseas proceeds before any repayments.

Example 7. Schedule A OFS receives $9,500,000 from the issue of $10 million of debentures. The OFS keeps $500,000 as available overseas proceeds and $9 million are loaned to the DI in proceeds borrowing. DI does not allocate the resulting available proceeds. DI repays the $10 million overseas borrowing. There is a reduction in available proceeds of $9 million, under § 1404(a)(1), and a transfer of capital to Schedule A of $500,000, under § 1404(a)(4).

Example 8. Schedule A OFS receives $10 million of overseas proceeds and transfers $6 million of overseas proceeds to an AFN in Schedule C and $4 million to an AFN in Schedule B. In 1971, the DI repays $1 million of overseas borrowing. Under § 1404(a)(2), there are transfers of capital to Schedule C of $600,000 and to Schedule B of $400,000. In 1972, the OFS disposes of its interest in the Schedule B AFN and receves $5 million in cash. Only $3,600,000 of such funds constitute overseas proceeds. The OFS lends $3,600,000 to the DI in proceeds borrowing, and the DI allocates the resulting available proceeds to positive direct investment in Schedule C. In 1973, the DI repays the balance of the overseas borrowing. There is a transfer of capital to Schedule C of $3,600,000, under § 1401(a)(2), and a transfer of capital to Schedule C of $5,400,000, under § 1404(a)(3).

Pursuant to § 1404(b), repayment by the OFS of overseas borrowing first reduces available overseas proceeds. If the amount of repayment exceeds such reduction, the excess is treated as repayment by the DI of overseas borrowing under § 1404(a).

Example 9. In 1970, OFS receives $10 million of available overseas proceeds from an overseas borrowing, and lends $9 million to the DI in proceeds borrowing. The OFS invests $500,000 in debt obligations of AFNs. The DI allocates $8 million of the resultant available proceeds to positive direct investment in Schedule C. In 1971, the OFS repays $2 million. Available overseas proceeds are reduced from $500,000 to zero, under § 1404(b)(1). Available proceeds are reduced from $1 million to zero, under §§ 1404(b)(2) and 1404(a)(1). There is a transfer of capital, under § 1404(a)(2), to Schedule C in the amount of $500,000.

Example 10. In 1970, an OFS receives $10 million in overseas borrowing and lends the $10 million to the DI in proceeds borrowing, and the resulting available proceeds are allocated to positive direct investment in Schedule C. DI repays proceeds borrowing.

in 1971, in the amount of $10 million. Under § 1404(a)(2), there is a transfer of capital to Schedule C of $10 million, and overseas proceeds are extinguished. In 1973, the OFS repays the overseas borrowing. Since there are no remaining overseas proceeds, no transfer of capital or further reduction results. (See § 1404(a)(6).)

§ B1405–1 Authorized repayments.

Under § 1405, transfers of capital resulting in positive direct investment, which arise from repayment by a DI of an overseas borrowing or a proceeds borrowing to enable the OFS to repay its overseas borrowing, will be generally authorized under Subpart J in a manner similar to repayment by a DI of other AFN borrowing. As in the case of DI guarantees of AFN borrowing, the general authorization of § 1002 is conditional upon the filing by the DI of a certificate (Form FDI–106) pursuant to § 1002(b). Note that, by virtue of § 1405(a), DI's guarantee of an OFS borrowing that does not qualify as an overseas borrowing is not covered either by § 1405(b) or § 1002(a).

§ B1406–1 Interchange of borrowing by DI and OFS.

Under § 1406, a DI may substitute foreign borrowing for borrowing by the DI from its OFS, or vice versa, and treat the later borrowing as a continuance of the borrowing for which it was substituted. The two types of borrowing that may be interchanged under § 1406 are: (i) foreign borrowing, as defined in § 324(a)(1), and (ii) proceeds borrowing as defined in § 1401(e), or borrowing by a DI from its OFS that would qualify as proceeds borrowing under § 1401(e) if such borrowing and the underlying borrowing by the OFS were continuously outstanding for at least 12 months. All or a portion of a borrowing of one type may be substituted for an equal amount of the other type of borrowing. A borrowing that is substituted for an earlier borrowing must be made on or before the date of repayment of the earlier borrowing. The DI must record a substitution on the books and records required under §§ 203(b), 601, and 1402(b).

The original and substitute borrowings are tacked together for the purpose of determining the period during which the original borrowing is treated as having been outstanding. Substitution may be used to qualify a foreign borrowing as long-term foreign borrowing under § 324(a)(2), or to qualify a borrowing by a DI from its OFS as proceeds borrowing under § 1401(e). The borrowing for which another borrowing has been substituted may be repaid to the extent of the substitution without any reduction of available proceeds or charge for a transfer of capital. A borrowing by an OFS underlying a borrowing by the DI from the OFS may likewise be repaid without any reduction of available proceeds or charge for a transfer of capital, to the extent that foreign borrowing is substituted for the borrowing by the DI from the OFS.

Although a substitute borrowing is treated as a continuance of the earlier borrowing, the repayment of the substitute borrowing will have the effect provided under the regulations for repayment of the substitute type of borrowing. Thus, foreign borrowing that is substituted for borrowing by the DI from its OFS may qualify the earlier borrowing as proceeds borrowing under § 1401(e), but the repayment of the foreign borrowing will reduce proceeds as provided under § 324(c) or involve a transfer of capital under § 312(a)(7). Similarly, a proceeds borrowing that is substituted for foreign borrowing may qualify the foreign borrowing as a long-term foreign borrowing under § 324(a)(2), but the repayment of the proceeds borrowing will have the effect provided under § 1404.

§ B1407–1 Assumption by DI of borrowing by its OFS.

Under § 1407, a DI making an election under IRC § 4912(c) may assume an obligation of its OFS to repay overseas borrowing or borrowing that would qualify as overseas borrowing if it were continuously outstanding for at least 12 months. The effect of an assumption of overseas borrowing will be determined by serial application of the following rules:

(i) To the extent of available overseas proceeds held by the OFS at the time of the assumption, the DI will be charged with a transfer of capital to the OFS. At the same time, however, the assumption will constitute a foreign borrowing by the DI in an amount equal to the DI's transfer of capital to the OFS. If such borrowing qualifies as long-term foreign borrowing under § 324(a)(2), available proceeds thereof may be deducted from positive direct investment by allocation under § 306(e).

(ii) In proportion to and to the extent of overseas proceeds that have been transferred by the OFS under § 1403(a)(2) to other AFNs of the DI and are held by such AFNs at the time of assumption, the DI will be charged with transfers of capital to such AFNs. The assumption will also constitute a foreign borrowing by the DI in an amount equal to the total transfers of capital to such AFNs. If such borrowing qualifies as long-term foreign borrowing under § 324(a)(2), available proceeds thereof may be deducted from positive direct investment by allocation under § 306(e).

(iii) To the extent of overseas proceeds which have been transferred to the DI in proceeds borrowing under § 1403(a)(1) that is outstanding at the time of assumption, the DI will not be charged with a transfer of capital. The assumption will constitute a foreign borrowing by the DI that has been substituted for proceeds borrowing under § 1406. The foreign borrowing involved in the assumption will be treated as a continuance of the borrowing by the DI from its OFS that is repaid (without effect under the regulations) in connection with the assumption.

(iv) Any additional amount of assumed obligation that is not covered under paragraphs (i) through (iii) will constitute foreign borrowing by the DI, but not a transfer of capital. Such amount should correspond to the difference between the aggregate principal amount of the obligation that was assumed and the amount of funds or other property received by the OFS after the initial offering expenses were deducted.

Finally, an assumption will reduce overseas proceeds of the overseas borrowing which the DI has obligated itself to repay by the amount of the assumed obligation or the amount of such overseas proceeds, whichever is less.

The above rules, appropriately adjusted, apply also to assumption of borrowing that would qualify as overseas borrowing if outstanding for at least 12 months.

Any assumption of an OFS's debt obligation under § 1407 must be recorded by the DI in the books and records required to be maintained under §§ 203(b) and 1402(b). The DI should identify the specific borrowing it has become obligated to repay and reflect its application of the rules of §§ 1406 and 1407 to the assumption.

There is no provision in the regulations relating to a DI's assumption of debt obligations of an international finance subsidiary (IFS), as defined in § 323(a). A DI and its IFS are considered a single person under § 323(b). Any assumption of an IFS's obligation, if made pursuant to an election under IRC § 4912(c), would not bring about any change in a DI's foreign borrowing under § 324.

[FR Doc.73–18715 Filed 9–14–73;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. D]

PART 204—RESERVES OF MEMBER BANKS

Reserve Percentages

On May 16, the Board of Governors established an 8 percent marginal reserve requirement against certain selected classes of time deposits (38 FR 13726). The classes of time deposits that are subject to the marginal reserve requirement were changed in some respects on July 16

(38 FR 19908). These actions were taken pursuant to the Board's authority under section 19 of the Federal Reserve Act (12 U.S.C. section 461) to set reserve ratios for member banks.

The Board has decided to increase the marginal reserve requirement from 8 to 11 percent, subject to the proviso that in no event shall the reserves required of a member bank on its aggregate amount of time and savings deposits exceed 10 percent.

There was no notice and public participation with respect to this amendment since such procedure would result in delay that would be contrary to the public interest and serve no useful purpose. The effective date was not deferred for the 30-day period referred to in section 553(d) of Title 5, United States Code, because the Board found that the general credit situation and the public interest compelled it to make the action effective no later than the day adopted. See § 262.2(e) of the Board's Rules of Procedure, 12 CFR § 262.2(e).

Effective October 4, 1973, § 204.5(a)(1)(ii) and (2)(ii) of Regulation D is amended to read as follows:

§ 204.5 Reserve Requirements.

(a) *Reserve percentages.* Pursuant to the provisions of section 19 of the Federal Reserve Act and § 204.2(a) and subject to paragraph (c) of this section, the Board of Governors of the Federal Reserve System hereby prescribes the following reserve balances that each member bank of the Federal Reserve System is required to maintain on deposit with the Federal Reserve Bank of its district:

(1) If not in a reserve city— * * *

(ii) 3 percent of its other time deposits up to $5 million, plus 5 percent of such deposits in excess of $5 million: *Provided, however,* That a member bank shall maintain a reserve balance equal to 11 percent of the amount by which the daily average amount of time deposits of the types hereinafter specified exceeds either the daily average amount of such time deposits outstanding during the computation period ending May 16, 1973, or $10 million, whichever is greater, and such 11 percent reserve percentage shall apply with respect to time deposits of the following types:

(*a*) time deposits of $100,000 or more; and

(*b*) time deposits represented by promissory notes, acknowledgments of advance, due bills, or similar obligations issued by a member bank's affiliate, as provided in § 204.1(f); and

(*c*) time deposits represented by bank acceptances, as provided in § 204.1(f);

Provided further, That in no event shall the reserves required on its aggregate amount of time and savings deposits exceed 10 percent; and

* * * * *

(2) If in a reserve city (except as to any bank located in such a city that is permitted by the Board of Governors of the Federal Reserve System, pursuant to § 204.2(a)(2), to maintain the reserves specified in subparagraph (1) of this paragraph)— * * *

(ii) 3 percent of its other time deposits up to $5 million, plus 5 percent of such deposits in excess of $5 million: *Provided, however,* That a member bank shall maintain a reserve balance equal to 11 percent of the amount by which the daily average amount of time deposits of the types hereinafter specified exceeds either the daily average amount of such time deposits outstanding during the computation period ending May 16, 1973, or $10 million, whichever is greater, and such 11 percent reserve percentage shall apply with respect to time deposits of the following types:

(a) time deposits of $100,000 or more; and

(b) time deposits represented by promissory notes, acknowledgments of advance, due bills, or similar obligations issued by a member bank's affiliate, as provided in § 204.1(f); and

(c) time deposits represented by bank acceptances, as provided in § 204.1(f);

Provided further, That in no event shall the reserves required on its aggregate amount of time and savings deposits exceed 10 percent; and

* * * * *

By order of the Board of Governors, Sepetmber 7, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19646 Filed 9-14-73;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 26—NUTRITIVE SWEETENERS

In the matter of establishing definitions and standards of identity for the nutritive sweeteners dextrose monohydrate, dextrose anhydrous, glucose sirup, and dried glucose sirup:

A notice of proposed rule making was published in the FEDERAL REGISTER for October 5, 1972 (37 FR 21103), based upon the Recommended International Standards submitted by the Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission, herein called the "Codex standards," and upon a petition filed by the Corn Refiners Association, Inc., 1001 Connecticut Ave., Washington, D.C. 20036, herein called the "CRA," for the four nutritive sweeteners mentioned.

In the opinion of the Commissioner of Food and Drugs, minor differences exist between the Codex standards and the CRA proposal. The requirement for reducing sugar content in dextrose monohydrate and dextrose anhydrous is stated as such in § 26.1(b)(1) and, by cross reference, in § 26.2(a) of the CRA proposal, but it is entitled "D-glucose content" in paragraph 2.1 of the corresponding Codex standards. The analytical method prescribed for determining the reducing sugar content is a quantitative measure of D-glucose (a reducing sugar) and also of other reducing sugars that may be present in a sample. The statement of the requirement in the CRA proposal is therefore considered to be appropriate and is being retained in the order set forth below. For analysis of the subject foods, the CRA proposal specifies "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 11th Ed., 1970. As referee methods of analysis for the settlement of international disputes, the Codex standards sometimes specify FAO/WHO Codex Alimentarius Commission Methods of Analysis for Sugars; sometimes, methods of the International Commission for Uniform Methods of Sugar Analysis; and for other times, AOAC methods. The Commissioner proposed to recognize the AOAC methods as the official methods for the FDA standards of identity. The Commissioner concludes that the AOAC methods should be the only ones set forth in the FDA standards, but one may use any method he desires to determine compliance, except in cases of dispute at which time only the AOAC methods shall prevail.

The Codex standards provide for high sulfur dioxide containing glucose sirups and dried glucose sirups for confectionery purposes. Inasmuch as these sirups are not distributed in the United States, the Commissioner proposed not to provide for them in the standards of identity, and that proposal is affirmed in the order set forth below.

The Codex standards specify maximum limits for copper, arsenic, and lead contaminants. The matter of contaminants is not dealt with by the Federal Food, Drug, and Cosmetic Act in connection with the promulgation of standards of identity, but rather under other provisions of that statute.

Six letters were received in response to the proposal:

1. With reference to the proposed standards for dextrose monohydrate and dextrose anhydrous, §§ 26.1 and 26.2, one letter indicated that the specified minimum dextrose equivalent (D.E.), which represents the percentage of reducing sugars calculated on a dry basis and expressed as anhydrous dextrose (D-glucose), is not sufficient to assure the use of high quality dextrose in food and drug products. The respondent recommended the inclusion of a requirement for a specific rotation of not less than +52.5° and not more than +53.0° calculated on

an anhydrous basis, corresponding with the specification for dextrose in the U.S. Pharmacopoeia, 18th Rev., p. 180. The specification is not included in the Codex standards. The Commissioner believes that such a requirement, although appropriate for drugs, would be unnecessary in these food standards.

2. One letter opposed use of the terms "glucose sirup" and "dried glucose sirup" as being inappropriate for the names of the foods identified in §§ 26.3 and 26.4 The letter stated that their use as names of foods is confusing because "glucose" is the accepted name for the carbohydrate D-glucose and, further, that it is inappropriate to use the name of a minor constituent as the name of a food, as would be the case with a sirup having a D.E. of 20 and containing about 5.5 percent glucose. The terms "glucose sirup" and "dried glucose sirup" have been used in food standards, in the food industry, and in international commerce for many years as the names of products obtained by the incomplete hydrolysis of edible starch; and such usage is recognized by the Codex standards, standard dictionaries, and encyclopedias. The CRA indicates that it is only in the United States and Canada that an alternative name such as "corn sirup" is used. The Commissioner concludes that the terms "glucose sirup" and "dried glucose sirup" are appropriate as common or usual names of the subject foods as alternatives to names which identify the starch source.

3. One comment recommended that the minimum D.E. requirement in §§ 26.3 and 26.4 be lowered from 20 to 7 because glucose sirups with a D.E. as low as 7 are presently being used in foods, and new product development would be restricted if the higher figure were specified. The Codex Alimentarius Commission of experts from many nations, including the United States, proposed a D.E. of 20 as the minimum for glucose sirup and dried glucose sirup. Their recommendation was based on their knowledge of such characterizing properties of glucose sirups as solubility, clarity, viscosity, and functionality, as well as on their extensive experience in the manufacture and use of the products. The CRA and a similar European organization, Association Des Amidonneries De Mais De La C.E.E., recommended the same minimum. The Commissioner, therefore, is of the opinion that the value of 20 should be retained as the minimum required D.E., and that products with lower D.E. should be regarded as other products. Existing food standards in 21 CFR Parts 14, 27, 29, etc., provide for glucose sirup, dried glucose sirup, corn sirup, and dried corn sirup ingredients; and require that the solids of such sirups contain not less than 40 percent by weight of reducing sugars calculated as anhydrous dextrose, corresponding to a D.E. of 40. It is pointed out that the extension of the terms "glucose sirup" and "dried glucose sirup" in these standards (§§ 26.3 and 26.4) to products having a D.E. as low as 20 does not affect existing or future standards which may require the use of sirups having a higher D.E.

4. One letter suggested that the Codex standard and the CRA proposal for dried glucose sirup be amended. The respondent indicated that the 93.0 percent minimum requirement for total solids is acceptable for dried glucose sirups which have a D.E. of 20 to 50 but not for products with a D.E. of 88 to 98. According to the respondent, dried glucose sirups with a D.E. of 88 to 98 have approximately the same equilibrium moisture as dextrose monohydrate, do not exhibit the caking tendencies of the dried glucose sirups of lower D.E., and should, therefore, have the minimum requirement for total solids lowered from 93.0 to 90.0 percent to correspond with the total solids requirement for dextrose monohydrate in both the Codex standard and in the CRA proposal.

The Commissioner concurs in the respondent's suggestion that the CRA proposed standard be amended to provide for presently available commercial products with D.E. of 88 to 98. Accordingly, § 26.4(a) of the order now provides that the total solids content of dried glucose sirup be not less than 90.0 percent when the D.E. is not less than 88.0, and otherwise not less than 93.0 percent. No action can be taken at this time on the respondent's further suggestion that the corresponding paragraph 2.1 of Codex standard CAC/RS 10–2969 be similarly amended. Published proposals concerning amendment or establishment of FDA standards in order to adopt Codex standard CAC/RS 10–1969 be similarly vide for amendment of the Codex standards. Separate actions would be required by the member nations responsible for establishing or amending Codex standards.

5. The CRA submitted comments on the actions proposed by the Commissioner in the October 5, 1972, FEDERAL REGISTER notice. The Association endorsed the Commissioner's proposal to recognize the methods in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed., 1970, (instead of the methods set forth in Codex) as the official methods for the FDA standards of identity. The CRA also approved of the Commissioner's proposal that the standards of identity not provide for high sulfur dioxide containing glucose sirup and dried glucose sirup for confectionery use because these products are not distributed in the United States.

6. The CRA also endorsed the methods of analysis referenced in the Codex standards but commented that the requirement for reducing sugar content and the description of the method for determining it are more accurately stated in the standards for glucose sirup and dried glucose sirup than in the standards for dextrose anhydrous and dextrose monohydrate. The Association recommended that the wording of the glucose and dried glucose sirup standards be used throughout. The CRA implemented its recommendation in its proposal and, as indicated previously, the Commissioner approves of and adopts the CRA position and the FDA standards. However, as stated at the end of paragraph 4 above, amendment of the Codex standards must be undertaken elsewhere.

Paragraph (d) of §§ 26.1 and 26.3 of the proposal made reference to the applicability of 21 CFR Part 128 pertaining to current good manufacturing practice in the manufacture, processing, packing, or holding of the foods. In the regulation, as revised, the reference has been deleted from these sections as being unnecessary because the pertinent provisions of Part 128 are applicable without such reference. Paragraph (e) of §§ 26.1 and 26.3 has been redesignated as paragraph (d). In order to be consistent with the usage in other food standards (as prescribed by the United States Government Printing Office Style Manual), the spelling "syrup" as used in the proposal is changed to "sirup" in §§ 26.3 and 26.4 of the order. Provision is also made for the alternative spelling "syrup". Other relatively minor editorial changes were made in §§ 26.1 through 26.4 in the interests of clarity and uniformity of presentation in the regulation.

On the basis of the information given in the proposal, the comments received, and other relevant information, the Commissioner concludes that it will promote honesty and fair dealing in the interest of consumers to adopt the standards proposed by CRA with certain modifications as indicated. At a later date, the United States representation to the Codex Alimentarius Commission will convey this country's decision on the Codex standards.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–1056, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered*, That Chapter I of Title 21 of the Code of Federal Regulations be amended by adding a new Part 26 as follows:

PART 26—NUTRITIVE SWEETENERS

Sec.
26.1 Dextrose monohydrate; identity.
26.2 Dextrose anhydrous; identity.
26.3 Glucose sirup; identity.
26.4 Dried glucose sirup; identity.

AUTHORITY: Secs. 401, 701, 52 Stat. 1046, 1055–1056, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371.

§ 26.1 Dextrose monohydrate; identity.

(a) Dextrose monohydrate is purified and crystallized D-glucose containing one molecule of water of crystallization with each molecule of D-glucose.

(b) The food shall meet the following specifications:

(1) The total solids content is not less than 90.0 percent mass/mass (m/m), and the reducing sugar content (dextrose equivalent), expressed as D-glucose, is

not less than 99.5 percent m/m calculated on a dry basis.

(2) The sulfated ash content is not more than 0.25 percent m/m (calculated on a dry basis), and the sulfur dioxide content is not more than 20 mg/kg.

(c) The name of the food is "dextrose monohydrate" or "dextrose."

(d) For purposes of this section, the methods of analysis to be used to determine if the food meets the specifications of paragraph (b) (1) and (2) of this section are the following sections in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed., 1970:[1]

(1) Total solids content, 31.005.

(2) Reducing sugar content, 31.212.

(3) Sulfated ash content, 31.208.

(4) Sulfur dioxide content, 20.090–20.095.

§ 26.2 Dextrose anhydrous; identity.

(a) Dextrose anhydrous is purified and crystallized D-glucose without water of crystallization and conforms to the specifications of 21 CFR 26.1, except that the total solids content is not less than 98.0 percent m/m.

(b) The name of the food is "dextrose anhydrous" or "anhydrous dextrose".

§ 26.3 Glucose sirup; identity.

(a) Glucose sirup is the purified, concentrated, aqueous solution of nutritive saccharides obtained by the incomplete hydrolysis of any edible starch.

(b) The food shall meet the following specifications:

(1) The total solids content is not less than 70.0 percent mass/mass (m/m), and the reducing sugar content (dextrose equivalent), expressed as D-glucose, is not less than 20.0 percent m/m calculated on a dry basis.

(2) The sulfated ash content is not more than 1.0 percent m/m (calculated on a dry basis), and the sulfur dioxide content is not more than 40 mg/kg.

(c) The name of the food is "glucose sirup", provided, that when derived from a specific type of starch, the product may be called "_____ sirup", the blank to be filled in with the name of the starch; for example, "corn sirup", "wheat sirup", "tapioca sirup", Alternatively, the word "sirup" may be spelled "syrup".

(d) For purposes of this section, the methods of analysis to be used to determine if a food meets the specifications of paragraph (b) (1) and (2) of this section are the following sections in "Official Methods of Analysis of the Association of Official Analytical Chemists", 11th Ed., 1970: [1]

(1) Total solids content, 31.200–31.201.

(2) Reducing sugar content, 31.212.

(3) Sulfated ash content, 31.208.

(4) Sulfur dioxide content, 20.090–20.095.

[1] Copies may be obtained from:
Association of Official Analytical Chemists
P.O. Box 540, Benjamin Franklin Station
Washington, DC 20044

§ 26.4 Dried glucose sirup; identity.

(a) Dried glucose sirup is glucose sirup from which the water has been partially removed and conforms to the specifications of 21 CFR 26.3, except that:

(1) The total solids content is not less than 90.0 percent m/m when the reducing sugar content (dextrose equivalent), expressed as D-glucose, is not less than 88.0 percent m/m, calculated on a dry basis; or

(2) The total solids content is not less than 93.0 percent m/m when the reducing sugar content, (dextrose equivalent) expressed as D-glucose, is less than 88.0 percent m/m, calculated on a dry basis.

(b) The name of the food is "dried glucose sirup"; provided, that when derived from a specific type of starch, the product may be called "dried _____ sirup", the blank to be filled in with the name of the starch; for example, "dried corn sirup"; "dried wheat sirup", "dried tapioca sirup". Alternatively, the word "sirup" may be spelled "syrup".

Any person who will be adversely affected by the foregoing order may at any time on or before October 17, 1973, file with the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 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 or 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.—Compliance with this order, which shall include any labeling changes required, may begin on November 16, 1973, and all labeling ordered after December 31, 1973, and all labeling used for products shipped in interstate commerce after December 31, 1974, shall comply with these regulations, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be published in the FEDERAL REGISTER.

NOTE.—Incorporation by reference provisions approved by the Director of the Federal Register March 26, 1973.

Dated September 10, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-19632 Filed 9-14-73;8:45 am]

Title 25—Indians

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

SUBCHAPTER W—MISCELLANEOUS ACTIVITIES

PART 251—LICENSED INDIAN TRADERS

Limits on Trade With Government Employees

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

Part 251, Subchapter W, Chapter I of Title 25 of the Code of Federal Regulations is amended by the revision of § 251.5 (a). Section 251.5(a) currently allows U.S. Government employees to purchase from any Indian or Indian organization any arts and crafts or any other product, service or commodity without obtaining prior approval of the Secretary of the Interior where the amount does not exceed $100, $250 in Alaska. This revision raises the limits from $100 to $500, from $250 to $750 in Alaska. The revision is proposed pursuant to the Act of June 19, 1939 (53 Stat. 840; 25 U.S.C. 68a, 87a, 441).

These limitations on purchases by Government employees were established in 1957 and are unrealistic compared to current price structures. The limitations act to restrict Indians and Indian organizations from selling goods and services to Government employees, when desired. Advance notice and public procedure would delay the change in the limitation on purchases to the detriment of Indians and Indian organizations and have been deemed contrary to the public interest. Therefore, advance notice and public procedure are dispensed with under the exception provided in subsection (b) (B) of 5 U.S.C. 553 (1970).

The revision of § 251.5(a) shall become effective October 17, 1973.

As revised, § 251.5(a) reads as follows:

§ 251.5 Government employees not to trade with Indians except in certain cases.

* * * * *

(a) Employees of the United States Government, including those in the Bureau of Indian Affairs may, with the approval of the Secretary of the Interior in each case where the amount involved exceeds $500, or with the approval of the superintendent or other officer in charge, where the amount involved does not exceed $500, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service or commodity produced, rendered, owned, controlled or furnished by any Indian or Indian organization: *Provided*, That no employee of the United States Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee: *And provided further*, That employees in Alaska may in each case

make such purchases with the approval of the Secretary of the Interior where the amount involved exceeds $750, and with the approval of the superintendent or other officer in charge where the amount involved does not exceed $750.

* * * * *

WILLIAM L. ROGERS,
Deputy Assistant Secretary of the Interior.

SEPTEMBER 10, 1973.

[FR Doc.73-19658 Filed 9-14-73;8:45 am]

PART 252—TRADERS ON NAVAJO, ZUNI, AND HOPI RESERVATIONS

Trade With Government Employees

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

Beginning on page 7334 of the FEDERAL REGISTER of March 20, 1973 (38 FR 7334), there was published a notice of proposed rulemaking to revise § 252.4 of Part 252 to Title 25 of the Code of Federal Regulations relating to trade between Government employees and Indians on the Navajo, Zuni and Hopi Reservations. This revision was proposed pursuant to authority contained in the Act of June 30, 1834 (4 Stat. 738; 25 U.S.C. 68), as amended by the Act of June 19, 1939 (53 Stat. 840; 25 U.S.C. 68a).

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the revised regulations.

During this period comments, suggestions, and objections were submitted by interested persons. Careful consideration was given to the comments received, and one revision was made as a result of them. In § 252.4(a), the limitation on purchases by employees of the U.S. Government was increased from $100 to $500.

The new § 252.4 shall become effective October 17, 1973.

WILLIAM L. ROGERS,
Deputy Assistant Secretary of the Interior.

SEPTEMBER 10, 1973.

Section 252.4 of Chapter I, Title 25, of the Code of Federal Regulations is revised to read as follows:

§ 252.4 Government employees not to trade with Indians except in certain cases.

Save as authorized by the Act of June 19, 1939 (53 Stat. 840; 25 U.S.C. 68a, 87a, 441), no person employed in Indian affairs shall have any interest or concern in any trade with the Indians except for and on account of the United States; and any person offending herein shall be liable to a penalty of $5,000 and shall be removed from his office. Employees of the U.S. Government, including those in the Bureau of Indian Affairs, may be permitted to trade with Indians or Indian organizations under the conditions specified below:

(a) Employees of the U.S. Government, including those in the Bureau of Indian Affairs, may, with the approval of the Secretary of the Interior, in each case where the amount involved exceeds $500, or with the approval of the superintendent or other officer in charge, where the amount involved does not exceed $500, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service, or commodity produced, rendered, owned, controlled, or furnished by any Indian or Indian organization: *Provided*, That no employee of the U.S. Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee.

(b) *U.S. employees, Indian blood.* Indian employees of the U.S. Government, of whatever degree of Indian blood, may be members in the same manner as other Indian members of the tribe not so employed and receive benefits by reason of their membership in such tribes, corporations, or cooperative associations, organized by and operated for Indians. Such Indian Government employees may engage in all lawful transactions with Indians, Indian tribes, and such corporations or cooperative associations. None of the transactions authorized herein may be entered into by such employees for the purpose of engaging directly or indirectly in the selling, reselling, trading, bartering, or passing on in any other way for profit the objects, rights, services, or property thus acquired. Nothing in this section shall prevent in proper cases the disposition of any such property when such transaction cannot be considered as actually engaging in any of the businesses prohibited in this section. All transactions authorized herein to be valid must be approved by the Secretary of the Interior.

(c) *Leases or sales of restricted Indian land.* Leases or sales of trust or restricted Indian land to or from Indian employees of the U.S. Government must be made on sealed bids unless the Commissioner of Indian Affairs waives this requirement on the basis of a full report showing (1) the need for the transaction, (2) the benefits accruing to both parties, and (3) that the consideration for the proposed transaction shall be not less than the appraised value of the land or leasehold interest unless the Indian employee qualifies and is intending a transaction in accordance with § 121.18 (b) and (c) of this chapter or § 131.55(b) (1), (2), and (3) of this chapter. An affidavit as follows shall accompany each proposed land transaction:

I ----------,
(Name)
----------, swear (or affirm)
(Title)
that I have not exercised any undue influence nor used any special knowledge received by reason of my office in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction.

(53 Stat. 840; 25 U.S.C. 68a, 87a, 441)

[FR Doc.73-19657 Filed 9-14-73;8:45 am]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 610—CHILDREN'S DRESS AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 625 (38 FR 9031), the Secretary of Labor appointed and convened Industry Committee No. 113-B for the Children's Dress and Related Products Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 113-B are hereby published, amending paragraph (a) of § 610.2 of Title 29, Code of Federal Regulations, by combining two classifications into one and establishing a single rate for employment covered prior to the 1961 amendments.

As amended, § 610.2 reads as follows:

§ 610.2 Wage rates.

* * * * *

(a) *Pre-1961 coverage classification.* (1) The minimum wage for this classification is $1.60 an hour.

(2) This classification applies to all activities of employees in the industry to whom section 6 of the Act would have applied prior to the Fair Labor Standards Amendments of 1961.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; (29 U.S.C. 205, 206, 208).)

Effective date.—This amendment shall become effective October 3, 1973.

Signed at Washington, D.C., this 12th day of September 1973.

WARREN D. LANDIS,
Acting Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.73-19705 Filed 9-14-73;8:45 am]

PART 612—WOMEN'S OUTERWEAR, NEEDLEWORK, AND MISCELLANEOUS FABRICATED TEXTILE PRODUCTS INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 625 (38 FR 9031), the Secretary of Labor appointed and convened Industry Committee No. 113–C for the Women's Outerwear, Needlework, and Miscellaneous Fabricated Textile Products Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 113–C are hereby published, amending Part 612 of Title 29, Code of Federal Regulations, by changing the wage rates for the hand-crocheting and hand-embroidery of crocheted hats and general classifications in the pre-1961 coverage in § 612.2; by updating the industry definition in § 612.1; by making editorial changes in § 612.2 and by reflecting the deletion of the classification removed in the wage order dated August 5, 1971, and published in 36 FR 14736.

Sections 612.1 and 612.2 are amended to read as follows:

§ 612.1 Definition.

The women's outerwear, needlework, and miscellaneous fabricated textile products industry in Puerto Rico is defined as follows: The manufacture from any material of women's and girls' outerwear (except scarves, blouses, and girls' dresses) and all other apparel and apparel furnishings and accessories made by knitting, crocheting, cutting, sewing, embroidering, or other processes; and the manufacture of all textile products and the manufacture of like articles in which a synthetic material in sheet form is the basic component: *Provided, however,* That the industry shall not include any product or activity included in the corsets, brassieres, and allied garments industry in Puerto Rico (Part 614 of this chapter), the gloves and mittens industry in Puerto Rico (Part 603 of this chapter), the hosiery industry in Puerto Rico (Part 687 of this chapter), the men's and boys' clothing and related products industry in Puerto Rico (Part 615 of this chapter), the shoe and related products industry in Puerto Rico (Part 601 of this chapter), the jewelry, decorations, brushes, and novelties industry in Puerto Rico (Part 613 of this chapter), the textile and textile products industry in Puerto Rico (Part 699 of this chapter), the handkerchief, scarf, and art linen industry in Puerto Rico (Part 608 of this chapter), the women's and children's underwear and women's blouse industry in Puerto Rico (Part 609 of this chapter), the sweater and knit swimwear industry in Puerto Rico (Part 611 of this chapter), and the children's dress and related products industry in Puerto Rico (Part 610 of this chapter), as defined in the wage orders for these industries.

§ 612.2 Wage rates.

Wages at not less than those prescribed in this section shall be paid under section 6(c) of the Fair Labor Standards Act of 1938 by every employer to each of his employees in each of the classifications in the industry who in any workweek is engaged in commerce or in the production of goods for commerce or is employed in an enterprise engaged in commerce or in the production of goods for commerce as those terms are defined in section 3 of the Act.

(a) *Pre-1961 coverage classifications.* The classifications in this paragraph (a) apply to all activities in the women's outerwear, needlework and fabricated textile products industry in Puerto Rico to which section 6 of the Act would have applied prior to the Fair Labor Standards Amendments of 1961.

(1) *Hand-crocheting and hand-embroidery of crocheted hats classification.* (i) The minimum wage for this classification is $1.50 an hour.

(ii) This classification is defined as the operations of hand-crocheting, hand-knitting, and hand-embroidery of crocheted or knitted headwear for women, misses, girls, and infants 3 years of age and under.

(2) *General classification.* (i) The minimum wage for this classification is $1.60 an hour.

(ii) This classification is defined as all activities in the women's outerwear, needlework, and miscellaneous fabricated textile products industry in Puerto Rico, other than those in the hand-crocheting and hand-embroidery of crocheted hats classification.

(b) *1961 coverage classification.* (1) The minimum wage for this classification is $1.60 an hour.

(2) This classification is defined as all activities of employees covered by section 6 of the Act, only by reason of the Fair Labor Standards Amendments of 1961 who are not included in any other classification of this industry or any other industry in Puerto Rico.

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.60 an hour.

(2) This classification is defined as all activities in the women's outerwear, needlework and fabricated textile products industry in Puerto Rico to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

(Secs. 5, 6, 8, 52 Stat. 1062, 1064 as amended; (29 U.S.C. 205, 206, 208).)

Effective date.—This amendment shall become effective October 3, 1973.

Signed at Washington, D.C., this 12th day of September 1973.

WARREN D. LANDIS,
Acting Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.73–19704 Filed 9–14–73;8:45 am]

PART 614—CORSETS, BRASSIERES, AND ALLIED GARMENTS INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 625 (38 FR 9031), the Secretary of Labor appointed and convened Industry Committee No. 113–A for the Corsets, Brassieres and Allied Garments Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 113–A are hereby published, amending paragraphs (a)(1) and (c)(1) of § 614.2 of Title 29, Code of Federal Regulations.

As amended, § 614.2 reads as follows:

§ 614.2 Wage rates.

* * * * *

(a) *Pre-1961 coverage classification.* (1) The minimum rate for this classification is $1.60 an hour.

* * * * *

(c) *1966 coverage classification.* (1) The minimum rate for this classification is $1.60 an hour.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064 as amended; (29 U.S.C. 205, 206, 208).)

Effective date.—This amendment shall become effective October 3, 1973.

Signed at Washington, D.C., this 12th day of September 1973.

WARREN D. LANDIS,
Acting Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.73–19706 Filed 9–14–73;8:45 am]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER E—DEFENSE CONTRACTING

PART 166—REPORTING PROCEDURES ON DEFENSE RELATED EMPLOYMENT

Negotiated Contract Awards

The purpose of this Amendment to Part 166(d) is to update the list of DoD Contractors Receiving Negotiated Contract Awards of $10 million or More for FY 1973.

Section 166.11 has been amended by the addition of a new paragraph (d) as follows:

§ 166.11 Department of Defense Contractors Receiving Negotiated Contract Awards of $10 Million or More.

* * * * *

(d) *Fiscal Year 1973.*

AAI Corp.
AMF Inc.
Aero Corp.
Aerojet General Corp.
Aerospace Corp.
Air America Inc.
Airlift International Inc.
Alabama Refining Co. Inc.
American Airlines Inc.
AMBAC Industries Inc.
American Export Isbrandsten Lines
American Manufacturing Co of Texas
American President Lines, Ltd.
American Telephone & Telegraph Co.
AMRON Corp.
Applied Devices Corp.
ARO Inc.
Asiatic Petroleum Corp.
Atlas Fabricators Inc.
Automation Industries Inc.
AVCO Corp.
Ayers, N W & Son Inc.
Bath Iron Works Corp.
Battelle Memorial Institute
Bendix Corp.
Boeing Co.
Brunswick Corp.
Bulova Watch Co Inc.
Bunker Ramo Corp.
Burroughs Corp.
CCI Corp.
California Physician Service
California, University of
Calspan Corp.
Caltex Oil Products Co.
Campbell Soup Co.
Carson Oil Co.
Central Gulf Steamship Corp.
Cessna Aircraft Co.
Chamberlain Manufacturing Corp.
Chesapeake Instrument Corp.
Chromalloy American Corp.
Chrysler Corp.
Collins Radio Co.
Colorado Dental Service
Colt Industries Operating Corp.
Computer Sciences Corp.
Condec Corp.
Continental Air Lines, Inc.
Control Data Corp.
Curtis Wright Corp.
Cutler Hammer Inc.
Day & Zimmerman Inc.
Dayron Corp.
Dynalectron Corp.
E Systems Inc.
Eastman Kodak Co.
EDO Corp.
Electronic Communications, Inc.
Esso International Corp.
FMC Corp.
Fairchild Camera & Instrument Corp.
Fairchild Industries, Inc.
Federal Cartridge Corp.
Federal Electric Corp.
Flying Tiger Corp.
GTE Sylvania Inc.
Garrett Corp.
Gary Aircraft Corp.
General Dynamics Corp.
General Electric Co.
General Foods Corp.
General Motors Corp.
General Time Corp.
Global Associates
Gold Pak Meat Co., Inc.
Goodrich, B. F. Co.
Goodyear Aerospace Corp.
Goodyear Tire & Rubber Co.
Gould, Inc.
Grumman Aerospace Corp.
Grumman Corp.
Guam Oil & Refining Co., Inc.
Gulf & Western Industries, Inc.
Hallicrafters Co.
Harris Intertype Corp.
Hawaiian Independent Refinery Inc.
Hayes International Corp.
Hazeltine Corp.
Hercules, Inc.
Hewlett Packard Co.
Hoffman Electronics Corp.
Honeywell, Inc.
Honeywell Information Systems, Inc.
Hudson Waterways Corp.
Hughes Aircraft Co.
Humble Oil & Refining Co.
Hunt Building Corp.
ICI America, Inc.
IIT Research Institute
ITT Arctic Services
ITT Gilfillan, Inc.
ITT World Communications, Inc.
Institute for Defense Analysis
Intercontinental Manufacturing Co.
International Business Machine Co.
International Harvester Co.
International Telephone & Telegraph Corp.
Interstate Electronics Corp.
Iowa Beef Processors, Inc.
Itek Corp.
Jacksonville Shipyards, Inc.
Johns Hopkins University
Kaman Aerospace Corp.
Kaman Corp.
Kentron Hawaii, Ltd.
Kisco Co., Inc.
Kollmorgen Corp.
Kollsman Instrument Corp.
Kraftco Corp.
Kurz, Charles & Co.
LTV Aerospace Corp.
Lear Siegler, Inc.
Litton Systems, Inc.
Lockheed Aircraft Corp.
Logicon, Inc.
Lundy Electrics & Systems, Inc.
Lykes Bros. Steamship Co., Inc.
MBAssociates
Magnavox Co.
Marathon Le Tourneau Co.
Martin Marietta Aluminum Sales, Inc.
Martin Marietta Corp.
Mason & Hanger Silas Mason Co.
Massachusetts Institute of Technology
Mayer, Oscar & Co., Inc.
McDonnell Douglas Corp.
McGraw Edison Co.
Mine Safety Appliances Co.
Minnesota Mining and Manufacturing Co.
Mitre Corp.
Mobil Oil Corp.
Morrison Knudsen & Ecoscience, Inc. (JV)
Motorola, Inc.
Mutual of Omaha Insurance Co.
NHA, Inc.
National Presto Industries, Inc.
National Steel & Shipbuilding Co.
National Union Electric Corp.
Newport News Shipbuilding & Drydock Co.
Norris Industries, Inc.
Northrop Corp.
Northrop Worldwide Aircraft Services, Inc.
Northwest Airlines, Inc.
Olin Corp.
Overseas National Airways, Inc.
PRD Electronics, Inc.
Pacific Architects & Engineers, Inc.
Pacific Far East Line, Inc.
Pan American World Airways, Inc.
Philco Ford Corp.
Philip Morris, Inc.
Planning Research Corp.
Powerine Oil Co.
Proctor & Gamble Distributing Co.
Prudential Grace Lines, Inc.
REDM Corp.
RCA Corp.
RCA Global Communications, Inc.
Rand Corp.
Raytheon Co.
Remington Arms Co.
Reynolds, R J Industries, Inc.
Rockwell International Corp.
Royal Industries, Inc.
Sanders Associates, Inc.
Saturn Airways, Inc.
Science Applications, Inc.
Sea Land Service, Inc.
Seaboard World Airlines, Inc.
Seatrain Lines, Inc.
Simplex Wire & Cable Co.
Singer Co.
Sparton Corp.
Sperry Rand Corp.
Standard Oil Co. of California
Stanford Research Institute
States Steamship Co.
Summa Corp.
Sundstrand Corp.
Sundt, M M Construction Co.
Supreme Beef Co., Inc.
Susquehanna Corp.
Swift & Co.
System Development Corp.
TRW Colorado Electronics, Inc.
TRW, Inc.
Teledyne C A E
Teledyne, Inc.
Teledyne Industries, Inc.
Temtex Industries, Inc.
Tenco Construction Co.
Texas Instruments, Inc.
Textron, Inc.
Thiokol Chemical Corp.
Tracor, Inc.
Trans International Airlines, Inc.
Trans World Airlines, Inc.
Tumpane Co.
Uniroyal, Inc.
United Aircraft Corp.
United States Lines Co.
United States Radium Corp.
United States Steel Corp.
Varian Associates
Varo, Inc.
Vitro Corp. of America
Ward La France Truck Corp.
Waterman Steamship Corp.
Watkins Johnson Co.
Western Electric Co., Inc.
Western Union International, Inc.
Western Union Telegraph Co.
Westinghouse Electric Corp.
Whittaker Corp.
World Airways, Inc.
Xerox Corp.

MAURICE W. ROCHE,
Director Correspondence and Directives OASD (Comptroller).

SEPTEMBER 7, 1973.

[FR Doc.73-19702 Filed 9-14-73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 73-896]

ASSIGNMENT OF CALL SIGNS

In the matter of amendment of Parts 2, 74, and 81 of the Commission's rules concerning the assignment of call signs to stations which operate exclusively on frequencies above 30 megahertz and which are classed as coast telephone stations in Alaska or fixed stations.

1. At the present time call signs formed from the two blocks KAA20 through KZZ99 and WAA20 through WZZ99 are being assigned to coast telephone stations in Alaska and to fixed stations. With the increase in the number of these stations licensed by the Commission to operate on frequencies above thirty megahertz, the number of three-letter, two-digit call signs available for assignment to Commission licensees as well as to stations operated by the United States Government has progressively diminished.

2. To provide sufficient available call signs for assignment to the above mentioned stations in the future, the call signs for each new coast telephone station in Alaska or fixed station authorized to operate exclusively on frequencies above thirty megahertz will be formed from the block WAA200 through WZZ999. Call signs consisting of three-letters, two-digits which were assigned to such stations prior to the effective date of this order will normally be retained upon license renewal. Consequent amendments of §§ 2.302, 74.982, and 81.72 of the Commission's rules are attached.

3. Due to factors including the limited availability of three-letter, two-digit call signs taken together with the fact that call signs from the WAA200 through WZZ999 block are in abundance, notice and public procedure within the meaning of the Administrative Procedure Act 5 U.S.C. 553(b)(3)(B) are found to be unnecessary. The amendments set forth in the Appendix are therefore effective forthwith.

4. Authority for the amendment is contained in section 4(i) and 303 of the Communications Act of 1934, as amended. In view of the foregoing, *It is ordered* That, effective October 23, 1973, §§ 2.302, 74.982, and 81.72 of the Commission's rules are amended as set forth in the Appendix attached hereto.

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

Adopted September 6, 1973.

Released September 13, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[1] Commissioner Robert E. Lee absent.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

APPENDIX

1. The table in § 2.302 of the Commission's rules is revised to read as follows:

§ 2.302 Call signs.

* * * * *

Class of station	Composition of call sign	Call sign block
*	*	*
Coast telephone in Alaska.	3 letters, 2 digits..	KAA20 through KZZ99 WAA20 through WZZ99
	3 letters, 3 digits (for stations assigned frequencies above 30 MHz).	WAA200 through WZZ999
Fixed.....	3 letters, 2 digits..	KAA20 through KZZ99 WAA20 through WZZ99
	3 letters, 3 digits (for stations assigned frequencies above 30 MHz).	WAA200 through WZZ999
*	*	*

* * * * *

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

2. Section 74.982 of the Commission's rules is revised to read as follows:

§ 74.982 Station identification.

(a) Call signs for instructional television fixed stations will consist of three letters and three digits pursuant to the provisions of § 2.302 of this chapter relating to fixed stations.

* * * * *

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA—PUBLIC FIXED STATIONS

3. Section 81.72 (f) and (g) of the Commission's rules is revised to read as follows:

§ 81.72 Assignment of call signs.

* * * * *

(f) Marine fixed stations and marine relay stations shall be assigned individual call signs each consisting of three letters followed by two digits taken from either the block KAA through KZZ or the block WAA through WZZ or, in the case of stations operating exclusively on frequencies above 30 megahertz, three letters followed by three digits taken from the block WAA through WZZ.

(g) Marine control stations and marine repeater stations shall be assigned individual call signs each consisting of three letters followed by two digits taken from either the block KAA through KZZ or the block WAA through WZZ, or in the case of stations operating exclusively above 30 megahertz, three letters followed by three digits taken from the block WAA through WZZ.

* * * * *

[FR Doc.73-19687 Filed 9-14-73;8:45 am]

[Docket No. 19764 RM-1994; FCC 73-909]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations; Table of Assignments (Columbus, Indiana)

1. The Commission has before it a notice of proposed rulemaking adopted June 6, 1973 (FCC 73-608, 38 FR 15856), inviting comments on a proposal to assign Channel 285A to Columbus, Indiana. The proceeding was instituted on the basis of a petition filed by Rush County Broadcasting Company (petitioner). Supporting comments were filed by petitioner. There were no oppositions to the proposal.

2. Columbus (population 27,141)[1] is the seat of Bartholomew County (population 57,022) and is located 42 miles southeast of Indianapolis. Channel 268 is presently assigned to Columbus and is licensed to Station WCSI-FM. There is also a daytime-only AM station (WCSI) at Columbus. Channel 285A can be assigned to Columbus without requiring any other changes in the FM Table of Assignments, and in conformance with the Commission's minimum mileage separation rule.

3. The preclusion study indicates that the proposed assignment to Columbus would foreclose future assignment only on Channel 285A; the adjacent channels are not affected. The precluded area would occur in and near Columbus. There are seven other communities within the precluded area, with populations less than that of Columbus, where Channel 285A could be assigned: two (13,352 and 4,582 populations) each have an FM Class B station; two (4,906 and 4,902 populations) are each served by an FM station located in a neighboring community; and the remaining three have a population less than 2,500 persons and also receive service from FM stations in neighboring communities.

4. In supporting comments petitioner asserts the proposed assignment would provide a second FM service and a competitive facility to the commonly-owned Stations WCSI and WCSI-FM in Columbus. It reaffirms its intentions to apply for the channel if assigned, and if authorized, to build the station promptly.

5. We note that such an assignment would intermix a Class A with a Class B channel at Columbus. However, it appears that petitioner was unable to find a Class B channel available for the community and is willing to operate on a Class A channel in competition with WCSI-FM which operates on Class B Channel 268. Although in some circumstances we are hesitant to intermix channels, in others we have done so. Under our assignment criteria Columbus has a population the size of which would warrant its being assigned a second

[1] Population figures cited are from the 1970 U.S. Census.

FM channel. After consideration of the pertinent facts in this proceeding, we are of the view that the subject proposal has merit and that its adoption would serve the public interest.

6. Authority for the action taken herein is contained in Sections 4(i), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended.

7. Accordingly, *It is ordered*, That effective October 23, 1973, the Table of FM Assignments (§ 73.202(b)) is amended with respect to the city listed below as follows:

City	Channel No.
Columbus, Indiana	268, 285A

8. *It is further ordered*, That this proceeding is terminated.

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

Adopted September 6, 1973.

Released September 11, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-19688 Filed 9-14-73;8:45 am]

[FCC 73-916]

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Unattended Operation of TV and FM Translator Stations

1. On August 29, 1972, the Commission adopted an Order (FCC 72-777, released September 1, 1972), construing the word "prompt" in §§ 74.734 and 74.1234 of the Commission's rules[2] to mean 30 minutes, for the purpose of providing guidance to applicants and licensees as to the meaning of the word within the context of the rule. We issued the order without instituting a rulemaking proceeding because the change was interpretative, it having long been policy, on a staff level, to interpret the term in that manner. On October 2, 1972, petitions for reconsideration were filed by seven licensees of translator stations,[3] challenging our assertion that the change was interpretative and contending that a rulemaking proceeding was mandatory. We need not decide that issue, however, because our decision on this proceeding moots the question.

2. Petitioners argue that the fact that translators are generally located in remote areas means that there is little likelihood of interference which could be caused by defective operation. We cannot accept that argument, for there exists a great danger of interference to aircraft radio operations, land-mobile radio operations, public safety radio systems and other radio operations, irrespective of the remoteness of a transmitter. We are firmly convinced of the need for the rule and we are here concerned only with how that rule will be worded and administered.

3. What constitutes "prompt" is a matter of judgment susceptible to widely varying interpretations by licensees. Similarly, the amount of time reasonably required by the person designated to suspend operation of a translator in an emergency may vary greatly, depending upon terrain, accessibility from roads, weather conditions, and similar factors. We now accept the fact that it may not be feasible to attempt to apply a specific time limit to all situations with the expectation that it can be met under all circumstances, but we continue to believe that a word such as "prompt" is too vague to fairly apprise licensees as to what is expected of them and it offers them no guidance. Some middle ground is obviously necessary. We have, therefore, decided to restore the term "prompt" to the rules with the clear understanding that it will be construed to mean no more than three hours unless unforeseeable extraordinary circumstances beyond the licensee's control make it impossible to effect suspension within that time. The burden of showing the existence of such circumstances will be on the licensee who is unable to comply within three hours. Fortunately, the occasions when it has been necessary to invoke the rule have been few, but because we are concerned with emergency situations, we think that is necessary for the Commission to retain the means to accomplish suspension of a translator as quickly as prevailing conditions will permit.

4. For the reasons stated, *It Is Ordered*, That pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, the petitions for reconsideration filed herein Are Granted, the Commission's Order adopted August 29, 1972 (FCC 72-777) Is Set Aside, and §§ 74.734 and 74.1234 Are Amended to read as set out in the Appendix attached hereto effective October 23, 1973.

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

Adopted September 6, 1973.

Released September 13, 1973.

FEDERAL COMMUNICATIONS COMMISSION[4]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

APPENDIX

Part 74 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 74.734, paragraph (a)(4) is revised to read as follows:

§ 74.734 Unattended operation.

(a) * * *

(4) The Commission shall be supplied with the name, address, and telephone number of a person or persons who may be contacted to secure suspension of operation of the translator promptly should such action be deemed necessary by the Commission. Such information shall be kept current by the licensee.

* * * * *

2. In § 74.1234, paragraph (a)(4) is revised to read as follows:

§ 74.1234 Unattended operation.

(a) * * *

(4) The Commission shall be supplied with the name, address, and telephone number of a person or persons who may be contacted to secure suspension of operation of the translator promptly should such action be deemed necessary by the Commission. Such information shall be kept current by the licensee.

* * * * *

[FR Doc.73-19685 Filed 9-14-73;8:45 am]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Frequencies and Conditions of Use

Correction

In FR Doc. 73-18769 appearing on page 24368 in the issue of Friday, September 7, 1973, make the following change:

In the carrier frequency table of § 83.351(a) insert the following column headings above the entry for "156.275."

Carrier frequency (MHz)	See section	Conditions of use

Title 50—Wildlife and Fisheries

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

PART 32—HUNTING

Certain National Wildlife Refuges in Oregon

The following regulations are issued and are effective September 17, 1973. These regulations apply to public hunting on portions of certain National Wildlife Refuges in Oregon.

General Conditions: Hunting shall be in accordance with applicable State regulations. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. No vehicle travel is permitted except on maintained roads and trails. Special conditions applying to individual refuges are listed on the reverse side of maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, P.O. Box 3737, Portland, Oregon 97208.

[1] Commissioner Robert E. Lee absent.

[2] Sections 74.734 and 74.1234 provide that the Commission shall be supplied with the name, address, and telephone number of a person or persons who may be contacted to secure prompt suspension of a translator should this be deemed necessary by the Commission.

[3] The petitioners are filed as part of the original document.

[4] Commissioner Robert E. Lee absent.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Migratory birds may be hunted on the following refuge areas:

Deer Flat National Wildlife Refuge, Snake River Sector (Headquarters: Deer Flat National Wildlife Refuge, Route 1, Box 1457, Nampa, Idaho 83651).

Hart Mountain National Antelope Refuge, P.O. Box 111, Lakeview, Oregon 97630.

Ducks, geese, and coots may be hunted on the following refuge areas:

Baskett Slough National Wildlife Refuge, Route 1, Box 709, Dallas, Oregon 97338.

Special Conditions: 1. Hunting is permitted on Wednesdays, Saturdays, and Sundays from opening shooting time each day until 12 noon during the last six weeks of the goose season as it applies to Polk County.

2. A Federal permit is required and will be issued on an advance reservation basis. Application for reservation will be accepted between September 15 and October 15, 1973, by mail only.

3. The use of 12-guage soft iron shot shells sold at refuge check stands is required.

Cold Springs National Wildlife Refuge, Hermiston, Oregon. (Headquarters: Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882).

McKay Creek National Wildlife Refuge, Pendleton, Oregon. (Headquarters: Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882).

Special Condition: Hunting will be permitted on Wednesdays, Saturdays, Sundays, and Federal holidays.

Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882.

Special Condition: Hunting will be permitted on Wednesdays, Saturdays, Sundays, and Federal holidays.

Upper Klamath National Wildlife Refuge, (Headquarters: Tule Lake National Wildlife Refuge, Route 1, Box 74, Tulelake, California 96134).

Special Condition: 1. Sculling and airthrust boats are prohibited.

William L. Finley National Wildlife Refuge, Route 2, Box 208, Corvallis, Oregon 97330.

Special Conditions: 1. Hunting is permitted on Wednesdays, Saturdays, and Sundays from opening shooting time each day until 12 noon, during the last six weeks of the goose hunting season as it applies to Benton County.

2. A Federal permit is required and will be issued on an advance reservation basis. Application for reservation will be accepted between September 15 and October 15, 1973, by mail only.

3. In the designated goose hunting area "A" hunters may shoot from assigned blind sites only and are limited to the use of ten (10) shells per day.

4. The use of 12-gauge soft iron shot shells sold at refuge check stands is required.

Ducks, geese, coots and common snipe may be hunted on the following refuges:

Klamath Forest National Wildlife Refuge (Headquarters: Tule Lake National Wildlife Refuge, Route 1, Box 74, Tulelake, California 96134).

Special Condition: 1. Sculling and airthrust boats are prohibited.

Malheur National Wildlife Refuge, P.O. Box 113, Burns, Oregon 97720.

Special Conditions: 1. Use of motors on boats is prohibited.

2. Closed to hunting of canvasback.

Mourning doves and band-tailed pigeons may be hunted on the following refuge areas:

Ankeny National Wildlife Refuge, Box 198, Jefferson, Oregon 97352.

Special Condition: All hunters must check in and out of the refuge daily by use of self-service permits.

Baskett Slough National Wildlife Refuge, Route 1, Box 709, Dallas, Oregon 97338.

Special Condition: All hunters must check in and out of the refuge daily by use of self-service permits.

Malheur National Wildlife Refuge, P.O. Box 113, Burns, Oregon 97720.

Special Condition: That portion of the refuge in Blitzen Valley west of Highway 205 south of Diamond Lane will be open to hunting.

William L. Finley National Wildlife Refuge, Route 2, Box 208, Corvallis, Oregon 97330.

Special Condition: All hunters must check in and out of the refuge daily by use of self-service permits.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Upland game birds may be hunted on the following refuge areas:

Deer Flat National Wildlife Refuge, Snake River Sector (Headquarters: Deer Flat National Wildlife Refuge, Route 1, Box 1457, Nampa, Idaho 83651).

Hart Mountain National Antelope Range, P.O. Box 111, Lakeview, Oregon 97630.

Pheasant, quail, and partridge may be hunted on the following refuge areas:

Cold Springs National Wildlife Refuge, Hermiston, Oregon. (Headquarters: Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882).

Malheur National Wildlife Refuge, P.O. Box 113, Burns, Oregon 97720.

Special Condition: Hunting will be permitted during the last 9 days of the State season on the upland game hunting area and during State seasons running concurrently with the waterfowl season on the waterfowl hunting area, and that portion of the refuge in the Blitzen Valley west of Highway 205.

McKay Creek National Wildlife Refuge, Pendleton, Oregon. (Headquarters: Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882).

Special Condition: Hunting is permitted on Wednesdays, Saturdays, and Sundays each week.

Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, Oregon 97882.

Special Condition: Hunting will be permitted on Wednesdays, Saturdays, Sundays, and Federal holidays.

Pheasant and quail may be hunted on the following refuge areas:

Ankeny National Wildlife Refuge, Route 1, Box 198, Jefferson, Oregon 97352.

Special Conditions: 1. All hunters must check in and out of the refuge daily by use of self-service permits.

2. Hunters on the area served by each registration station will be limited to 100 at any one time.

Baskett Slough National Wildlife Refuge, Route 1, Box 709, Dallas, Oregon 97338.

Special Conditions: 1. No hunting permitted after November 11, 1973.

2. All hunters must check in and out of the refuge daily by use of self-service permits.

3. Hunters on the area served by each registration station will be limited to 100 at any one time.

William L. Finley National Wildlife Refuge, Route 2, Box 208, Corvallis, Oregon 97330.

Special Conditions: 1. No hunting permitted after November 11, 1973.

2. All hunters must check in and out of the refuge daily by use of self-service permits.

3. Hunters on the area served by each registration station will be limited to 100 at any one time.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through June 30, 1974.

R. KAHLER MARTINSON,
Regional Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 31, 1973.

[FR Doc.73-19701 Filed 9-14-73;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT—FEDERAL HOUSING COMMISSIONER [FEDERAL HOUSING ADMINISTRATION]

SUBCHAPTER A—GENERAL

[Docket No. R-73-239]

PART 200—INTRODUCTION

Correction of Structural or Other Defects in Homes Covered by Mortgage Insurance

The Department is amending its regulations concerning correction of structural defects in homes with mortgages insured under section 235 of the National Housing Act. The headings of §§ 200.522 and 200.527 are being clarified and the text of § 200.527 revised in order to prevent any misconstruction that the section sets a more restrictive standard for granting an assistance claim under section 518(b) of the Act.

Since the amendment clarifies existing regulations without substantive change, it is unnecessary to provide for comment and public procedure and good cause exists for making this amendment effective upon publication.

Accordingly, Part 200 is amended as follows:

1. In Subpart L, in the Table of Contents, the pertinent section headings are amended to read:

Sec.
200.522 Eligibility for assistance.
200.527 Terms and conditions of assistance.

§ 200.522 [Amended]

2. In § 200.522 the heading is amended to read: § 200.522 Eligibility for assistance.

3. In § 200.527 the heading and second sentence of the introductory text are amended to read as follows:

§ 200.527 Terms and conditions of assistance.

Upon a finding by the Secretary that a mortgagor is eligible to be considered for assistance under this subpart, the Secretary will, in his sole discretion, determine whether to afford assistance hereunder by direct expenditures to correct defects as defined in § 200.522(b), compensation of a mortgagor who has made such expenditures himself, or a combination of both direct expenditures and compensation of the mortgagor. The Secretary, in determining the form of assistance and when it will be afforded, will consider:

* * * * *

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Effective date.—This amendment shall become effective on September 17, 1973.

SHELDON B. LUBAR,
Assistant Secretary-Commissioner.

[FR Doc.73-19708 Filed 9-14-73;8:45 am]

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-207]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

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

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
*	*	*	*	*	*	*
Nebraska	Dodge	Fremont, city of				September 11, 1973, Emerg.
Virginia		Roanoke city of				Do.

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

Issued September 5, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-19564 Filed 9-14-73;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

United States Customs Service

[19 CFR Parts 10, 11, 12, 19, 24, 25, 113, 114, 141, 142, 172]

CUSTOMS BONDS

Proposed Revision of Customs Regulations

Notice is hereby given that under the authority of Revised Statute 251, as amended (19 U.S.C. 66), and sections 623, 624, 46 Stat. 759, as amended (19 U.S.C. 1623, 1624), it is proposed to revise the Customs Regulations pertaining to Customs bonds.

The proposed revision is part of the general revision of the Customs Regulations which includes a rearrangement of the sequence of parts in Chapter I of Title 19 of the Code of Federal Regulations. The proposed Part 113 and § 114.34 replace the present Part 25. This revision does not include provisions relating to the filing of a Bond Transcript in connection with some of the Customs term bonds. These provisions were published in the FEDERAL REGISTER on July 20, 1973 (T.D. 73-197; 38 FR 19361).

Changes or additions in language are proposed to clarify some provisions and eliminate inconsistencies, and to incorporate existing administrative interpretations and practices into the Customs Regulations. The principal changes in the requirements and procedures in the proposed parts from those set forth in the present part are as follows:

1. Sections 113.1 and 113.2 are new and are based on (19 U.S.C. 1623). These two sections set forth the general authority and powers of the Commissioner of Customs in regard to Customs bonds. Proposed § 113.3 is new and sets forth in the Customs Regulations a general principle of law in regard to the liability of a surety on a terminated bond.

2. In proposed § 113.13 which replaces § 25.3(a) of the present regulations, current item 2 which refers to cartage contract bonds is omitted because a special type of bond is no longer needed. T.D. 68-155 (33 FR 8731), changed the manner of procuring contracts for Government cartage.

3. In § 113.14, paragraphs (x) and (y) add to the list of bonds approved by the district director, the single entry and term bonds for the accelerated payment of drawback, set forth in T.D. 73-3 (37 FR 28283), and the Drawback Export Bond, set forth in T.D. 73-5 (37 FR 28416). Paragraphs (dd) to (hh) of this same section add the Containerized Cargo bond, the Trade Fair bond, the Copyright bond, the Public Gauger bond, and the special bond for the importation of flammable fabrics to this list. These bonds are not listed in present § 25.4(a), are currently in use, and should be listed. Paragraph (ii) adds to this list of bonds the bond of a licensed Customs cartman or lighterman for the issuance of temporary identification card, set forth in T.D. 73-140 (38 FR 13550).

4. Proposed § 113.15 is new, and sets forth the two criteria of which the district director must be satisfied, before he can approve a bond.

5. Proposed § 113.23 broadens the scope of the present § 25.5(d) of the Customs Regulations, and is concerned with all types of changes on a bond. The terms "modification," "interlineation," "erasure," and "alteration" have special meanings, and are therefore defined in paragraph (a). The phrase "but prior to the approval of the bond by Customs" has been added to paragraph (c) so as to specifically point out and thereby eliminate any possible confusion as to the period of time when the interlineation and alterations can be made after the bond is signed by the parties. Paragraph (d) is new and refers to changes on the bond after it has been approved by Customs.

6. Proposed § 113.26 sets forth the procedure concerning the distribution of copies of the blanket term bonds. Paragraph (a) is new and sets forth the procedure for the blanket term bonds approved by the district director. Paragraph (b) is taken from present § 25.3(b) of the Customs Regulations, and expressly points out that this procedure applies only to blanket smelting and refining term bonds which are the only blanket term bonds approved by the Commissioner.

7. Proposed § 113.34(c) in dealing with bonds executed by an authorized officer of a corporation consolidates the requirements that must be met by such officer in order for him to act on behalf of the corporation.

8. Proposed § 113.35(b) (2) and (3) has eliminated the restriction in § 25.9 (e) and (f), prohibiting a married woman from acting as a surety. The revised section would make her ability to act as surety depend upon the law of the state where she wishes to act as surety. At present, only the states of Georgia and Idaho prevent a married woman from acting as surety.

9. In proposed § 113.37, paragraph (b) sets forth the requirements relating to placing the name of the corporation on the bond. Paragraph (d) sets forth the seal requirements that apply to the corporate surety and the corporate principal. These requirements are set forth in the present regulations only in relation to corporate principals (§ 25.8). Paragraph (c) of § 113.37 is new and requires that the name of the agent or attorney of a corporate surety be either stamped, printed, or typed, below his signature.

10. Present § 25.12(b) states that when two or more companies are accepted as sureties, each should limit its liability on Customs Form 3903. However, this Customs form has been abolished. Proposed § 113.37(e) sets forth a form similar to the abolished Customs Form 3903 which may be used to limit each surety company's liability when two or more companies are involved.

11. Proposed § 113.37(f) incorporates T.D. 71-21 (36 FR 1056), which invalidated all corporate surety powers of attorney under the old procedure, adopted a revised corporate surety power of attorney, and set forth the manner in which corporate surety powers of attorney are to be filed and processed under the new procedure. This section would replace paragraphs (c) and (d) of § 25.12 of the current regulations. Subparagraph (4) of § 113.37(f) provides that the copy of the authorization of the power of attorney retained by the grantee will expire when the Customs list verifying his power of attorney is received by the appropriate ports, rather than in 60 days if that occurs sooner.

12. Proposed § 113.39(a) would change the first sentence of predecessor § 25.14 by adding the phrase "(except for savings bonds)" after the words "United States bonds". United States savings bonds cannot be used as security or collateral for Customs bonds.

13. Present § 25.14 refers to a duly executed power of attorney and agreement in a form similar to that prescribed in Treasury Department Circular 154, dated February 6, 1935, superseded by Treasury Department Circular 154, Revised, dated October 31, 1969. The current reference is shown in proposed § 113.39(b). Since the latter Treasury Department Circular is not readily available to the public, the power of attorney and agreement for corporations found therein is given in § 113.39(b). Section 113.39(b) indicates that this power of attorney and agreement should be modified as appropriate when the obligor is either an individual or partnership.

14. Proposed § 113.51 is new and is based on 19 U.S.C. 1623(c) which sets forth the authority for canceling the bond or charges against it.

15. Present § 25.15(e), although it is in the section on cancellation of export bonds, applies to bonds in general and is, therefore, placed in a separate section (§ 113.52(a)) from the section on cancellation of export bonds (§ 113.55).

The time period before reporting the failure to satisfy a Customs bond to the United States attorney for prosecution is extended from 60 days to 90 days in order to reflect current accounting practices and procedures.

16. Section 10.112 is changed to include reduced duty documents as well as free entry documents and provides for the late filing of such documents prior to final liquidation unless the late filing is due to willful negligence or fraudulent intent. This is in conformity with present practice.

17. Proposed § 113.43(b) would change the first sentence of present § 25.18(c) by limiting the time period for late application for extension of time on the bond or stipulation for the production of a missing document to not more than 2 months from the date of expiration of the period of the bond or stipulation, and limiting the extension permitted to 2 months. This change is in accord with T.D. 69-4 (33 FR 18931) which limited the extension of time on the bond or stipulation to one period of 2 months.

18. Proposed § 113.43(c) would modify the language of the second sentence of § 25.18(c) by specifying that the failure to file the free-entry or reduced-duty document was not due to willful negligence or fraudulent intent.

19. Section 25.17(d) which concerns assessment of damages for the failure to redeliver merchandise is not placed in the proposed Part 113, but is placed in sections of the regulations dealing with failure to redeliver. First sentence of § 25.17(d) is added to § 141.113 as paragraph (g). Second sentence of § 25.17(d) dealing with demand for return of merchandise released under temporary importation bond is added to § 10.39(d) as subparagraph (3). Third sentence of § 25.17(d) is covered by § 12.16(c).

20. Detailed information concerning the application for the consolidated aircraft bond and general term bond is located in proposed §§ 113.61 and 113.62, respectively, rather than proposed §113.14 because that section is only concerned with the approval of the bonds by the district director. The third and fourth sentences of § 25.4(a)(35) which concern the qualification of the carrier for the transportation of bonded merchandise are omitted from Part 113 because they are contained in revised Part 112, which is concerned with the qualification of the carrier.

21. Sections 25.19 (a) and (d) in regard to the cancellation of erroneous charges against the bond when it is determined that liquidated damages assessed or paid under a bond did not in fact accrue are for the most part contained in § 172.31. Therefore, merely a cross-reference is given in proposed § 113.54(a) to § 172.31. Information concerning the refunding of liquidated damages paid and the handling of questionable cases since they involve liquidated damages in general are relocated in § 172.31. A correction is made in the forms shown.

22. Proposed § 114.34 places the requirements concerning the cancellation of erroneous charges involving carnets, presently located in § 25.19 (b) and (c), in Part 114—Carnets.

Accordingly, it is proposed to amend the Customs Regulations as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

In § 10.39, paragraph (a) is amended by substituting in the first sentence "§ 113.55" for "§ 25.15", and paragraph (d) is amended by adding a new subparagraph (3) to read as follows:

§ 10.39 Cancellation of bonds.

* * * * * * *

(d) * * *

(3) *Demand for return to Customs custody.*—When the demand for return to Customs custody is made in the case of merchandise entered under schedule 8, part 5C, Tariff Schedules of the United States (19 U.S.C. 1202), upon finding that the merchandise is not entitled to admission into the commerce of the United States, liquidated damages in an amount equal to double the estimated duties on the merchandise not returned shall be demanded, except that in the case of samples solely for use in taking orders, motion-picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and tools of trade, the liquidated damages demanded shall be in an amount equal to 110 percent of the estimated duties.

* * * * * * *

§ 10.41a [Amended]

In § 10.41a, the fifth sentence of paragraph (c) is amended by substituting "§ 113.14(p)" for "§ 25.4(a)(34)".

§§ 10.43 and 10.71 [Amended]

Sections 10.43(a) and 10.71(c) are amended by substituting "§ 113.42" for "§ 25.16(c)".

Section 10.112 and the centerhead before that section are amended to read as follows:

LATE FILING OF FREE ENTRY AND REDUCED DUTY DOCUMENTS

§ 10.112 Filing free entry documents or reduced duty documents after entry.

Whenever a free entry or a reduced duty document, form, or statement required to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production, but failure to file it was not due to willful negligence or fraudulent intent, such document, form, or statement may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final. See § 113.43 (c) of this chapter for satisfaction of the bond and cancellation of the bond charge.

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

PART 11—PACKING AND STAMPING; MARKING

§§ 11.12 and 11.12a [Amended]

Sections 11.12(c) and 11.12a(c) are amended by substituting "§ 113.14" for "§§ 25.3 and 25.4".

§ 11.12b [Amended]

In § 11.12b, paragraph (c) is amended by substituting "§ 113.14" for "§ 25.4".

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

PART 12—SPECIAL CLASSES OF MERCHANDISE

§§ 12.73 and 12.91 [Amended]

Sections 12.73(c), and 12.91(d) are amended by substituting "§ 113.14" for "§ 25.4(a)".

§ 12.80 [Amended]

Section 12.80(c) is amended by substituting "§ 113.14" for "§ 25.4(a)".

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

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

§ 19.17 [Amended]

In § 19.17, paragraph (e) is amended by substituting in the second sentence "T.D. 72-244" for "T.D. 50267, as amended by T.D. 52403".

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

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

§ 24.11 [Amended]

In § 24.11, paragraph (a)(2) is amended by substituting "§ 13.14(u)" in place of "§ 25.4(a)(32)".

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

PART 25—CUSTOMS BONDS

§§ 25.1 through 25.19 [Deleted]

Chapter I of Title 19, Code of Federal Regulations, is amended by deleting Part 25.

(R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, as amended; (19 U.S.C. 66, 1623, 1624).)

PART 113—CUSTOMS BONDS

Chapter I of Title 19, Code of Federal Regulations, is amended by adding new Part 113 as follows:

Sec.

113.0 Scope.

Subpart A—General Provisions

113.1 Authority to require execution of bond or security.

Sec.
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113.61 Consolidated Aircraft Bond.
113.62 General Term Bond for Entry of Merchandise.

AUTHORITY: R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, as amended; 19 U.S.C. 66, 1623, 1624. Subpart E also issued under sec. 484, 46 Stat. 722, as amended; (19 U.S.C. 1484). Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 113.0 Scope.

This part sets forth the general requirements applicable to bonds. It contains the general authority and powers of the Commissioner of Customs in requiring bonds, the classes of bonds and their approval and execution, general and special bond requirements, the requirements which must be met to be either a principal or a surety, the requirements concerning the production of documents, and the authority and manner of assessing damages and of cancelling the bond or charges against a bond.

Subpart A—General Provisions

§ 113.1 Authority to require execution of bond or security.

Where a bond or other security is not specifically required by law, the Commissioner of Customs, pursuant to Treasury Department Order No. 165 Revised, as amended (T.D. 53654, 19 FR 7241), may by regulation or specific instruction require, or authorize the district director to require, such bonds or other security considered necessary for the protection of the revenue or to assure compliance with any pertinent law, regulation, or instruction.

§ 113.2 Powers of Commissioner of Customs relating to bonds.

Whenever a bond is required or authorized by law, regulations, or instructions, the Commissioner of Customs may:

(a) Prescribe the conditions and form of such bond, and fix the amount of penalty, whether for the payment of liquidated damages, or of a penal sum, unless otherwise specially provided for by law.

(b) Provide for the approval of the sureties on the bond, without regard to any general provision of law.

(c) Authorize the execution of a term bond the conditions of which shall extend to and cover similar cases of importations over a period of time, not to exceed one year.

(d) Authorize the taking of a consolidated bond (single entry or term) in lieu of separate bonds to assure compliance with two or more provisions of law, regulations, or instructions. Such a consolidated bond shall have the same force and effect as the separate bonds in lieu of which it was taken. The Commissioner of Customs may fix the penalty of a consolidated bond without regard to any other provision of law, regulation, or instruction.

§ 113.3 Liability of surety on a terminated bond.

A surety remains liable on a terminated bond for obligations incurred prior to termination.

Subpart B—Classes and Approval of Bonds

§ 113.11 Name and classes of bonds.

(a) *Name.*—All bonds required to be given under the Customs statutes or regulations shall be known as Customs bonds.

(b) *Classes.*—Customs bonds shall consist of two classes:

(1) Those approved by the Commissioner of Customs (see § 113.13).

(2) Those approved by the district director (see § 113.14).

§ 113.12 Carnets.

A carnet is an international customs document which serves simultaneously as a customs entry document and as a customs bond. Therefore, carnets, provided for in Part 114 of this chapter, are ordinarily acceptable without posting further security under the Customs statutes or regulations requiring bonds.

§ 113.13 Bonds approved by the Commissioner of Customs.

The following bonds, after execution by the principals and sureties, shall be forwarded by the district director to the Commissioner of Customs for approval:

(a) *Proprietor's Manufacturing Warehouse Bond, Class 6, Customs Form 3583.*—Proprietor's Manufacturing Warehouse Bond, Class 6, Customs Form 3583, in an amount to be recommended by the district director, but not less than $5,000 on each building or area and not more than $50,000 on all buildings or areas, unless the Commissioner of Customs directs that additional security is necessary. Buildings connected by loading platforms or sheds shall be considered as separate buildings. This Customs bond shall be prepared in duplicate. The district director shall forward to the Commissioner, along with this bond, his recommendation, together with all reports, documents, and drawings filed in connection with the bond.

(b) *Blanket smelting and refining bond.*—Blanket smelting and refining bond in the form prescribed by T.D. 72-244, in an amount to be recommended by the district director and fixed by the Commissioner. The number of copies required for this bond are set forth in § 113.26(b).

§ 113.14 Bonds approved by the district director.

The following bonds are subject, after execution, to approval by the district director:

(a) *Proprietor's Warehouse Bond, Customs Form 3581.*—Proprietor's Warehouse Bond, Customs Form 3581, in the amount of $5,000 on each building or area covered, but not to exceed $50,000 on all buildings or areas unless the district director believes additional security is necessary. Buildings connected by loading platforms or sheds shall be considered as separate buildings. All reports, documents, and drawings submitted in connection with the bonding of the warehouse shall be filed with the bond.

(b) *Bonds for the carriage of merchandise.*—(1) *Carrier's Bond, Customs Form 3587.*—Carrier's Bond, Customs Form 3587, for common carriers, contract carriers, and freight forwarders, in an amount to be determined by the district director, but in an amount not less than $25,000 in the case of motor and air carriers and in an amount not less than $50,000 in the case of other carriers.

(2) *Private Carrier's Bond, Customs Form 3588.*—Private Carrier's Bond, Customs Form 3588, in an amount to be determined by the district director.

(c) *Bond of Customs Cartman or Lighterman, Customs Form 3855.*—Bond of Customs Cartman or Lighterman, Customs Form 3855, in such amount as the district director deems necessary, but not less than $5,000, and not more than $50,000, unless the district director deems the latter amount insufficient. If the latter amount is considered by the district director insufficient, he shall report this fact to the Commissioner of Customs for the Commissioner's determination as to the amount of the bond.

(d) *Bond of Claimant of Seized Goods for Costs of Court, Customs Form 4615.*—Bond of Claimant of Seized for Costs of Court, Customs Form 4615, in the amount of $250.

(e) *Bond to Produce Manifest and Shipper's Export Declarations for Goods Exported to Canada.*—(1) *Single entry bond, Customs Form 7303.*—Single entry bond to Produce Manifest and Shipper's Export Declarations for Goods Exported to Canada, Customs Form 7303, in the amount of $1,000.

(2) *Term bond.*—Term bond to produce manifest and shipper's export declarations for goods exported to Canada, in the form prescribed in T.D. 46594, as amended by T.D. 52626, in such amount as the district director may deem necessary.

(f) *Special carpet wool and camel's hair bond.*—(1) *Single entry bond, Customs Form 7547.*—Special single entry carpet wool and camel's hair bond, Customs Form 7547, in an amount equal to the value of the wool or hair involved plus double the estimated duty, as determined at the time of entry.

(2) *Term bond, Customs Form 7549.*—Special term carpet wool and camel's hair bond, Customs Form 7549, in the amount of $10,000, or such larger amount as the district director may deem necessary.

(g) *Immediate Delivery and Consumption Entry Bond.*—(1) *Single entry bond, Customs Form 7551.*—Immediate Delivery and Consumption Entry Bond (Single Entry), Customs Form 7551, in the amount equal to the value of the articles, as set forth in the entry, plus the estimated duty (including any taxes required by law to be treated as duties) and the estimated amount of any other taxes imposed upon or by reason of importation, as determined at the time of entry except that:

(i) *Merchandise entered at reduced rate of duty.*—When the bond is to cover merchandise granted a conditional right of entry at a reduced rate of duty, the amount of the bond shall be fixed on the basis of the maximum rate of duty prescribed by the law.

(ii) *Merchandise remaining in Customs custody.*—When the merchandise involved will remain in Customs custody until (*a*) the examination of the merchandise has been completed, (*b*) it is found to be truly and correctly invoiced, and (*c*) it is determined that its release is not precluded by law or regulation and it is entitled to admission into the commerce of the United States, the bond shall be in an amount equal to the aggregate sum of double the estimated amount of ordinary Customs duty on the merchandise (including any taxes required by law to be treated as duties) plus the estimated amount of any other tax or taxes on the merchandise collectible by the district director.

(iii) *Merchandise unconditionally free of duty.*—When the merchandise appears to the satisfaction of the district director to be unconditionally free of duty and not prohibited from admission into the commerce of the United States, the amount of the bond may be in such lesser amount as, in the opinion of the district director, will be sufficient to accomplish the purpose for which the bond is given, but in no case less than $100.

(iv) *Immediate delivery.*—When the bond relates to an application for immediate delivery, the amount of the bond shall be fixed in the amount equal to the value of the articles, based on the information furnished in the application, plus the estimated duty (including any taxes required by law to be treated as duties) and the estimated amount of any taxes imposed upon or by reason of importation, as determined at the time of the application.

(2) *Term bond, Customs Form 7553.*—Immediate Delivery and Consumption Entry Bond (Term), Customs Form 7553, in the amount of $10,000, or such larger amount as the district director may deem necessary. This bond shall be taken to cover only entries to be made at a single port and shall not be modified to cover more than one port. The rules prescribed in paragraph (a)(1) of this section for determining the amount of the single entry immediate delivery and consumption entry bond shall be applied in making charges against immediate delivery and consumption entry term bonds.

(h) *Warehouse Entry Bond, Customs Form 7555.*—Warehouse Entry Bond, Customs Form 7555, in an amount equal to the aggregate sum of double the estimated amount of ordinary Customs duty on the merchandise (including any taxes required by law to be treated as duties) plus the estimated amount of any other tax or taxes on the merchandise collectible by the district director. When the bond is to cover merchandise granted a conditional right of entry at a reduced rate of duty, the amount of the bond shall be fixed on the basis of the maximum rate of duty prescribed by the law.

(i) *Bond for Exportation or Transportation or for Transportation and Exportation.*—(1) *Single entry bond, Customs Form 7557.*—Single entry Bond for Exportation or Transportation or for Transportation and Exportation, Customs Form 7557, in an amount equal to double the estimated duties.

(2) *Term bond, Customs Form 7559.*—Term Bond for Exportation or Transportation or for Transportation and Exportation, Customs Form 7559, in the amount of $10,000, or such larger amount as the district director may deem necessary to afford ample security to the revenue.

(j) *Bond for Articles Entered or Withdrawn from Warehouse Conditionally Free of Duty, Customs Form 7561.*—Bond for Articles Entered or Withdrawn from Warehouse Conditionally Free of Duty, Customs Form 7561, in an amount equal to the aggregate sum ordinary Customs duty on the merchandise (including any taxes required by law to be treated as duties) plus the estimated amount of any other tax or taxes on the merchandise collectible by the district director. When the bond is to cover merchandise granted a conditional right of entry at a reduced rate of duty, the amount of the bond shall be fixed on the basis of the maximum rate of duty prescribed by the law.

(k) *Bond for Temporary Importations.*—(1) *Single entry, Customs Form 7563.*—Bond for Temporary Importations, Customs Form 7563, in an amount equal to double the duties which it is estimated would accrue (or such larger amount as the district director shall state in writing to the entrant, as is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry, except that in the case of samples solely for use in taking orders, motion-picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and tools of trade, the bond shall be in an amount equal to 110 percent of the estimated duties.

(2) *Term bond, Customs Form 7563–A.*—Term Bond for Temporary Importations, Customs Form 7563–A, in such amount as the district director may deem necessary, but in no case less than $1,000, unless the bond covers entries at 2 or more ports in which case the amount shall not be less than $10,000.

(l) *Bond for articles for exhibition, Customs Form 7565.*—Bond for articles for exhibition, Customs Form 7565, in an amount equal to the estimated duties, as determined at the time of entry.

(m) *Vessel, Vehicle, or Aircraft Bond.*—(1) *Single entry bond, Customs Form 7567.*—Vessel, Vehicle, or Aircraft Bond (Single Entry), Customs Form 7567, in such amount as the district director may deem necessary, but in no case less than $1,000.

(2) *Term bond, Customs Form 7569.*—Vessel, Vehicle, or Aircraft Bond (Term), Customs Form 7569, in the amount of $10,000, or such larger amount as may be fixed by the district director at the port where the bond is filed.

(n) *Single entry bond on entry for or withdrawal from manufacturing warehouse, Customs Form 7571.*—Bond on

entry for or withdrawal from manufacturing warehouse (single entry), Customs Form 7571, in an amount equal to the aggregate sum of double the estimated amount of ordinary Customs duty on the merchandise, as determined at the time of entry (including any taxes required by law to be treated as duties) plus the estimated amount of any other tax or taxes on the merchandise collectable by the district director.

(o) *Single entry bond to produce bill of lading, Customs Form 7581.*—Bond to Produce Bill of Lading (Single Entry), Customs Form 7581, in an amount equal to one and one-half times the invoice value.

(p) *Bond for control of instruments of international traffic, Customs Form 7587.*—Bond for the Control of Certain Instruments of International Traffic, Customs Form 7587, required by § 10.41a of this chapter in the amount of $10,000 or such larger amount as the district director may deem necessary to afford ample security to the revenue. Upon each approval or discontinuance of such bond there shall be promptly transmitted to the Commissioner of Customs the following information which shall be published in the weekly Customs Bulletin:

(1) Name and address of principal,

(2) Name and address of surety,

(3) Date of bond,

(4) Date of approval,

(5) Date of discontinuance (when applicable), and

(6) Amount of the bond.

(q) *Antidumping Bond, Customs Form 7591.*—Antidumping Bond, Customs Form 7591, in an amount equal to the estimated value of the merchandise.

(r) *Landing bond for alcoholic beverages, Customs Form 7593.*—Landing Bond, Customs Form 7593, to land spirits, wines, or other alcoholic liquors in foreign ports, in an amount equal to double the estimated duty.

(s) *General term bond for the entry of merchandise, Customs Form 7595.*—General Term Bond for Entry of Merchandise, Customs Form 7595, in the amount of $100,000, or such larger amount as may be fixed by the district director at the port where the bond is filed.

(t) *Bond to secure the payment of overtime services*—(1) *Single entry bond, Customs Form 7597.*—Single entry bond, Customs Form 7597, in an amount deemed by the district director to be sufficient to secure the payment of overtime services requested by or on behalf of parties in interest.

(2) *Term bond, Customs Form 7599.*—Term bond, Customs Form 7599, in an amount deemed by the district director to be sufficient to secure the payment of overtime services requested by or on behalf of parties in interest.

(u) *Superseding bond, Customs Form 7601.*—Superseding bond of the actual owner whose declaration has been filed pursuant to section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), to pay increased and additional duties imposed upon or by reason of importation, to redeliver merchandise for marking and other purposes, and to perform all required acts with respect to merchandise not entitled to admission into the commerce of the United States, Customs Form 7601, in an amount equal to the amount of the single-entry bond or the bond charge which it supersedes.

(v) *Bond for conditionally-free withdrawal for supplies of fishing vessels, Customs Form 7603.*—Bond for Conditionally-Free Withdrawal of Distilled Spirits (Including Alcohol, Wines, or Beer, for Supplies of Fishing Vessels, Customs Form 7603, in an amount equal to the duties and taxes that would have been assessed had the supplies been regularly entered, or withdrawn, for consumption. When the form is used as a term bond, the bond shall be fixed in such larger amount as the district director may deem necessary.

(w) *Consolidated Aircraft Bond, Customs Form 7605.*—Consolidated Aircraft Bond, Customs Form 7605, filed with any district director at the option of the carrier, in the amount of $100,000, or such larger amount as may be fixed by the district director.

(x) *Bond for Accelerated Payment of Drawback.*— (1) *Single entry bond, Customs Form 7609.*—Bond for Accelerated Payment of Drawback (Single Entry), Customs Form 7609, in an amount equal to the amount of accelerated payment to be received on the entry covered.

(2) *Term bond, Customs Form 7611.*—Bond for Accelerated Payment of Drawback (Term), Customs Form 7611, in an amount sufficient to cover the maximum amount of accelerated payment to be outstanding at any time during the period of the bond.

(y) *Drawback Export Bond, Customs Form 7613.*—Drawback Export Bond, Customs Form 7613, filed at the option of the drawback claimant using the exporter's summary procedure mentioned in § 22.7 of this chapter, in an amount equal to twenty five percent of the drawback claimed on entries filed by the principal (exporter-claimant) during the term of the bond.

(z) *Special bond for the entry of merchandise believed to involve unfair practices or unfair methods of competition.*—Special bond for the entry of merchandise believed to involve unfair practices or methods of competition, taken under the provisions of section 337(f), Tariff Act of 1930, as amended (19 U.S.C. 1337(f)), in the form prescribed in T.D. 45474. This bond shall be in an amount equal to the domestic value of the merchandise, as defined in § 12.39 (b) of this chapter.

(aa) *Special bond for the clearance of vessel penalized for carrying narcotics.*—Special bond for clearance of vessel penalized for carrying smoking opium or other narcotics under the provisions of section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), in the form prescribed in T.D. 45474. This bond shall be in an amount satisfactory to the district director to guarantee the payment of any fine imposed against the owner or master of the vessel.

(bb) *Special bond for the exportation of convict-made goods.*—Special bond for the exportation of convict-made goods, in the form prescribed in T.D. 45474, in an amount equal to the domestic value of the merchandise.

(cc) *Special bond for the observance of neutrality.*—Special bond for observance of neutrality in the form prescribed in T.D. 45474, in an amount equal to double the value of the vessel and cargo on board, including her armament.

(dd) *Containerized Cargo Bond.*—Containerized Cargo Bond (Term), in the form prescribed in section 19.40 of this chapter, in the sum of $25,000, or such larger amount as the district director shall determine.

(ee) *Trade Fair Bond.*—Trade Fair Bond, in the form prescribed in § 147.3 of this chapter, in an amount to be determined by the district director.

(ff) *Copyright bond.*—Copyright bond, the form for which may be obtained from the district director, in an amount equal to the value of the articles, as set forth in the entry, plus the estimated duty. (See § 133.43 of this chapter.)

(gg) *Public Gauger bond.*—Public Gauger bond, the form for which may be obtained from the district director, in an amount of $10,000. (See § 151.43 of this chapter.)

(hh) *Special bond for the importation of flammable fabrics.*—Special bond for the importation of flammable fabrics, the form for which may be obtained from the district director, in an amount equal to double the value of the merchandise.

(ii) *Bond of Customs Cartman for Issuance of Temporary Identification Card.*—Bond of Customs Cartman for Issuance of Temporary Identification Card, in the form prescribed in § 112.49(d) of this chapter, in an amount determined by the district director.

§ 113.15 Approval of bond.

The district director at the port where the bond is filed may approve any bonds described in § 113.14, if he is satisfied that:

(a) The amount of the bond is sufficient, and

(b) The bond is in proper form.

§ 113.16 Amount of bond approved by the district director.

The amount of any Customs bond approved by the district director shall not be less than $100, except when the law or regulation expressly provides that a lesser amount be taken. Fractional parts of a dollar shall be disregarded in computing the amount of the bond, which shall be stated always as the next highest dollar.

§ 113.17 Approved form of bond inadequate.

If a situation develops where the approved form of a bond, described in

§ 113.14, is deemed to be inapplicable, the district director may draft a form which he believes will be sufficient, but before the execution of the bond, the proposed form shall be submitted to the Commissioner of Customs for his consideration and approval.

§ 113.18 Retention of approved bonds.

All the bonds approved by the district director, described in § 113.14, except the Bond of Claimant of Seized Goods for Costs of Court, Customs Form 4615, shall remain on file in his office. The bond on Customs Form 4615, described in § 113.14(d), shall be transmitted to the United States attorney, as required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608).

Subpart C—General and Special Bond Requirements

§ 113.21 Information required on the bond.

(a) *Identification of principal and sureties.*—The names of the principal and sureties and their respective places of residence shall appear in full in the body of the bond. In the case of a corporate principal or surety, its legal designation and the address of its principal place of business shall appear.

(b) *Date of execution.*—Each bond shall bear the date it was actually executed.

(c) *Statement of the amount.*—The amount of the bond shall be stated in both words and figures.

(d) *Use of abbreviations.*—Abbreviations shall not be used, except in dates, descriptions of merchandise, and the marks and numbers on packages.

(e) *Blank spaces on the bond.*—Lines shall be drawn through all spaces on the bond which are not filled in.

§ 113.22 Witnesses required.

(a) *Generally.*—The signature of each party to a bond executed by a noncorporate principal or surety shall be witnessed by two persons, who shall sign their names as witnesses, followed by their addresses.

(b) *Witness for both principal and surety.*—When two persons signing as witnesses act for both principal and surety, they shall so indicate by stating on the bond "as to both" or a similar term.

(c) *Corporate principal or surety.*—No witnesses are required where bonds are executed by properly authorized officers or agents of a corporate principal or corporate surety. For requirements concerning the execution of a bond by an authorized officer or agent of a corporate principal or surety, see §§ 113.34 and 113.37.

§ 113.23 Changes made on the bond.

(a) *Definition of the types of changes.*—(1) *Modification or interlineation.*—For the purpose of this section, modifications or interlineations are changes which go to the substance of the bond, or are basic revisions of the bond.

(2) *Alterations or erasures.*—Alterations or erasures consist of minor changes, such as correction of typographical errors, or change of address, which do not go to the substance, or result in basic revision of the bond.

(b) *Prior to signing.*—When erasures, alterations, modifications, or interlineations are made on the bond prior to its signing by the parties to the bond, a statement by an agent of the surety company or by the personal sureties to that effect shall be placed upon the bond.

(c) *After signing.*—If erasures or alterations are made after the bond is signed, but prior to the approval of the bond by Customs, the consent of all the parties shall be written in the bond. Except in cases where a change in the bond is expressly authorized by regulation, or by the Commissioner no modification or interlineation shall be made on the bond after execution. When modification or interlineation is desired, a new bond will be executed.

(d) *After approval of the bond by Customs.*—Except in cases where change in the bond is expressly authorized by regulations, or instructions from the Commissioner, the district director shall not permit a change as defined in paragraph (a) of this section after the bond has been approved by Customs. When changes are desired, a new bond is required, which, when approved, shall supersede the existing bond.

(e) *Stipulations.*—All stipulations expressly authorized by the Commissioner pursuant to this section shall be securely attached to the related bond to prevent their loss or misplacement.

§ 113.24 Seals.

(a) *Bonds approved by the Commissioner of Customs.*—Bonds which are approved by the Commissioner of Customs must be under seal. The seal on such bonds shall be affixed adjoining the signatures of principal and sureties, if individuals, and the corporate seal shall be affixed adjoining the signatures of persons signing on behalf of a corporation.

(b) *Bonds approved by the district director.*—Bonds approved by the district director shall be under seal in accordance with the law of the State in which executed. However, when the charter or governing statute of a corporation requires its acts to be evidenced by its corporate seal, such seal is required.

§ 113.25 Termination date for term bonds.

The termination date of every term bond shall be the last day of the period and not the first day of a succeeding period; for example, January 1, 19—, to and including December 31 of that same year, and not January 1, 19—, to January 1 of the next year.

§ 113.26 Blanket term bonds.

(a) *Bonds approved by the district director.*—When a blanket term bond on Customs Form 7563–A, 7569, 7595, or 7599 is submitted, it shall be accompanied by a sufficient number of copies for transmittal to each port at which the principal seeks to conduct business. If this bond is to cover operations in one Customs district, the district director shall forward a copy, after approval, to each port named in the bond. If the bond is to cover operations in ports in other Customs districts, the district director shall forward the copies for other ports to the headquarters port for each other district, for distribution to the ports named in the bond.

(b) *Blanket smelting and refining term bonds.*—Blanket smelting and refining term bonds, described in § 113.13(b), requiring the approval of the Commissioner of Customs, shall be accompanied by a sufficient number of copies for transmittal by the Commissioner to each port at which the principal seeks to conduct business.

Subpart D—Principals and Sureties

§ 113.31 Information pertaining to principals and sureties on the bond.

The general information pertaining to the principal and sureties which must be given in the body of the bond is set forth in § 113.21(a).

§ 113.32 Same party as principal and surety; attorney in fact.

(a) *Same party as principal and surety.*—The same person, partnership, or corporation cannot be both principal and surety on a bond.

(b) *Attorney in fact for principal or surety.*—In executing a bond, a person may act as:

(1) Attorney in fact for both principal and surety;

(2) Surety and attorney in fact for the principal; or

(3) Principal attorney in fact for the surety.

§ 113.33 Partnerships as principals.

(a) *Name of partners on the bond.*—Unless written notice of the full names of all partners in the firm has been previously filed with the district director, the names of all persons composing the partnership shall appear in the body of the bond; for example, "A, B, and C, composing the firm of A, B, and Co."

(b) *Execution.*—Partnership bonds shall be executed in the firm name, with the name of the member or attorney of the firm executing it appearing immediately below the firm signature.

(c) *Action of one principal binding on all principals of the partnership.*—Pursuant to section 495 of the Tariff Act of 1930, as amended (19 U.S.C. 1495), when a Custom bond is executed by any member of the partnership, the bond shall be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution.

§ 113.34 Corporations as principals.

(a) *Name of corporation on the bonds.*—The name of a corporation executing a Customs bond as a principal, may be printed or placed thereon by means of a rubber stamp or otherwise,

followed by the written signature of the authorized officer or attorney.

(b) *Signature and seal of the corporation on the bond.*—The bond of a corporate principal shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.24.

(c) *Bond executed by an authorized officer of corporation.*—When the bond is executed by an authorized officer of a corporation and no power of attorney has been filed with the district director, the following evidence of his authority to act shall be furnished:

(1) *Execution of Certificate as to Corporate Principal.*—The official character, authority, and signature of the person or persons executing the bond for the corporate principal may be certified by the secretary, assistant secretary, or other officer of the corporation. Such certification shall be made by executing, under corporate seal, the provision appearing in the bond entitled "Certificate as to Corporate Principal."

(2) *Evidence in lieu of the certificate.*—In lieu of the above certificate, there may be attached to the bond so much of the records of the corporation as will show the official character, authority, and signature of the officer signing. The following documents should be attached:

(i) A certificate from the proper public officer showing the legal existence of the corporation. The district director, on bonds which he approves (§ 113.14), may waive the production of evidence of incorporation when such fact is a matter of common knowledge and he certifies this fact.

(ii) A copy of the bylaws, or so much thereof as authorizes the execution of such bonds, certified by the secretary of the corporation and authenticated by its corporate seal.

(iii) A copy of the document authorizing such officer to sign such bond, certified by the secretary of the corporation under the corporate seal, or a power of attorney executed in accordance with Subpart C of Part 141 of this chapter containing such authority.

(iv) A document verifying the signature of the officer properly attested under the corporate seal.

(d) *Bond executed by an attorney in fact.*—When an attorney in fact executes a bond on behalf of a corporate principal and a power of attorney has not been filed with the district director, there shall be attached a power of attorney executed under the corporate seal by an officer of the corporation whose authority to execute such power shall be shown as prescribed in paragraph (c) of this section.

§ 113.35 Individual sureties.

(a) *Number required.*—If individuals sign as sureties, there shall be two sureties on the bond. In the case of bonds approved by the district director, however, one surety may be accepted if the district director is satisfied that such surety is sufficient for the protection of the Government.

(b) *Qualifications to act as surety.*—(1) *Residency and citizenship.*—Every surety on a Customs bond must be both a resident and citizen of the United States.

(2) *Married women.*—A married woman may be accepted as a surety, unless the state in which she wishes to act as surety prohibits her from acting in that capacity.

(3) *Granting of power of attorney.*—Any individual other than a married woman in a State where she is prohibited from acting as a surety may grant a power of attorney to sign as surety on Customs bonds. If the power of attorney is limited to bonds of one or several importers, the importers shall be named in the power.

(4) *Property requirements.*—Each individual surety must have unencumbered property liable to execution within the limits of the Customs district in which the contract of suretyship is to be performed. The current market value of such property must be equal to the penalty of any bond executed by him. If a single surety is accepted, he shall qualify in an amount equal to twice the penalty of the bond.

(c) *Oath and evidence of solvency.*—Before being accepted as a surety the individual shall:

(1) Take an oath on Customs Form 3579, setting forth:

(i) The amount of his assets over and above all his debts and liabilities and such exemptions as may be allowed by law; and

(ii) The general description and the location of one or more pieces of real estate owned by him within the limits of the Cutsoms district and the value thereof over and above all encumbrances.

(2) Produce such evidence of solvency and financial responsibility as the district director may require.

(d) *Determination of financial responsibility.*—An individual surety shall not be accepted on a bond until he has satisfied the district director as to his financial responsibility. The district director may refer the matter to the special agent in charge for immediate investigation to verify the financial responsibility of the surety.

(e) *Continuance of financial responsibility.*—In order to follow the continued solvency and financial responsibility of individual sureties, the district director shall require a new oath and determine the financial responsibility of each such surety as prescribed in paragraphs (c) and (d) of this section at least once every 6 months, and more often if he deems it advisable.

§ 113.36 Partners acting as surety in behalf of a partner or in behalf of a partnership.

A person may act as surety for a business partner when such person is acting with respect to his separate property and in his individual capacity and as such must qualify as an individual surety, in accordance with § 113.35. A member of a partnership shall not be accepted as surety on a bond executed by the firm as principal.

§ 113.37 Corporate sureties.

(a) *Lists of corporations and limits of their bonds.*—A list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted, shall be furnished annually to all district directors by the Secretary of the Treasury. No corporation shall be accepted as surety on a bond unless named in the current list and no bond shall be for a greater amount than the respective limit stated in such list, unless the excess is protected as prescribed in § 223.11 of the Bureau of Accounts Regulations (31 CFR 223.11).

(b) *Name of corporation on the bond.*—The name of a corporation executing a Customs bond, as a surety, may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(c) *Name of agent or attorney on the bond.*—The agent or attorney acting for a corporate surety shall have stamped, printed, or typed on each bond executed by him, below his signature, his full name as it appears on the bond.

(d) *Signature and seal of the corporation on the bond.*—A bond executed by a corporate surety shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.24.

(e) *Two or more corporations as sureties on the same obligation.*—Two or more corporations may be accepted as sureties on any obligation the amount of which does not exceed the limitations of their aggregate qualifying power as fixed and determined by the Secretary of the Treasury. The amount for which each corporation may act as surety in all cases must be within the limitation prescribed by the Secretary, unless such excess is protected as prescribed in § 223.11 of the Bureau of Accounts Regulations (31 CFR 223.11). Each corporation shall limit its liability to a definite specified amount, in terms, upon the face of the bond by attaching the following:

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, of _____ as principal, and _____, a corporation existing under the laws of the State of _____, and _____, a corporation existing under the laws of the State of _____, as sureties, are held and firmly bound unto the United States of America, in the sum of _____ thousand dollars ($_____), jointly and severally with each surety as hereinafter specified, and the said _____ jointly and severally with said principal in the sum of _____ thousand dollars ($_____) of said penal sum and no more; and the said _____ jointly and severally with said principal in the sum of _____ thousand dollars ($_____) of said penal sum and no more; for the payment of which respective sums we bind ourselves, our

heirs, executors, and administrators, successors and assigns, in the manner and in the respective sums hereinbefore set forth, firmly by these presents. The obligors herein expressly agree that for the purpose of allowing a joint action against any or all of them, and for that purpose only, this bond shall be treated as the joint and several as well as the several obligation of each of the obligors.

Sealed with our seals, and dated this _____ day of _____, in the year one thousand nine hundred and _____.

(f) *Power of attorney for the agent or attorney of the surety.*—Corporations may execute powers of attorney to act in their behalf in the following manner:

(1) *Execution and contents.*—The corporate surety power of attorney shall be executed on Customs Form 5297, and shall contain the following information:

(i) Corporate surety name and number,

(ii) Name and address of agent or attorney, and his social security number,

(iii) Districts in which the agent or attorney is authorized to act,

(iv) Date of the power of attorney,

(v) Seal of the corporate surety, and

(vi) Attestation of any two principal officers.

(2) *Extent of authorization.*—Authorization must be by Customs districts and may not be limited to a single port. A separate Customs Form 5297 shall be submitted for each district, except when the authorization for the agent or attorney to act is for all districts. If the power of attorney covers all districts, the word "All" shall be entered in the appropriate space on the power of attorney.

(3) *Filing.*—Corporate surety powers of attorney executed on Customs Form 5297 shall be filed in duplicate (original and copy) at any Customs port of entry. The separate powers of attorney providing authority for an agent or attorney in any number of districts may be filed at one time at the same port. The original of the power of attorney shall be sent by the port to the Customs Data Center. The Customs Data Center shall periodically issue computer printouts reflecting all corporate powers of attorney, which shall be sent to all applicable ports of entry. The copy of the power of attorney shall be retained at the port where the power was filed for use in connection with bonds executed at the port for the surety company by the person covered by the power of attorney, until the first computer print-out reflecting the power of attorney has been received.

(4) *Use at port where power not filed before receipt of computer printout.*—If the grantee desires to use his power of attorney at a port covered by the power, but other than the one where his power was filed, before the first computer printout reflecting this power of attorney is received, he shall file Customs Form 5297 in triplicate (original and two copies), rather than duplicate. The second copy shall be validated by Customs and returned to the grantee. The grantee, at the time of filing a bond at a port other than the port where the power of attorney was filed, shall exhibit this validated copy of the power of attorney as proof of his grant of authority. The validity of this copy of the power shall expire when the first computer print-out reflecting this power of attorney is received.

(5) *Term and revocation.*—Corporate surety powers of attorney shall continue in force and effect until revoked. Any surety desiring that a designated agent or attorney be divested of his power of attorney must execute a revocation on Customs Form 5297.

(6) *Change on the power of attorney.*—No change, including a change due to typographical error, or change of address, shall be made on the Customs Form 5297 after it has been approved by Customs. To correct the power of attorney two separate Customs Forms 5297 shall be submitted, one revoking the previous power of attorney, and one containing a new grant of authority.

§ 113.38 Delinquent sureties.

(a) *Acceptance as surety when in default as principal on another Customs bond.*—No person shall be accepted as surety on any Customs bond while he is in default as principal on any other Customs bond.

(b) *Acceptance as surety when in default as surety on another Customs bond.*—A surety on a Customs bond which is in default may be accepted as surety on other Customs bonds only to the extent that his assets are unencumbered by such default.

§ 113.39 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) *General provision.*—In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury or the Commissioner of Customs is authorized to enforce, the district director is authorized to accept United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.

(b) *Authority to sell United States obligations on default.*—At the time of deposit of any obligation of the United States, other than United States money, with the district director, the obligor shall deliver a duly executed power of attorney and agreement in a form similar to that prescribed in Treasury Department Circular 154, dated October 31, 1969, amended, authorizing the district director, in case of any default in the performance of any of the conditions or stipulations of the bond, to sell such olgigation so deposited and to apply the proceeds of such sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of such default. The format of the power of attorney and agreement, when the obligor is a corporation, is set forth below, and shall be modified as appropriate when the obligor is either an individual or a partnership:

POWER OF ATTORNEY AND AGREEMENT
(For corporation)

Know all men by these presents, that _____, a corporation duly incorporated under the laws of the State of _____, and having its principal office in the city of _____, State of _____, in pursuance of a resolution of the board of directors of said corporation, passed on the ____ day of _____, 19__, a duly certified copy of which resolution is hereto attached, does hereby constitute and appoint (Name and official title of bond-approving officer), and his successors in office, as attorney for said corporation, for and in the name of said corporation to collect or to sell, assign, and transfer certain securities described as follows:

_____
_____
_____

such securities having been deposited by it, pursuant to authority conferred by 6 U.S.C. 15, and subject to the provisions thereof and of Treasury Circular No. 154, dated October 31, 1969, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by it with the United States, under date of _____, which is hereby made a part hereof, and the undersigned agrees that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, its said attorney shall have full power to collect said securities or any part thereof, or to sell, assign, and transfer said securities or any part thereof without notice, at public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and to apply the proceeds of such sale or collection in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as its said attorney may deem best; and the undersigned further agrees that the authority herein granted is irrevocable.

And said corporation hereby for itself, its successors and assigns, ratifies and confirms whatever its said attorney shall do by virtue of these presents.

In witness whereof, the _____, the corporation hereinabove named, by (Name and title of officer), duly authorized to act in the premises, has executed this instrument and caused the seal of the corporation to be hereto affixed this _____ day of _____, 19__.

[Corporate seal.]

_____
By _____

Before me, the undersigned, a notary public within and for the county of _____, in the State of _____ (or the District of Columbia), personall appeared (Name and title of officer) and for an in behalf of said _____, corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this _____ day of _____, 19__.

[Notarial seal.] _____
Notary Public

NOTE.—Securities must be described by title, date of maturity, rate of interest, denomination, serial number, and whether coupon or registered. Failure to give complete description will warrant rejection of this power of attorney.

(c) *Application of United States money on default.*—If cash is deposited in lieu of sureties on the bond, the district director is authorized to apply such

cash, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of a default under the bond.

Subpart E—Production of Documents

§ 113.41 Entry made prior to production of documents.

When entry is made prior to the production of a required document, a card memorandum on Customs Form 5101 shall be prepared by the importer and presented with the entry, whether the importer gives bond on Customs Form 7551 or 7553, or other appropriate form, or stipulates to produce such document.

§ 113.42 Time period for production of documents.

Except when another period is fixed by law or regulations, any document for the production of which a bond or stipulation is given shall be delivered to the district director within 6 months from the date of the transaction in connection with which the bond or stipulation was given, or within any extension of such time which may be granted pursuant to § 113.43(a). If the period ends on a Saturday, Sunday, or holiday, delivery on the next business day shall be accepted as timely.

§ 113.43 Extension of time period.

(a) *Application received within time period.*—If a document (other than an invoice) referred to in § 113.42 is not produced within 6 months from the date of the transaction in connection with which the bond or stipulation was given, the district director, in his discretion, upon written application of the importer, may extend the period for one further period of 2 months.

(b) *Late application.*—No application for the extension of the period of any bond or stipulation given to assure the production of a missing document shall be allowed by the district director if such application is received later than 2 months after the expiration of the period of the bond or stipulation, and any such extension shall not be allowed by the district director for a period of more than 2 months from the date of expiration of the period.

(c) *Acceptance of a free-entry or reduced-duty document prior to liquidation.*—When a bond or stipulation is given for the production of any free-entry or reduced-duty document and a satisfactory document is produced prior to liquidation of the entry or within the period during which a valid reliquidation may be completed, provided the failure to file was not due to willful negligence or fraudulent intent, it shall be accepted as satisfying the requirement that it be filed in connection with the entry, and the bond charge for its production shall be canceled.

§ 113.44 Assent of sureties to an extension of a bond.

(a) *Extension prescribed by law or regulations.*—The assent of the sureties to any extension of the period prescribed in a bond is not necessary when the extension is authorized by law or regulations.

(b) *Other extension.*—The assent of the sureties shall be obtained before any extension of the period prescribed in a bond, other than an extension authorized by law or regulation, is allowed.

§ 113.45 Charge for production of a missing document made against a term bond.

When a charge for the production of a missing document is made against a term bond, the charge shall be in the amount of the single entry bond that would have been taken had the transaction been covered by a single entry bond.

§ 113.46 Cancellation of bond charges resulting from failure to produce documents.

Section 172.22 of this chapter sets forth provisions relating to the cancellation of bond charges resulting from failure to produce documents.

Subpart F—Assessment of Damages and Cancellation of Bond

§ 113.51 Cancellation of bond or charge against the bond.

The Commissioner of Customs may authorize the cancellation of any bond provided for in this part or any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon payment of such lessor amount or penalty or upon such other terms and conditions as he may deem sufficient.

§ 113.52 Failure to satisfy the bond.

If any Customs bond, except one given only for the production of free-entry or reduced-duty documents (see §§ 113.43 (c) and 172.22(c) of this chapter), is unsatisfied upon the expiration of 90 days after liability has accrued thereunder, the matter shall be reported to the United States attorney for prosecution unless measures have been taken to file an application for relief in accordance with the provisions of Part 172 of this chapter or to effect a satisfactory settlement.

§ 113.53 Waiver of Customs requirement supported by a bond.

(a) *Waiver by the Commissioner of Customs.*—When a Customs requirement supported by a bond is waived by the Commissioner of Customs, the waiver may be:

(1) Unconditional, in which case the importer is relieved from the payment of liquidated damages;

(2) Conditioned upon prior settlement of the bond obligation by payment of liquidated damages; or

(3) Conditioned upon such other terms and conditions as the Commissioner may deem sufficient.

(b) *Waiver by the district director.*—When a Customs requirement supported by a bond is waived by the district director pursuant to the authority conferred upon him in these regulations, the waiver shall be unconditional.

§ 113.54 Cancellation of erroneous charges.

(a) *Bonds.*—Section 172.31 of this chapter sets forth the cancellation of erroneous charges against the bond when it is determined that liquidated damages assessed or paid under a bond did not in fact accrue.

(b) *Carnets.*—Section 114.34 of this chapter sets forth the cancellation of erroneous charges involving carnets.

§ 113.55 Cancellation of export bonds.

(a) *Definition of exportation.*—An exportation is a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. The shipment of merchandise abroad with the intention of returning it to the United States with a design to circumvent provisions of restriction or limitation in the tariff laws or to secure a benefit accruing to imported merchandise is not an exportation. Merchandise of foreign origin returned from abroad under these circumstances is dutiable according to its nature, weight, and value at the time of its original arrival in this country.

(b) *Manner of cancellation.*—A bond to assure the exportation of merchandise may be cancelled:

(1) *Upon exportation.*—Upon the specification of such merchandise on the outward manifest or outward bill of lading, the inspector's certificate of lading, the record of clearance of the vessel or of the departure of the vehicle, and the production of a foreign landing certificate if such certificate is required by the district director.

(2) *Upon payment of liquidated damages.*—Upon the payment of liquidated damages in accordance with the provisions of § 10.39 of this chapter, if exportation or destruction is not timely in the case of articles entered under schedule 8, part 5C, Tariff Schedules of the United States (19 U.S.C. 1202).

(c) *Cancellation of vessel, vehicle, or aircraft bond.*—The requirement of the vessel, vehicle, or aircraft bond, Customs Form 7567 or 7569, may be considered as having been complied with upon the production of the applicable documents mentioned in paragraph (b) of this section.

(d) *Foreign landing certificate.*—A foreign landing certificate, when required, shall be produced within six months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of lading. Landing certificates are required in the following cases:

(1) *Mandatory.*—A landing certificate shall be required in every case to establish the exportation of narcotic drugs or any equipment, stores (except such articles as are placed on board vessels or aircraft under the provisions of section

309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317)), or machinery for vessels.

(2) *Optional with the district director.*—A landing certificate may be required by the district director for merchandise exported from the United States, or residue cargo, when he deems such a certificate necessary for the protection of the revenue.

(3) *Waiver.*—Except as provided for in § 4.88 of this chapter, in cases where landing certificates are required and they cannot be produced, an application for waiver thereof may be made to the Commissioner of Customs through the district director, accompanied by such proofs of exportation and landing abroad as may be available.

(e) *Articles less than $10.*—In the case of articles for which the ordinary Customs duty estimated at the time of entry did not exceed $10 and which are exported within the period of the bond (including any lawful extension) but without Customs supervision, the bond may be cancelled upon production of evidence of a bona fide exportation satisfactory to the district director.

Subpart G—Special Provisions Concerning Consolidated Aircraft Bonds and General Term Bonds for the Entry of Merchandise

§ 113.61 Consolidated Aircraft Bond.

(a) *Bond not authorization for carriage of bonded merchandise.*—Approval of a Consolidated Aircraft Bond, Customs Form 7605, will not authorize an airline to act as a carrier for the transportation of bonded merchandise unless and until the airline filing the bond is qualified as a carrier for such transportation, in accordance with § 112.12 of this chapter.

(b) *Discontinuance of ordinary carrier's bond.*—When an airline has filed a bond on Customs Form 7605, and obtained Customs approval of the bond, it may obtain discontinuance of its bond on Customs Form 3587 by request to the district director at the port where the latter bond was approved.

§ 113.62 General Term Bond for Entry of Merchandise.

(a) *Application required.*—A principal desiring to execute the General Term Bond For Entry of Merchandise, Customs Form 7595, shall file with the district director an application for permission to file the bond.

(b) *Form of the application.*—The application for the General Term Bond For Entry of Merchandise, Customs Form 7595, shall show:

(1) The general character of the merchandise to be entered;

(2) The total amount of ordinary Customs duties (including any taxes required by law to be treated as duties) accruing on all merchandise imported by the principal during the calendar year preceding the date of the application, plus the estimated amount of any other tax or taxes on the merchandise collectible by the district director. Such total amount of duties and taxes shall be that which would have been required to be deposited had the merchandise been entered for consumption, even though some of or all the merchandise may have been entered under bond. If no imports were made during the calendar year prior to the application, a statement of the duties and taxes it is estimated will accrue on all importations during the current year shall be submitted; and

(3) The ports at which it is intended to file entries.

PART 114—CARNETS

Part 114 is amended by adding at the end thereof a new § 114.34, reading as follows:

§ 114.34 Cancellation of erroneous charges.

(a) *TIR carnet.*—When it is determined that liquidated damages assessed or paid for any shortage, irregular delivery, or nondelivery of merchandise covered by a TIR carnet did not in fact accrue, the liquidated damages shall be cancelled by the district director and, if paid, refunded, as provided by § 18.8 of this chapter.

(b) *A.T.A. or E.C.S. carnet.*—When it is determined that liquidated damages assessed or paid for failure to properly reexport or destroy merchandise temporarily imported under cover of an A.T.A. or E.C.S. carnet did not in fact accrue, the liquidated damages shall be cancelled by the district director and, if paid, refunded as provided by § 10.39 of this chapter.

(c) *Determination dependent upon a construction of law.*—When the determination of whether or not the charge was erroneously made depends upon a construction of law, the charge shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling by the Commissioner of Customs decisive of the issue. Approval of the Commissioner shall be requested in all doubtful cases. (See § 172.31 of this chapter.)

(R.S. 251, as amended, 77A Stat. 14, secs. 623, 624, 46 Stat. 759, as amended; 19 U.S.C. 66, 1202 (Gen. Hdnte. 11), 1623, 1624.)

PART 141—ENTRY OF MERCHANDISE

§ 141.41 [Amended]

Section 141.41 is amended by substituting "Part 113" for "Part 25".

§ 141.102 [Amended]

In § 141.102, paragraph (d) is amended by substituting "Part 113" for "Part 25".

Section 141.113 is amended by adding a new paragraph (g) to read as follows:

§ 141.113 Recall of merchandise released from Customs custody.

* * * * *

(g) *Demand not complied with.*—When the demand of the district director for return of merchandise to Customs custody is not complied with, liquidated damages shall be assessed, except in the case of merchandise entered under schedule 8, part 5C, Tariff Schedules of the United States (19 U.S.C. 1202), in an amount equal to the value of the merchandise not returned, as determined at the time of entry, plus the estimated duties and taxes if any. Liquidated damages assessed on merchandise entered under schedule 8, part 5C, Tariff Schedules of the United States, are set forth in § 10.39(d)(3) of this chapter.

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

PART 142—SPECIAL PERMITS FOR IMMEDIATE DELIVERY PRIOR TO ENTRY

§ 142.4 [Amended]

In § 142.4, paragraph (a) is amended by substituting "§ 113.14(g)(1)" for "§ 25.4(a)(9)", and paragraph (b) is amended by substituting "§ 113.14(g)(2)" for "§ 25.4(a)(9)".

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

PART 172—LIQUIDATED DAMAGES

Section 172.31 is amended to read as follows:

§ 172.31 Act or omission did not occur.

(a) *Definite.*—If it is definitely determined that the act or omission forming the basis for a claim for liquidated damages did not in fact occur, the claim shall be cancelled by the district director. If the liquidated damages have already been paid, they shall be refunded by the regional commissioner of Customs, and an appropriate notation shall be made on Customs Form 5955-A, if the transaction has already been recorded thereon.

(b) *Dependent upon a construction of law.*—When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling decisive of the issue.

(c) *Doubtful cases.*—Approval of the Commissioner of Customs shall be requested in all doubtful cases.

(R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, as amended; 19 U.S.C. 66, 1623, 1624.)

For ready comparison there is annexed to this notice a parallel reference table showing the relation of sections in the proposed Part 113 to 19 CFR Part 25.

Prior to the adoption of the revision, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Attention: Regulations Division, Washington, D.C. 20229, and received on or before November 13, 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,

Bureau of Customs, Washington, D.C., during regular business hours.

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

Approved September 5, 1973.

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

ANNEX TO NOTICE OF PROPOSED RULE MAKING

PARALLEL REFERENCE TABLE

(This table shows the relation of sections in proposed Part 113 to 19 CFR Part 25)

Proposed Part 113 section	*19 CFR section*
113.0	None.
113.1	None.
113.2 and 113.3	None.
113.11	25.1.
113.12	25.1.
113.13(a)	25.3(a)(1).
113.13(b)	25.3(a)(3).
113.14(a)	25.4(a)(2).
113.14(b)(1)	25.4(a)(1)(i) and 18.1(a) C.M.
113.14(b)(2)	25.4(a)(1)(ii).
113.14(c)	25.4(a)(3).
113.14(d)	25.4(a)(4).
113.14(e)(1)	25.4(a)(5).
113.14(e)(2)	25.4(a)(6).
113.14(f)(1)	25.4(a)(7).
113.14(f)(2)	25.4(a)(8).
113.14(g)(1)	25.4(a)(9).
113.14(g)(2)	25.4(a)(10).
113.14(h)	25.4(a)(11).
113.14(i)(1)	25.4(a)(12).
113.14(i)(2)	25.4(a)(13).
113.14(j)	25.4(a)(14).
113.14(k)(1)	25.4(a)(15) and 10.31(f).
113.14(k)(2)	25.4(a)(16).
113.14(l)	25.4(a)(17).
113.14(m)(1)	25.4(a)(18).
113.14(m)(2)	25.4(a)(19)
113.14(n)	25.4(a)(21).
113.14(o)	25.4(a)(22).
113.14(p)	25.4(a)(34).
113.14(q)	25.4(a)(23).
113.14(r)	25.4(a)(24).
113.14(s)	25.4(a)(25).
113.14(t)(1)	25.4(a)(26).
113.14(t)(2)	25.4(a)(27).
113.14(u)	25.4(a)(33).
113.14(v)	25.4(a)(28).
113.14(w)	25.4(a)(35).
113.14(x) (1)–(2)	New.
113.14(y)	New.
113.14(z)	25.4(a)(29).
113.14(aa)	25.4(a)(30).
113.14(bb)	25.4(a)(31).
113.14(cc)	25.4(a)(32).
113.14(dd)–(ll)	New.
113.15	None.
113.16	25.4(b).
113.17	25.4(c).
113.18	25.4(a).
113.21(a)	25.5(a) and 25.8(a).
113.21(b)	25.5(c).
113.21(c)	25.4(b).
113.21(d)	25.4(b).
113.21(e)	25.4(b).
113.22(a)	25.5(a).
113.22(b)	25.5(b).
113.22(c)	25.5(a).
113.23(a)	None.
113.23(b)	25.5(d).
113.23(c)	25.5(d).
113.23 (d) and (e)	25.5, C.M.
113.24(a)	25.6(a).
113.24(b)	25.6(b).
113.25	25.5(c).
113.26(a)	None.
113.26(b)	None.
113.26(c)	None.
113.27	25.3(b).
113.31	None.
113.32(a)	25.13.
113.32(b)	25.13.
113.33(a)	25.7(b).
113.33(b)	25.7(a).
113.33(c)	None.
113.34(a)	25.8(d).
113.34(b)	25.8(a).
113.34(c)	25.8(a), 25.5(a) and 25.8(b).
113.34(d)	25.8(c).
113.35(a)	25.9(a).
113.35(b)	25.9(a), 25.9(e), 25.9(f), and 25.9(b).
113.35(c)	25.9(a).
113.35(d)	25.9(c).
113.35(e)	25.9(d).
113.36	25.11.
113.37(a)	25.12(a).
113.37(b)	25.8(d).
113.37(c)	None.
113.37(d)	25.8(a).
113.37(e)	25.12(b).
113.37(f)	25.12(c) and 25.12(d).
113.38(a)	25.10(a).
113.38(b)	25.10(b).
113.39(a)	25.14.
113.39(b)	25.14.
113.39(c)	25.14.
113.41	25.16(a).
113.42	25.16(c).
113.43(a)	25.18(a).
113.43 (b) and (c)	25.18(c).
113.44(a)	25.18(d).
113.44(b)	25.18(d).
113.45	25.16(b).
113.46	None.
113.51	None.
113.52	25.15(e).
113.53(a)	25.17(f).
113.53(b)	25.17(f).
113.54(a)	None.
113.54(b)	None.
113.55(a)	Footnote 5.
113.55 (b) and (c)	25.15(a).
113.55(d)	25.15(b), 25.15(a), and 25.15(c).
113.55(e)	25.15(d).
113.61(a)	25.4(a)(35).
113.61(b)	25.4(a)(35).
113.62(a)	25.4(a)(25).
113.62(b)	25.4(a)(25).

[FR Doc.73-19557 Filed 9-14-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Office of Oil and Gas

[32A CFR Ch. X]

REFUNDS OF LICENSE FEES PAID FOR IMPORTS OF CRUDE OIL INCORPORATED INTO ASPHALT

Proposed Oil Import Bulletin

Recent amendment of Proclamation 3279, as amended, authorized the Secretary of the Interior to refund fees whether in whole or in part where crude oil imported by virtue of a license for which a fee has been paid has been manufactured into asphalt. The authority so directed has been implemented in section 32 of Oil Import Regulation 1 (Revision 5), as amended, and requires that applications for refunds must be filed with the Director in such form as the Director may prescribe and shall be accompanied by all information necessary in the judgement of the Director to enable him to determine the sum, if any, which should be refunded.

The proposed bulletin describes the format which will be utilized in calculating the eligible rebate volume and includes an Asphalt Production Schedule on which data needed by the Director is to be reported to enable him to determine the rebate volume and sum to be refunded.

The proposed bulletin also describes the maintenance by the allocation holder of asphalt production records available for inspection by representatives of the Office of Oil and Gas in connection with the responsibility of such office for assuring compliance with the Proclamation and Regulation.

Interested persons are invited to submit written comments on the proposed bulletin by October 17, 1973, to the Director, Office of Oil and Gas, Department of the Interior, Washington, D.C. 20240. Each person who submits comments is asked to provide fifteen (15) copies.

ROY GOODEARLE,
Acting Director.

PROPOSED BULLETIN—OIL IMPORTS

Subject: Refunds of License Fees Paid for Imports of Crude Oil Incorporated into Asphalt.

Paragraph (a)(3)(iv) of section 3 of Proclamation 3279, as amended by Proclamation 4227 (38 FR 16195) states in part:

The Secretary is authorized to refund fees, whether in whole or part, where—(iv) crude oil imported by virtue of a license for which a fee was paid has been manufactured into asphalt;

This section of the proclamation is implemented by paragraph (g)(3) of sec. 32 of Oil Import Regulation 1 (Revision 5), as amended, which states in part:

(g) Refund of license fees paid for the importation of crude, unfinished oils or finished products shall be made by the Director, wholly or in part: (3) to the extent that such crude oil or unfinished oils have been incorporated into petrochemicals as defined in section 9A of this Regulation which are subsequently exported, or finished products subsequently exported or that asphalt as defined in this Regulation was produced from the imported feedstocks. Applications for refunds must be filed in such form as the Director may prescribe not later than ninety (90) days after exportation of the petrochemical or finished product or manufacture of the asphalt to which such application pertains; and shall be accompanied by all information necessary in the judgment of the Director to enable him to determine the sum, if any, which should be refunded.

Applications for rebates shall be made on such forms as the Director may provide.

Asphalt is specifically defined in paragraph (g)(6) of section 15 of Proclamation 3279, as amended:

"Asphalt" means a solid or semi-solid cementitious crude oil or derivative of crude oil, 50 percent or more of the constituents of which are bitumins, which is not to be used as fuel and which is to be used without further processing except airblowing or blending by mechanical means.

An applicant applying for a rebate of fees paid on imported crude oil for asphalt production shall provide such information as required by the Director. The following format will be utilized in calculating the eligible rebate volume.

$$\frac{A}{B}\left(\begin{array}{c}\text{Total Hydrocarbon (1) Volume}\\ \text{of the Asphalt Production}\\ \text{Derived From the Inputs}\end{array}\right)=\begin{array}{c}\text{Rebate}\\ \text{Volume}\end{array}$$

A=Asphalt content of fee paid inputs calculated as the sum of:

$$\left(\begin{array}{c}\text{Volume of Fee Paid}\\ \text{Input A}\end{array}\right)\left(\begin{array}{c}\text{Volume percent Asphalt Content of}\\ \text{Fee Paid Input A}\end{array}\right)+\left(\begin{array}{c}\text{Volume of Fee Paid}\\ \text{Input B}\end{array}\right)\left(\begin{array}{c}\text{Volume percent Asphalt Content of}\\ \text{Fee Paid Input B}\end{array}\right)+\text{etc.}$$

(1) Includes cutback solvent in the asphalt but not nonhydrocarbon materials such as water.

B=Asphalt content of all inputs, fee paid and other, calculated as the sum of:

$$\left(\begin{array}{c}\text{Volume of Fee Paid}\\ \text{Input A}\end{array}\right)\left(\begin{array}{c}\text{Volume percent Asphalt Content of}\\ \text{Fee Paid Input A}\end{array}\right)+\left(\begin{array}{c}\text{Volume of Fee Paid}\\ \text{Input B}\end{array}\right)\left(\begin{array}{c}\text{Volume percent Asphalt Content of}\\ \text{Fee Paid Input B}\end{array}\right)+\left(\begin{array}{c}\text{Volume of}\\ \text{Input C}\end{array}\right)\left(\begin{array}{c}\text{Volume percent Asphalt Content of}\\ \text{Input C}\end{array}\right)+\text{etc.}$$

All persons receiving allocations are reminded of the requirements of sec. 6 of Oil Import Regulation 1 (Revision 5), as amended, as it relates to the maintenance by the allocation holder of records available for inspection by representatives of the Office of Oil and Gas in connection with the responsibility of such office for assuring compliance with the Regulation and Proclamation 3279, as amended. Such asphalt production records should include but not necessarily be limited to (a) identity of the crude input streams used to produce the asphalt (b) the volume of such streams (c) whether the crude oil stream is fee-paid or not and the amount of the fee (d) the asphalt content by volume of the crudes used to produce the asphalt (e) the volume of the asphalt produced, including the amount of cutback hydrocarbon solvent and the volume of nonhydrocarbon materials included.

The asphalt claimed as a basis of a rebate must have been produced in the facilities into which the fee-paid crude oil, on the basis of which a rebate was claimed, was charged as feedstock to produce the asphalt.

ASPHALT PRODUCTION SCHEDULE—REBATE OF FEES FOR ASPHALT PRODUCED

Date produced	Date fee paid	Fee-paid inputs			Fee-exempt inputs			Total barrels asphalt (1)+(2)	Total barrels asphalt produced [1]
		Asphalt content		Barrels of asphalt (1)	Asphalt content		Barrels of asphalt (2)		
		Barrels	By volume percent		Barrels	By volume percent			

[1] Includes cutback solvent but not non-hydrocarbon materials such as water.

[FR Doc.73-19739 Filed 9-13-73;9:48 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1421]

1973-CROP TUNG NUTS

Proposed Support Program

Pursuant to sections 201 and 401 of the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1446 and 1421), the Secretary is preparing to determine and announce the support program for 1973-crop tung nuts.

Section 201 provides that the price of tung nuts shall be supported through loans, purchases, or other operations at a level not in excess of 90 percentum nor less than 60 percentum of the parity price therefor: *Provided*, That in any crop year in which the Secretary determines that the domestic production of tung oil will be less than the anticipated domestic demand for such oil, the price of tung nuts shall be supported at not less than 65 percentum of the parity price therefor.

The program will include:

1. The level of support
2. The method of support
3. Conditions of eligibility
4. Area and period of program
5. Other program operating provisions

Section 401 of the Act requires that, in determining the level of support in excess of the minimum level prescribed by law, consideration be given to the supply of the commodity in relation to the demand therefor, the price levels at which other commodities are being supported, the availability of funds, the perishability of the commodity, the importance of the commodity to agriculture and the national economy, the ability to dispose of stocks acquired through a price-support operation, the need for offsetting temporary losses of export markets, and the ability and willingness of producers to keep supplies in line with demand.

Consideration will be given to data, views, and recommendations pertaining to the proposed determinations covered by this notice which are submitted in writing to the Director, Cotton, Rice and Oilseeds Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (8:15 a.m.-4:45 p.m.) (7 CFR 1.27 (b)). All submissions must, in order to be sure of consideration, be received by the Director not later than October 17, 1973.

Signed at Washington, D.C. on September 10, 1973.

GLENN A. WEIR,
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc.73-19676 Filed 9-14-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 141e]

BACITRACIN AND BACITRACIN-CONTAINING DRUGS

Proposed Change of Moisture Determination for Zinc Bacitracin-Neomycin-Polymyxin Powder Topical

The Commissioner of Food and Drugs proposes that the antibiotic drug regulations be amended, as set forth below, to change the method for moisture determination for bacitracin- or zinc bacitracin-neomycin-polymyxin powder topical from loss on drying to the method described in § 141.502.

For several months, all samples submitted for certification have been tested for moisture by this method and all results were within the established limits. The results obtained with the method in § 141.502 are more valuable as a quality control because it is a measure of all moisture present in the drug.

Therefore, under provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), it is proposed that Part 141e be amended in § 141e.430 by revising paragraph (b) to read as follows:

§ 141e.430 Bacitracin-neomycin-polymyxin powder topical; zinc bacitracin-neomycin-polymyxin powder topical.

* * * * *

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

* * * * *

Interested persons may on or before November 16, 1973, file with the Hearing Clerk, Food and Drug Administration, Rm. 6-86, 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 September 7, 1973.

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

[FR Doc.73-19631 Filed 9-14-73;8:45 am]

[21 CFR Part 278]

CONTROL OF ELECTRONIC PRODUCT RADIATION

Product Identification and Initial Reports

The Commissioner of Food and Drugs is proposing to amend Subpart C and Subpart H of the regulations, specifically § 278.202 (21 CFR 278.202) and § 278.710 (21 CFR 278.710), respectively, to discontinue the requirement that a manufacturer submit to the Secretary of Health, Education, and Welfare, the key to the code for determining the date of manufacture of an electronic product and instead require that this information be placed on the product identification tag or label affixed to the product.

Section 278.202 (21 CFR 278.202) requires manufacturers of electronic products, for which there are applicable performance standards in effect, to provide certain information in the form of a tag or label permanently affixed or inscribed on such product. This includes information necessary to identify the manufacturer, and the month, year, and place of manufacture. The manufacturer is permitted under this regulation to code the month, year, and place of manufacture on the labels of such products provided he previously supplies the Secretary of Health, Education, and Welfare with the key to such code.

Following the receipt by the Food and Drug Administration of requests from members of the public for the key to coded information on product labels, it was determined that the key to this coded information on labels of electronic products subject to performance standards does not constitute information exempt from disclosure under 5 U.S.C. 552 (b)(4).

On March 27, 1972 one hundred and forty-two (142) manufacturers of electronic products and industry associations, both domestic and foreign, were advised by letter of the intent to release to the public, upon request, coded information concerning the date of manufacture. All were given an opportunity to justify why such information should not be released. Twenty-six (26) manufacturers responded and 13 did not object to the disclosures. The 13 that objected stated that products are often manufactured far in advance of sale causing people to refrain from buying such merchandise if they are able to determine the data of manufacture.

It is the opinion of the Food and Drug Administration that manufacturers have not adequately substantiated their claims that providing the date of manufacture on a product will have an adverse impact on sales. This is based upon the fact that use is the critical factor in deterioration and warranties are given by the manufacturer from the date of sale, regardless of whether a unit was manufactured some months before.

To permit manufacturers to code the date of manufacture on labels, while at the same time allowing disclosure of this information to the public, is an unnecessary burden upon the Food and Drug Administration and the manufacturer. In addition, there is a definite need for the Food and Drug Administration representative, who is field-testing an electronic product subject to a standard, to know the date of manufacture in order to ascertain the applicable provisions of a performance standard for that unit. The applicable provisions will change as amendments to the standards are promulgated.

Therefore, it is proposed to amend § 278.202(a)(2) (21 CFR 278.202) to discontinue the requirement that a manufacturer supply the Secretary with the key to the code for determining the date of manufacture and instead require that the month and year of manufacture be clearly placed on the identification tag or label affixed to the product.

To achieve continuity throughout 21 CFR Part 278 on product identification, § 278.710(b) (21 CFR 278.710) would also be amended to clarify that the initial report of the manufacturer of an electronic product listed under § 278.750 (21 CFR 278.750) must only provide information concerning the manufacturer's code or other system of labeling sufficient to enable the Secretary to determine the place of manufacture.

It is proposed to make these amendments applicable to products manufactured after August 1, 1974, to allow manufacturers time to prepare for the amended requirements.

Therefore, pursuant to the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (secs. 358 and 360A, 82 Stat. 1177-1179 and 1182-1183; 42 U.S.C. 263(f), (i)) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes to amend Part 278 as follows:

1. In § 278.202 by revising paragraph (a)(2) to read as follows:

§ 278.202 Identification.

(a) * * *

(2) The month, year, and place of manufacture: The place of manufacture may be expressed in code provided the manufacturer has previously supplied the Secretary with the key to such code.

* * * * *

2. In 278.710 by revising paragraph (b) to read as follows:

§ 278.710 Initial reports.

* * * * *

(b) Identify each model of the listed product together with sufficient information concerning the manufacturer's code or other system of labeling sufficient to enable the Secretary to determine the place of manufacture.

* * * * *

Interested persons may on or before November 16, 1973 file with the Hearing Clerk, Food and Drug Administration, Rm. 6-86, 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. Except for material clearly designated by the contributor as proprietary trade secret information, all comments in response to the proposed regulations may be seen in the above office during regular business hours, Monday through Friday.

Dated September 10, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-19630 Filed 9-14-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-SW-57]

TRANSITION AREA

Proposed Designation

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

Interested persons may submit such written data, views, or arguments as

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

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

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

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

JONESTOWN, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Bar K Airpark (latitude 30°29'52" N., longitude 97°58'07" W.) and within 3 miles each side of the Austin, Tex., VORTAC 311°T (302°M) radial extending from the 5-mile radius to 28 miles northwest of the VORTAC.

The proposed transition area will provide controlled airspace for aircraft executing the proposed VORTAC-A instrument approach.

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

Issued in Forth Worth, Tex., on September 7, 1973.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.73-19644 Filed 9-14-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19810; FCC 73-911]

TELEVISION BROADCAST STATIONS

Proposed Table of Assignments

1. Notice of proposed rulemaking is hereby given concerning proposed amendment of the Television Table of Assignments (§ 73.606(b) of the Commission's rules and regulations) with respect to the petition of Greater Myrtle Beach Television Corporation (Myrtle Beach) proposing the assignment of Channel 43 to Myrtle Beach, South Carolina (RM-2153). The petition was tendered March 8, 1973, and accepted March 19, 1973.

2. Myrtle Beach, population 8,536,[1] is located in Horry County, population 69,992. There are presently no local television broadcast services in Myrtle Beach. Myrtle Beach is within the Grade B contours of Stations WECT and WWAY-TV, Wilmington, North Carolina, and there is a local cable television service. Petitioner asserts and we so find that Channel 43 may be assigned to Myrtle Beach without any other change in the Television Table of Assignments.

3. Myrtle Beach's principal contention is that the assignment of Channel 43 would bring much needed service to an extremely rapidly growing area. In this respect, various statistics are given as to the growth of Myrtle Beach and other communities in the area (including Myrtle Beach Base and Surfside Beach Town) and various population divisions (the Myrtle Beach Division, Lois West Division, Lois South Division, and Lois East Division), and there is an abundance of information as to growth and business activities. Petitioner contends that the Census figures are not true indicia of the population because of the popularity of Myrtle Beach area as a tourist attraction: it is asserted that "three quarters of a million people call Myrtle Beach their 'home away from home' during the long tourist season"; Myrtle Beach has an average weekly population of 250,000; tourists triple the population of the service area; and it is estimated that the number of visitors in 1970 totalled 12 million as compared to 8 million in 1965. In short, the tourist boom has had a tremendous effect on the economy, property values, and tax revenues of Horry County; for example, there were under construction six golf courses in the area at the time of the petition with others anticipated for later in 1973.

4. A sufficient showing has been made to warrant the Commission's adopting a notice of proposed rulemaking proposing the assignment of Channel 43 to Myrtle Beach, South Carolina. It indicates that Myrtle Beach probably merits a television channel of its own and that the proposed channel assignment is feasible. However, since channel assignments are made to a community, it would be helpful if the petitioner more carefully set forth the information relied on as concerns the city of Myrtle Beach, which is a community within the meaning of section 307(b) of the Act and our regulations, as contrasted to the Myrtle Beach Division and other portions of the surrounding area. While undoubtedly the data adduced is directed toward showing the importance of the city of Myrtle Beach to the area generally, a consideration which the Commission will carefully consider in making a decision here, it would be helpful if the data and information relied on by petitioner specified the relationship of the various communities and population areas to the city of Myrtle Beach, the length of the tourist season, and a breakdown of the statistics as concerns the city of Myrtle Beach as contrasted to what petitioner generally refers to as Myrtle Beach which apparently consists of the general area.[2]

5. In view of the foregoing, and pursuant to authority found in Sections 4 (i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, It Is Proposed to Amend § 73.606(b) of the Commission's rules and regulations, the Television Table of Assignments, as concerns Myrtle Beach, South Carolina, as follows:

City	Channel No.	
	Present	Proposed
Myrtle Beach, S.C.		43

6. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules and regulations, interested parties may file comments on or before October 23, 1973, and reply comments on or before November 1, 1973. All submissions by parties to this proceeding, or persons acting on behalf of such parties, must be made in written comments, reply comments, or other appropriate pleadings.

7. In accordance with the provisions of § 1.419 of the rules and regulations, an original and 14 copies of all comments, reply comments, briefs, and other documents shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters, 1919 M Street NW., Washington, D.C.

Adopted September 6, 1973.

Released September 11, 1973.

FEDERAL COMMUNICATIONS COMMISSION[3]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-19689 Filed 9-14-73;8:45 am]

[47 CFR Part 81]

[Docket No. 19805; FCC 73-898]

STATIONS ON LAND IN THE MARITIME SERVICE

Frequency Coordination

In the matter of amendment of Part 81 of the Commission's rules, governing stations on land in the Maritime Services,

[1] All population data is from the 1970 Census.

[2] A map or maps showing the location of various communities and population areas might be helpful.

[3] Commissioner Robert E. Lee absent.

to require frequency coordination for the use of marine limited coast very high frequency and single sideband stations (RM 1966, 2180).

1. Notice of proposed rulemaking in the above-entitled matter is hereby given.

2. The Southern California Marine Radio Council (SCMRC) and the Hawaiian Marine Radio Council (HMRC) have petitioned the Commission to amend Part 81 of its rules to require frequency coordination in connection with all applications for new or modified VHF and single sideband (SSB) limited coast marine stations. SCMRC proposes to coordinate for the Eleventh Coast Guard District, which comprises the southern portions of California as well as Arizona, portions of Utah and Nevada and ocean areas contiguous thereto. HMRC proposes to coordinate for Hawaii. Both request that they be recognized as the coordinator for the use of limited coast frequencies in their respective areas.

3. Public Notice of the filing of these petitions was given. Statements in opposition to the SCRMC petition were filed by A. W. Brothers and by the National Marine Electronics Association, Inc. (NMEA). NMEA advised delay pending study but proposed no study. A statement in support of the petition was filed by the Los Angeles-Long Beach Port Safety Council. The statements of A. W. Brothers and of the Los Angeles-Long Beach Port Safety Council were not accompanied by proof of service upon the petitioner as required by § 1.405(a) of the Commission's rules. Accordingly, they were not considered. No pleadings were filed relating to the HMRC petition.

4. We agree with the petitioners that the allocation and assignment of marine limited coast stations has become complex in some areas. Frequency coordination should aid the Commission in performing these functions. Frequency coordination should assist particularly in minimizing interference and congestion. While SCMRC limits its recommendation to its own area of concern, we will not adopt its suggestion that this notice of proposed rulemaking be limited to Southern California. Rather we hereby propose a general set of rules which will permit establishment of frequency coordination procelures in any area where a local situation warrants them. Recognition of a given organization, such as SCMRC or HMRC, to be the frequency coordinator of a given area and the determination of the boundaries of a given area should await case by case determination under the general rules here proposed.

5. Neither petitioner submitted detailed proposals for amending the rules. Accordingly, the rules hereby proposed are based upon study and analysis by the Commission. Because these rules will require frequency coordination for this class of stations for the first time, we believe relatively simple procedures should be used. If experience indicates more sophisticated procedures are required, they will be proposed. A relatively simple frequency coordination procedure exists for Flight Test Stations in § 87.334 of Subpart G of Part 87 of our rules. The rules hereby proposed are patterned closely after that procedure.

6. Accordingly, and for the reasons set forth above, the proposed amendments, as set forth in the attached Appendix, are issued pursuant to the authority contained in section 303 of the Communications Act of 1934, as amended.

7. Pursuant to the applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before October 23, 1973, and reply comments on or before November 1, 1973. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

8. In accordance with § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission. Responses will be available for public inspection during the regular business hours in the Docket Reference Room at its headquarters in Washington, D.C.

Adopted September 6, 1973.

Released September 13, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

APPENDIX

Subpart J of Part 81 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended by adding a new § 81.359 as follows:

§ 81.359 Frequency coordination.

(a) Except as provided in paragraphs (b) and (c) of this section each application for a new limited coast station license or renewal or modification of an existing license to be located in an area having a recognized frequency advisory committee shall be accompanied by:

(1) A report based on a field study, indicating the degree of probable interference to existing stations operating on the same area. The applicant shall consider all stations operating on the working frequency or frequencies requested or assigned within 50 miles of the proposed station location, and,

(2) A written statement that all existing licensees within the frequency and mileage limits contained in paragraph (a)(1) of this section and the frequency advisory committee as defined in paragraph (c)(2) of this section have been notified of the applicant's intention to file an application shall be included with the report. The notice of intention to file shall provide the licensees concerned and the advisory committee with the following information: the frequency and emission; transmitter location and power; and, antenna height proposed by the applicant.

[1] Commissioner Robert E. Lee absent; Commissioner Johnson concurring in the result.

(b) Applications for modification need not be accompanied by evidence of frequency coordination, where the modification does not involve any change in frequency(ies), power, emission, antenna height, antenna location or area of operation.

(c)(1) In lieu of the requirements specified in paragraph (a) of this section, a statement from a frequency advisory committee may be submitted with the application. The committee shall comment on the frequency or frequencies requested or the proposed changes in the authorized station and give the opinion of the committee regarding the probable interference of the proposal to existing stations. The committee shall consider, as a minimum, all stations operating on the frequency or frequencies requested or assigned within 50 miles of the proposed station location. The frequency advisory committee statement shall also recommend a frequency or frequencies, which in the opinion of the committee, will result in the least amount of interference to proposed and existing stations. In addition, committee recommendations may appropriately include comments on other technical factors and may contain recommended conditions or restrictions which it believes should appear on authorization to lessen the possibility of interference.

(2) A frequency advisory committee must be so organized that it is representative of all persons who are eligible for VHF and single sideband limited coast stations. A statement of organization, service area and composition of the committee must be submitted to the Commission for approval. The functions of any advisory committee shall be purely advisory in character to the applicant and the Commission, and its recommendations cannot be considered as binding upon either the applicant or the Commission.

[FR Doc.73-19686 Filed 9-14-73;8:45 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 220]

[Reg. T]

CREDIT BY BROKERS AND DEALERS

Notice of Extension of Time for Comment on Proposed Amendment

On July 13, 1973, notice of proposed rulemaking regarding an amendment to 12 CFR Part 220 by the Board of Governors of the Federal Reserve System pursuant to authority contained in the Securities Exchange Act of 1934 (15 U.S.C. 78g) was published in the FEDERAL REGISTER (38 FR 18690). The purpose of the proposed amendment was to negate previous Board interpretations which stated that broker/dealers would not be deemed to be arranging credit which they could not extend, as prohibited by § 220.7(a), when they sold investment contracts which included credit extended solely on the real estate or chattel part of the contract. In addition, the proposed amendment would provide uniform

treatment, for credit purposes, of every security as an indivisible whole in a manner consistent with that followed by the Securities and Exchange Commission in its area of regulation. Comments were to have been received not later than August 10, 1973. Requests for extension of the comment period have been made by some persons who would be affected by this proposal, particularly because of the fact that the matter is presently under consideration by the Securities and Exchange Commission. The Board has determind that it is appropriate and in the public interest to provide additional time within which interested persons are invited to submit, in writing, relevant data, views or arguments regarding the proposal and will therefore accept additional comments until September 25, 1973.

This notice is published pursuant to section 553(b) of Title 5, United States Code, and § 262.2(a) of the Rules of Procedure of the Board of Governors of the Federal Reserve System (12 CFR 262.2 (a)).

By order of the Board of Governors, August 31, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-19645 Filed 9-14-73;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 STATE

[Public Notice CM-65]

STUDY GROUP 7 OF THE U.S. NATIONAL COMMITTEE FOR THE INTERNATIONAL RADIO CONSULTATIVE COMMITTEE (CCIR)

Notice of Meeting

The Department of State announces that Study Group 7 of the U.S. National Committee for the International Radio Consultative Committee (CCIR) will meet on September 27, 1973, at the U.S. Naval Observatory, 34th Street and Massachusetts Avenue NW., Washington, D.C. The meeting will begin at 9:30 a.m. in Room 300 of Building 52.

Study Group 7 deals with time-signal services. The purpose of the meeting will be final review of documents proposed as U.S. contributions to the international meeting of Study Group 7 in 1974.

Members of the general public will be admitted up to the limits of the capacity of the meeting room. Members of the general public who plan to attend the meeting are requested to so inform Mr. Hugh Fosque, Chairman of U.S. Study Group 7, prior to September 27, 1973; Mr. Fosque can be contacted at NASA Headquarters, telephone number 202-755-2434.

Dated September 11, 1973.

GORDON L. HUFFCUTT,
Chairman,
U.S. CCIR National Committee.

[FR Doc.73-19624 Filed 9-14-73;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Notice of Meeting

SEPTEMBER 13, 1973.

The USAF Scientific Advisory Board Aeronautical Systems Division Advisory Group F-4 Structures Committee will hold closed meetings on September 19 and 20, 1973, from 8 a.m. until 5 p.m., at the McDonnell-Douglas Corporation, St. Louis, Missouri.

The Committee will receive classified briefings on structural aspects of the F-4E aircraft.

For further information contact the Scientific Advisory Board Secretariat at 202-697-4648.

STANLEY L. ROBERTS,
Colonel, USAF, Acting Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.73-19821 Filed 9-14-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bonneville Power Administration

POWER MANAGEMENT CHIEF, BRANCH OF POWER SUPPLY

Redelegations of Authority

Redelegations of Authority published in the FEDERAL REGISTER on July 6, 1968 (33 FR 9784), and amended on September 13, 1968 (33 FR 12974), February 21, 1969 (34 FR 2508), August 9, 1969 (34 FR 12955), September 18, 1969 (34 FR 14534), May 1, 1971 (36 FR 8266), June 8, 1971 (36 FR 11047), July 24, 1971 (36 FR 13799), November 26, 1971 (36 FR 22689), May 6, 1972 (37 FR 9245), July 13, 1972 (37 FR 13721), November 3, 1972 (37 FR 23463), June 27, 1973 (38 FR 16922), and August 29, 1973 (38 FR 23343), are further amended by revising section 10.13 of the BPA Manual to read as follows:

10.13 *Power Management.* c. The Chief, Branch of Power Supply may:

(1) * * *

(2) * * *

(3) Negotiate and arrange (under existing contracts or new arrangements) for the short term sale, purchase, exchange, or wheeling of power necessary to meet contractual commitments or load requirements, including negotiation of applicable charges, and to obligate funds for this purpose in the amounts made available to him in the form of trust funds, continuing fund, or appropriated funds. Where there is no existing contract, such arrangements are to be subsequently formalized by contracts executed by the Administrator.

Dated September 7, 1973.

DONALD PAUL HODEL,
Administrator.

[FR Doc.73-19656 Filed 9-14-73;8:45 am]

National Park Service

[Order No 1, Amdt. 1]

ASSISTANT SUPERINTENDENT, ET AL., OLYMPIC NATIONAL PARK

Delegation of Authority

Olympic National Park Order No. 1, approved September 29, 1972, and published in the FEDERAL REGISTER of November 3, 1972 (37 FR 23464), is amended as follows:

Section 4 is hereby amended to read as follows:

SEC. 4. *Procurement agent.*—The Procurement Agent may issue purchase orders not in excess of $2,000 for supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

(National Park Service Order No. 77 (38 FR 7478), as amended; Pacific Northwest Region Order No. 3 (37 FR 6325), as amended.)

Dated July 20, 1973.

ROGER W. ALLIN,
Superintendent,
Olympic National Park.

[FR Doc.73-19633 Filed 9-14-73;8:45 am]

[Order No. 7, Amdt. 2]

SUPERINTENDENTS, ET AL., NORTHEAST REGION

Delegation of Authority

Order No. 7, approved February 25, 1972, and published in the FEDERAL REGISTER at 37 FR 6325 on March 28, 1972, and Amendment No. 1, published at 37 FR 16414 on August 12, 1972, is hereby amended by adding the following subsections:

SEC. 1. *Superintendents* * * *

(n) Authority to conduct archeological investigations and salvage activities.

SEC. 2. *Delegation* * * *

(h) *Regional purchasing agent.*—The Regional Purchasing Agent may execute and approve purchase orders not in excess of $1,000 for equipment, supplies, and services. This authority may be exercised by the Regional Purchasing Agent in behalf of any office or area for which the Northeast Regional Office serves as the field finance office (National Park Service Order No. 77, 38 FR 7478, as amended).

Dated August 14, 1973.

CHESTER L. BROOKS,
Regional Director,
Northeast Region.

[FR Doc.73-19634 Filed 9-14-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[Amdt. 2]

SALES OF CERTAIN COMMODITIES

Monthly Sales List (Fiscal Year Ending June 30, 1974)

The CCC Monthly Sales List for the fiscal year ending June 30, 1974, published in 38 FR 19259 is amended as follows:

1. The provisions of section 25 entitled "Rice, rough—unrestricted use sales—FOB warehouse" are deleted.

2. The provisions of section 38 entitled "Cotton—extra long staple—unrestricted use sales" are deleted.

3. The last sentence of section 1(b) entitled "General" published in 38 FR 19259 as amended in 38 FR 22808 is revised to read as follows: "Interest at 10½ percent will be charged for delinquent payments on consignment and track sales of grain from the date of sale to the date payment is received."

4. The fifth sentence of section 1(c) entitled "General" is revised to read as follows: "Storage charges will be in accordance with the 1973 Uniform Grain Storage Agreement Schedule of Rates."

5. The sixth sentence of section 1(c) entitled "General" published in 38 FR 19259 as amended in 38 FR 22808 is revised to read as follows: "Interest to date of payment will be at 10½ percent."

6. Section 6 entitled "Barter eligibility list" is revised to read as follows: "Stocks of tobacco under CCC loan are available for existing barter contracts."

7. Section 11 entitled "Wheat—unrestricted use sales—bulk storable—basis Grade 1 in-store" is revised to read as follows: "The minimum price is the market price but not less than the formula price."

At designated terminals the formula price for the predominant class of wheat is the 1973 county loan rate where stored plus the monthly markup shown in this section plus the transit value of 4 cents per bushel which ever is higher. Adjustments for other classes will be established when necessary by CCC.

Outside of designated terminal markets, the formula price is the 1973 county loan rate where stored plus the monthly markup shown in this section plus transit value, if any. Loan differentials will be applied in determining the formula price of other qualities at all locations.

Monthly Markups in Cents Per Bushel

July 1973	25	Jan. 1974	31
August	25	February	33
September	25	March	35
October	25	April	37
November	27	May	37
December	29	June	37

8. The title of section 13 is revised to read as follows: "Corn—Unrestricted Use Sales—bulk-storable-basis Grade 2 yellow corn 15.1–15.5 percent moisture-in-store."

9. The provisions of section 14 entitled "Corn—Unrestricted Use Sales—port positions—bulk-storable-basis Grade 2 yellow corn—15.1–15.5 percent moisture-in-store" are deleted.

10. References in the second and fifth sentences of section 30 entitled "Tung Oil—unrestricted use sales" to the New Orleans ASCS Commodity Office are changed to the Prairie Village ASCS Commodity Office.

Effective date.—2:30 p.m. (EDT) August 31, 1973.

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

GLENN A. WEIR,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.73-19717 Filed 9-14-73;8:45 am]

Forest Service

COMMUNICATION SITES ON THE TONGASS AND CHUGACH NATIONAL FORESTS

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for Communication Sites on the Tongass and Chugach National Forests, Forest Service Report Number USDA–FS–DES (Adm) 73–74.

The environmental statement concerns a proposed action to construct communication facilities at twenty-two (22) locations on the Tongass and Chugach National Forests in Alaska. The facilities will serve seven communication modes with the majority of sites serving two or more systems.

This final environmental statement was filed with CEQ on September 6, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. & Independence Ave. SW
Washington, D.C. 20250

USDA, Forest Service
P.O. Box 1628
Juneau, Alaska 99801

and also at Forest Service offices in Alaska at the following locations: Juneau, Sitka, Petersburg, Ketchikan, Yakutat, Anchorage, Cordova, and Seward.

A limited number of single copies are available upon request to Regional Forester, U.S. Forest Service, Box 1628, Juneau, Alaska 99801.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State and local agencies as outlined in the Council on Environmental Quality Guidelines.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 11, 1973.

[FR Doc.73-19719 Filed 9-14-73;8:45 am]

VEGETATION CONTROL BY MECHANICAL TREATMENT IN NEW MEXICO

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement on a proposal for vegetation control by mechanical treatment in the State of New Mexico, Apache, Gila, and Santa Fe National Forests. USDA–FS–FES (Adm) 73–72.

The environmental statement considers probable environmental effects of the proposed program.

This final environmental statement was filed with CEQ on September 10, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3231
12th & Independence Ave., SW.
Washington, D.C. 20250

USDA, Forest Service
Southwestern Region
517 Gold Avenue, SW.
Albuquerque, New Mexico 87102

Apache National Forest
Federal Building
Springerville, Arizona 85938

Gila National Forest
301 West College Avenue
Silver City, New Mexico 88061

Santa Fe National Forest
Federal Building
Santa Fe, New Mexico 87501

A limited number of single copies are available upon request to William D. Hurst, Regional Forester, Southwestern Region, USDA, Forest Service, 517 Gold Avenue, S.W., Albuquerque, New Mexico 87102.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

SEPTEMBER 11, 1973.

[FR Doc.73-19718 Filed 9-14-73;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

G. L. KOOYMAN

Issuance of Letter of Exemption Under Marine Mammal Protection Act

Notice is hereby given that, on August 15, 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), a Letter of Exemption from the provisions of the Act on grounds of undue economic hardship was issued to the following named person authorizing him to engage in the following described activities, subject to the conditions specified in the Letter:

G. L. Kooyman, Ph.D., Assistant Research Physiologist, Scripps Institution of Oceanography, University of California, San Diego, P.O. Box 109, La Jolla, California 92037, to take as many as five

ice-breeding harbor seals for scientific research. Notice of receipt of the application was published in the FEDERAL REGISTER on August 1, 1973 (38 FR 20488), accompanied by a detailed summary of the application. A requirement of the Letter of Exemption was that the Holder maintain the animals in custody for the Government of the United States of America, that he claim no title in such mammals, and that, at the end of the research for which the taking of the mammals sought is contemplated he immediately notify the Director, National Marine Fisheries Service, that the animals remaining are available for disposition by him at his discretion.

Copies of the application for the exemption, of the Letter 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 September 11, 1973.

JOSEPH W. SLAVIN,
Acting Director.

[FR Doc.73–19679 Filed 9–14–73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

BREAST CANCER DIAGNOSIS COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Breast Cancer Diagnosis Committee, National Cancer Institute, which is sponsoring a Workshop on September 20, 1973, 9:00 a.m. to 5:00 p.m. at the National Institutes of Health, Building 31, Conference Room 2. This meeting will be open to the public at all times to formulate requests for proposals for a contract for the creation of standards for diagnosis of in situ breast cancer and the establishment of diagnostic criteria to define these lesions and separate them from benign proliferative lesions of the breast. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Maryland 20014, 301–496–1911, will furnish summaries of the meeting and roster of committee members and participants.

Dr. Bernice T. Radovich, Executive Secretary, Landow Building, Room B–406, National Institutes of Health, Bethesda, Maryland 20014, 301–496–6773, will provide substantive program information.

Dated September 12, 1973.

JOHN F. SHERMAN,
Deputy Director, NIH.

[FR Doc.73–19777 Filed 9–14–73;8:45 am]

BREAST CANCER TREATMENT COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Breast Cancer Treatment Committee, National Cancer Institute, September 21, 1973, 8:30 a.m., National Institutes of Health, Landow Building, Room C–414. This meeting will be open to the public from 8:30 a.m. to 10:30 a.m. to discuss general program, cancer "markers", and specifications for Requests for Proposals for contracts on "Hormonal Manipulation plus Chemotherapy" and "Therapy in State II and III Carcinoma". Attendance by the public will be limited to space available. The meeting will be closed to the public from 10:30 a.m. to 4:30 p.m., for the discussion and review of four contract proposals in the field of Treatment of Breast Cancer, in accordance with the provisions set forth in section 552(b) 4 of Title 5, U.S. Code, and section 10(d) of P.L. 92–463.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Maryland 20014, 301–496–1911, will furnish summaries of the open/closed meeting and roster of committee members.

Mary E. Sears, M.D., Executive Secretary, Landow Building, Room A–416, National Institutes of Health, Bethesda, Maryland 20014, 301–496–6773, will provide substantive program information.

Date September 12, 1973.

JOHN F. SHERMAN,
Deputy Director, NIH.

[FR Doc.73–19775 Filed 9–14–73;8:45 am]

BREAST CANCER TREATMENT COMMITTEE'S SUBCOMMITTEE ON MARKERS

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Breast Cancer Treatment Committee's Subcommittee on Markers, National Cancer Institute, September 20, 1973, 1:00 p.m., National Institutes of Health, Building 10, Conference Room 6B15A. This meeting will be open to the public from 1:00 p.m. until adjournment, to discuss various approaches to the problem of finding satisfactory "markers" of cancer as means of monitoring treatment. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Maryland 20014, 301–496–1911, will furnish summaries of the open meeting and roster of committee members.

Mary E. Sears, M.D., Executive Secretary, Landow Building, Room A–416, National Institutes of Health, Bethesda, Maryland 20014, 301–496–6773, will provide substantive program information.

Dated September 12, 1973.

JOHN F. SHERMAN,
Deputy Director, NIH.

[FR Doc.73–19776 Filed 9–14–73;8:45 am]

Office of Education

ADVISORY COMMITTEE ON ACCREDITATION AND INSTITUTIONAL ELIGIBILITY

Notice of Public Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the next meeting of the Advisory Committee on Accreditation and Institutional Eligibility will be held on September 24–26, 1973, at 9 a.m. local time, in Room 5169 (September 24) and the auditorium (September 25–26) of the HEW-North Building, 330 Independence Avenue SW., Washington, D.C.

The Advisory Committee on Accreditation and Institutional Eligibility is established pursuant to section 253 of the Veterans' Readjustment Assistance Act (Chapter 33, Title 38, U.S. Code). The Committee is established to advise the Commissioner of Education in fulfilling his statutory obligations to publish a list of nationally recognized accrediting agencies and associations which he determines to be reliable authority as to the quality of training offered by educational institutions and programs.

The meeting of the Committee shall be open to the public on Monday, September 24 and until 3 p.m. on September 25. The proposed agenda includes an orientation session for new Committee members, presentations by representatives of accrediting agencies and associations which have petitions for recognition pending before the Committee, and a review of various policy items. Under the authority of section 10(d) of the Federal Advisory Committee Act (P.L. 92–463) and section 552(b) of Title 5 of the United States Code, the meeting will be closed to the public from 3 p.m. on September 25 through September 26. Records shall be kept of all Committee proceedings.

Signed at Washington, D.C., on September 13, 1973.

JOHN R. PROFFITT,
Director, Accreditation and Institutional Eligibility Staff, Office of Education.

[FR Doc.73–19804 Filed 9–14–73;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX 73-5; Notice 2]

INTERMECCANICA AUTOMOBILI

Petition for Temporary Exemption From Motor Vehicle Safety Standards

The National Highway Traffic Safety Administration has decided to deny Intermeccanica Automobili an exemption of its Indra model from four Federal motor vehicle safety standards.

Notice of petition for the exemption was published in the FEDERAL REGISTER on June 19, 1973 (38 FR 15989), and an opportunity afforded for comment. Intermeccanica applied for exemptions pursuant to 15 U.S.C. 1410(a)(1)(A) under which it must demonstrate that requiring compliance with the standards for which exemption is requested would cause it substantial economic hardship. The standards for which exemption was requested were Nos. 201, *Occupant Protection in Interior Impact*, 212, *Windshield Mounting*, 215, *Exterior Protection*, and 301, *Fuel Tanks, Fuel Tank Filler Pipes, and Fuel Tank Connections*. The period of exemption requested was 3 years.

In support of its petition, Intermeccanica stated its belief that it already complied with Standards Nos. 201, 212, and 301 "based on our extensive usage of materials and methods of construction and installation equal to other manufacturers who have done the required testing and have met all requirements * * * We are doing everything known to us, short of actual crash test, in attempting to meet these requirements through contemporary design, construction, and materials." However, "testing required to prove compliance with these standards is prohibitively expensive, i.e., a 30 m.p.h. crash test and the cost of obtaining the required data from said crash." As for the bumper standard, "We have purchased over one year's supply of bumpers and chassis and to scrap these would be prohibitive." It estimated the cost to comply with Standard No. 215 on a crash basis as $119,210 resulting in an estimated price increase per vehicle of $1,600. The company's assets at the end of 1972 totalled $275,561. It states that at the time of the original vehicle design it was "unaware of the potential of the bumper standard." Although the Indra has been principally sold in Germany, the company seeks to enter the American market which it terms "essential for survival."

No comments were properly filed concerning the petition. One anonymous comment was received. NHTSA procedural rules, 49 CFR 551.35, require the comments to disclose the name of the commenter, and therefore the comment was not considered.

Section 555.6(a)(1) of Title 49 requires a petitioner to provide "Engineering and financial information demonstrating in detail how compliance * * * would cause substantial economic hardship." Petitioner submitted no analysis of what it would cost to test to verify compliance with Standards Nos. 201, 212, and 301. Further, petitioner provided no detailed information which would support its belief in its compliance with these standards.

The regulations also require a petitioner to describe its efforts to comply with the standards, including "a chronological analysis of such efforts showing its relationship to the rulemaking history of the standard from which exemption is sought." (49 CFR 555.6(a)(2)(i)). Standard No. 215 was proposed in November 1970, and issued in April 1971, but petitioner has not commented on the relationship of these dates to the design history of the Indra. Therefore, no decision can be made that the manufacturer has, in good faith, attempted to comply with Standard No. 215 prior to its request.

In light of the above, it is found that Intermeccanica has not provided sufficient information to justify the granting of the requested exemption, and its petition is accordingly denied.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159, 15 U.S.C. 1410; delegation of authority at 49 CFR 1.51)

Issued on September 10, 1973.

JAMES B. GREGORY,
Administrator.

[FR Doc.73-19673 Filed 9-14-73;8:45 am]

ADVISORY COMMITTEE ON FEDERAL PAY

NOTICE OF PUBLIC MEETING

The Advisory Committee on Federal Pay will meet in executive session on September 17, 18, and 26, to prepare its report on the Fiscal 1974 adjustment in Federal pay. The meetings of September 17 and 18 will be held in the office of Frederick R. Livingston, 525 Park Avenue, New York, New York. The meeting of September 26 will be held in the office of Jerome M. Rosow, 1251 Avenue of the Americas, New York City. All meetings will start at 9:30 a.m.

In these meetings the Committee will take various positions which will be subjective and recommendatory in nature. In formulating its recommendations and preparing its report the Committee needs to be free to exchange such subjective views without inhibition. Disclosure in this instance would severely limit the effectiveness of such discussions.

Therefore, by authority of Section 10(d) of Public Law 92-463, The Federal Advisory Committee Act, meetings of the Advisory Committee on Federal Pay to develop its recommendations for the annual adjustment in Federal pay will concern matters within Section 552(b)(5) of Title 5, United States Code, and therefore shall not be open to the public.

JEROME M. ROSOW,
Chairman,
Advisory Committee on Federal Pay.

[FR Doc.73-19823 Filed 9-14-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-373 and 50-374]

COMMONWEALTH EDISON CO.

Availability of Initial Decision of the Atomic Safety and Licensing Board

Pursuant to the National Environmental Policy Act of 1969 and the United States Atomic Energy Commission's regulation in Appendix D, Section A.9 and A.11, to 10 CFR, Part 50, notice is hereby given that an Initial Decision dated September 5, 1973, by the Atomic Safety and Licensing Board in the above captioned proceeding authorizing issuance of construction permits to the Commonwealth Edison Company for construction of the La Salle County Nuclear Power Station, Units 1 and 2, located in Brookfield Township, La Salle County, Illinois, 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 Reddicks Public Library, 100 West Lafayette Street, Ottawa, Illinois 61350.

The Initial Decision is also being made available at the Office of Planning and Analysis, Executive Office of the Governor, Room 614, State Office Building, Springfield, Illinois 62706, and at the Northeastern Illinois Planning Commission, 400 West Madison Street, Chicago, Illinois 60607.

Based upon the record developed in the public hearing in the above captioned matter, the Initial Decision modified in certain respects the contents of the Final Environmental Statement relating to the construction of the La Salle County Nuclear Power Station, prepared by the Commission's Directorate of Licensing. Pursuant to the provisions of 10 CFR, Part 50, Appendix D, Section A.11, the Final Environmental Statement is deemed modified to the extent that the findings and conclusions relating to environmental matters contained in the Initial Decision are different from those contained in the Final Environmental Statement dated February 1973. As required by Section A.11 of Appendix D, a copy of the Initial Decision, which modifies the Final Environmental Statement, has been transmitted to the Council on Environmental Quality and made available to the public as noted herein.

Pursuant to the above mentioned Initial Decision, the Atomic Energy Commission (the Commission) has issued Construction Permits Nos. CPPR-99 and CPPR-100 to the Commonwealth Edison Company for construction of two boiling water nuclear reactors, known as the La Salle County Nuclear Power Station, Units 1 and 2, each designed for a rated power of approximately 3293 megawatts thermal with a net electrical output of approximately 1078 megawatts.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR, Chapter I, which are set forth in the construction permits.

The application for the construction permits complies with the standards and requirements of the Act and the Commission's rules and regulations.

The construction permits are effective as of their date of issuance. The earliest date for the completion of Unit 1 is December 1, 1977, and the latest date for completion is June 1, 1978. The earliest date for the completion of Unit 2 is December 1, 1978, and the latest date for completion is June 1, 1979. Each permit shall expire on the latest date for completion of the facility.

In addition to the Initial Decision, copies of (1) Construction Permits Nos. CPPR–99 and CPPR–100; (2) the report of the Advisory Committee on Reactor Safeguards dated December 17, 1971; (3) the Directorate of Licensing's Safety Evaluation dated August 15, 1972; (4) the Preliminary Safety Analysis Report and amendments thereto; (5) the applicant's Environmental Report dated November 4, 1971 and supplements thereto; (6) the Draft Environmental Statement dated July 1972; and (7) the Final Environmental Statement dated February 1973, are also available for public inspection at the above-designated locations in Washington, D.C., and Ottawa, Illinois. Single copies of the Initial Decision by the Atomic Safety and Licensing Board, the construction permits, the Final Environmental Statement, and the Safety Evaluation may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing, Regulation.

Dated at Bethesda, Maryland, this 10th day of September 1973.

For the Atomic Energy Commission.

ROBERT A. CLARK,
Chief, Gas Cooled Reactors Branch Directorate of Licensing.

[FR Doc.73–19626 Filed 9–14–73;8:45 am]

REGULATORY GUIDES

Notice of Issuance and Availability

The Atomic Energy Commission has issued a new guide, Regulatory Guide 8.9, "Acceptable Concepts, Models, Equations, and Assumptions for a Bioassay Program," in its Regulatory Guide series. This series has been developed to describe and to make available to the public methods acceptable to the AEC Regulatory staff for implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain information needed by the staff in its review of applications for permits and licenses.

The new guide indicates acceptability of basic internal dosimetry concepts published by the International Commission on Radiological Protection, and of models, equations, and assumptions derived from these concepts, in implementing certain parts of the Commission's regulations.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Comments and suggestions in connection with improvements in the guides are encouraged and should be sent to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff. Requests for single copies of the issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Telephone requests cannot be accommodated.

Other Division 8 Regulatory Guides currently being developed include the following:

Bioassay for Uranium.
Respiratory Protection.
Dosimetry for Criticality Accidents.
Criticality Accident Alarm System.
Surface Contamination.

(5 U.S.C. 552(a).)

Dated at Bethesda, Maryland, this 10th day of September 1973.

For the Atomic Energy Commission.

LESTER ROGERS,
Director of Regulatory Standards.

[FR Doc.73–19625 Filed 9–14–73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23333; Order 73–8–70]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Specific Commodity Rates

Issued under delegated authority August 14, 1973.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA) and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement names three additional specific commodity rates as set forth in the attachment hereto,[1] reflecting reductions from general cargo rates; and was adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated August 24, 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 CAB 23910, R–1 through R–3 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 October 17, 1973.

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] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73–19712 Filed 9–14–73;8:45 am]

[Docket 25280; Order 73–9–30]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Cargo Rate Matters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of September 1973.

Agreements have 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 Conference of the International Air Transport Association (IATA). The agreements were adopted at the Composite Cargo Traffic Conferences held May/June 1973 in Mexico City. Together they comprise those portions on the worldwide cargo rate structure which affect air transportation as defined by the Act.[1]

The purpose of this order is to establish procedural dates for the receipt of justification, comments and replies relating to those parts of the agreements cited which involve air transportation, as well as certain composite resolutions adopted for worldwide application.[2]

[1] Filed as part of the original document.

[1] No agreement on North Atlantic cargo rates has been received.

[2] The North Atlantic will be the subject of a later Board order.

Agreement C.A.B. 23771 would revalidate the present South Pacific rate structure with minor changes. Minimum charges and general cargo rates will remain at *status quo*, except for general cargo rates to/from Honolulu which would be increased by 10 cents per kg. Most specific commodity rates will remain unchanged with the exception of rates to/from New York City which are generally proposed to be increased five cents per kilogram. No changes are proposed in the bulk unitization program save the elimination of rates for the Type 10 container (half-pallet for B-747 belly). The agreement would also extend the five percent surcharge on all U.S.-originating shipments to compensate for the effects of the dollar devaluation of February 12, 1973.

Agreement CAB 23772 encompasses the North/Central Pacific cargo rate structure. Except for a few minor changes in specific commodity rates, this agreement is virtually identical to Agreement CAB 23620 which the Board considered in Order 73-8-124 (August 24, 1973).[2]

Agreement CAB 23774 proposes increases of approximately two percent in general cargo rates within IATA Traffic Conference 3 (Asia, Australia and Australasia). Most specific commodity rates would remain at status quo. The agreement applies directly in air transportation only insofar as the U.S. points Guam and American Samoa are involved, and here we note that the five percent surcharge on all shipments from these points is proposed to be continued.

Mid-Atlantic rates directly affect air transportation only insofar as transportation to/from San Juan and the Virgin Islands is involved. Agreement CAB 23819 proposes to increase minimum charges from $24 to $26, while general cargo rates would be increased two percent. Specific commodity rates are to be increased from five to eight percent. The six percent surcharge on shipments originating at U.S. points would be continued.

Significant changes are proposed in the Western Hemisphere cargo rate structure (Agreement CAB 23796). Substantial increases are proposed in minimum charges. (See Attachment A[2a]). General cargo rates between the United States, on the one hand, and the Caribbean, Mexico and Venezuela, on the other hand, would be increased by amounts ranging from four to nine percent.[4] Southbound rates from the United States to South America would remain at *status quo*, while the corresponding northbound rates would be subject to increases in the three-four percent range for Argentina/Chile/Uruguay/Paraguay/Brazil, and a range of ten-eleven percent for Bolivia/Peru/Ecuador/Colombia. The net effect of these changes would be to reduce to some extent the directionality of the general rate structure between the United States and South America.

Most Western Hemisphere specific commodity rates would be increased from about 1.5 to 13 percent, with the bulk of the increases averaging about six percent. Pivot weights and minimum charges for containers would be reduced to encourage unitization, with the added effect that rates for containerized shipments now moving at the present pivot weights would generally be reduced from one to 16 percent, although rates on a few sectors would be increased.[5]

Certain of the composite resolutions, incorporated in Agreement C.A.B. 23773, also deserve comment.

The Board has long held that excess value charges should be assessed only on that amount by which a shipment's value exceeds the carrier's limit of liability under terms of the Warsaw Convention, and that any valuation charges should be cost-justified. Resolution 503 (Charges in Relation to Value) would now establish a valuation charge of 0.40 percent of that portion of the shipper's declared value for carriage which exceeds the basic Warsaw liability limit of $18.00 per kilogram, with the minimum charge per consignment set at $1.00. We note that the application of the valuation charge has been brought into conformance with the Board's policy, insofar as it would apply only to declared value not already covered by the carrier's basic liability, but we still expect adequate cost justification for the 0.40 percent (40¢ per $100) charge, as well as the $1.00 minimum charge per consignment.

Resolution 511 (Rates for Live Animals) would be revalidated in essentially its present form; generally speaking, live animals are carried at the general under—45 kg. cargo rate regardless of the weight of the consignment. Thus this traffic is charged a premium which varies depending on the spread of quantity discounts in the general cargo rate structure for a particular city pair.[6] On June 26, 1973, the Board concluded the *Investigation of Premium Rates for Live Animals and Birds* (Docket 21474) in U.S. domestic carriage, and in Order 73-6-103 found that the maximum lawful rates for cold-blooded animals are the general cargo rates and the maximum lawful rates for warm-blooded animals are 110 percent of the general cargo rates.[7] We see no reason why the pertinent issues would be any different in international air transportation, and in this light it appears clear that the IATA-agreed rates for live animals, encompassing premiums ranging over 200 percent in many cases, are excessive on their face. A related IATA resolution, 508, establishes a charge for stalls used in carrying large animals which is calculated on the basis of the rate for a certain weight of the animal transported rather than the weight of the stall or pen. This assessment seems to bear no relationship to the appropriate costs of service. In short, Board approval of Resolutions 508 and 511 is contingent on submission of full, adequate cost justification from the U.S. carrier members of IATA.

We also note that substantial increases are proposed for charges assessed under Resolution 509 (Charges for Disbursements) and Resolution 512a (C.O.D. Procedures). Resolution 509 presently specifies a charge to the consignee of three percent of any amount collected by the air carrier on behalf of a third party (such as a customs broker), or collected on behalf of the air carrier in connection with services performed prior to air carriage (such as cartage to the point of departure). This disbursement charge would now be increased to five percent, and the present $5.50 minimum would be raised to $10.00. Charges for C.O.D. services are proposed to be increased from two to four percent of the C.O.D. amount, while the minimum C.O.D. charge would now be $10.00 in place of the present $5.50 minimum. Such increases call for the submission of full and adequate cost justification from the carrier parties to the agreement.

Justification for the above mentioned agreements, together with any comments and/or objections from interested persons, shall be submitted within fifteen days after the date of this order. Replies shall be filed within thirty days after the days of this order.[8]

Accordingly, it is ordered, That:

1. All United States air carrier members of the International Air Transport Association shall file within fifteen calendar days after the date of this order, full documentation and economic justification for rates, charges and related conditions embodied in the subject agreements;

2. Comments and objections from interested persons and parties shall be submitted within fifteen calendar days after the date of this order;

3. Replies to justifications received in response to ordering paragraph 1 above and replies to comments received pursuant to ordering paragraph 2 above shall be submitted within thirty calendar days after the date of this order; and

4. Insofar as air transportation as defined by the Act is concerned, tariffs implementing the subject agreements shall not be filed in advance of Board approval of the subject agreements.

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[2] The Board approved increases in bulk unitization charges and in most specific commodity rates. Certain directional commodity rates, a five percent currency surcharge on U.S.-originating shipments, and increases in general cargo rates were disapproved.

[2a] Filed as part of the original document.

[4] Some U.S./Venezuela northbound rates would be reduced dastically in order to eliminate the present directional differentials. See Attachment B, filed as part of the original document.

[5] Examples of present and proposed specific commodity rates and bulk unitization charges are set forth in Attachments C and D, respectively, filed as part of the original document.

[6] See examples in Attachment E, filed as part of the original document.

[7] The Board denied petitions for reconsideration of its decision, by Order 73-8-68 (August 13, 1973).

[8] An original and 19 copies should be filed with the Board's Docket Section.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-19713 Filed 9-14-73;8:45 am]

[Docket No. 24694]

MIAMI-LOS ANGELES COMPETITIVE NONSTOP CASE

Notice of Postponement of Oral Argument

At the direction of the Board the oral argument in this proceeding, previously set for September 26, 1973 (38 FR 21201, August 6, 1973), is postponed until further notice.

Dated at Washington, D.C., September 12, 1973.

[SEAL] ROBERT L. PARK,
Associate Chief Administrative Law Judge.

[FR Doc.73-19711 Filed 9-14-73;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF COMMERCE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Commerce to fill by noncareer executive assignment in the expected service the position of Special Assistant to the Secretary for Policy Development, Office of the Secretary.

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

[FR Doc.73-19660 Filed 9-14-73;8:45 am]

DEPARTMENT OF COMMERCE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Commerce to fill by noncareer executive assignment in the expected service the position of Deputy Director, Office of Minority Business Enterprise.

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

[FR Doc.73-19661 Filed 9-14-73;8:45 am]

DEPARTMENT OF DEFENSE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Defense to fill by noncareer executive assignment in the excepted service the position of Principal Deputy Assistant Secretary (Installations and Logistics), Office of the Assistant Secretary of Defense (Installations and Logistics), Office of the Secretary of Defense.

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

[FR Doc.73-19662 Filed 9-14-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Eduaction, and Welfare to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Health, Office of the Secretary.

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

[FR Doc.73-19663 Filed 9-14-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Executive Assistant, Immediate Office of the Assistant Secretary, Office of the Assistant Secretary for Housing Management.

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

[FR Doc.73-19664 Filed 9-14-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Director, House Liaison, office of Legislative Affairs.

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

[FR Doc.73-19665 Filed 9-14-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of section 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Program Analysis and Evaluation, Office of Program Analysis and Evaluation, Assistant Secretary for Policy Development and Research.

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

[FR Doc.73-19666 Filed 9-14-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Research and Technology, Immediate Office, Assistant Secretary for Research and Technology.

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

[FR Doc.73-19667 Filed 9-14-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary—Mineral Resources (Minerals and Energy Policy, Office of the Secretary.

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

[FR Doc.73-19668 Filed 9-14-73;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENT

Notice Public Availability

Environmental Impact Statements Received By The Council On Environmental Quality From September 3 Through September 7, 1973.

NOTE.—At the head of the listing of statements received from each agency is the name of an individual who can answer questions regarding those statements.

DEPARTMENT OF AGRICULTURE

Contact: Dr. Fred H. Tschirley, Acting Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 331-E, Administration Building, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Lake Tahoe Basin Management Plan, Alpine, El Dorado, and Placer Counties, Calif., August 31: The statement refers to a proposed general management plan for National Forest lands in the Lake Tahoe Basin. The plan covers approximately 116,000 acres of land. Proposed is the addition of overnight camping facilities which will accommodate from 20,000 to 30,000 persons at a time. Land management decisions for the 5,400 acre Lincoln Creek inventoried roadless area on the Toiyabe National Forest are among those considered (approximately 200 pages). (ELR Order No. 31443.) (NTIS Order No. EIS 73 1443-D.)

Fox Planning Unit, Six River National Forest, Del Norte County, Calif., August 31: The statement refers to a proposed land use management plan for the Fox Planning Unit, Six River National Forest. The plan applies to 30,000 acres of National Forest lands, of which 15,000 acres have been inventoried as roadless. The Unit has been divided into 7 zones. Four zones, comprising 17,350 acres, will be managed for timber harvest; the remaining 42 percent of the Unit would maintain its natural condition. Low density recreation would be available throughout the Unit; one zone would be managed for medium recreation development and use. Mineral resources could be utilized (67 pages). (ELR Order No. 31447.) (NTIS Order No. EIS 73 1447-D.)

Spanish Peaks, Gallatin National Forest, Gallatin and Madison Counties, Mont., August 31: Proposed is the implementation of a multiple use plan for the Spanish Peaks Management unit of the Gallatin National Forest. The 82,000 acre Unit includes the 50,000 acre Spanish Peaks Primitive Area. The existing Primitive Area and an additional 15,000 acres will be managed as wilderness; another 13,000 acres will be managed as a roadless dispersed recreation area until Congress establishes a new wilderness boundary. Timber harvest and roads will be prohibited in most of the unit, and severely restricted in the area adjacent to the Gallatin River. Restrictions will be placed on visitors to the Spanish Peaks (54 pages). (ELR Order No. 31444.) (NTIS Order No. EIS 73 1444-D.)

Final

Communication Sites, Chugach and Tongass National Forest's, Alaska, September 7: Proposed is the construction of radio communication sites for 22 mountain top locations on National Forest lands in the Southeast, Prince William Sound, and Kenai peninsula areas of Alaska. There will be adverse visual impacts, and noise from servicing helicopters, which may frighten wildlife (approximately 160 pages). Comments made by: EPA, DOI, FAA, State, and local agencies, and concerned citizens. (ELR Order No. 31475.) (NTIS Order No. EIS 73 1475-F.)

Mazatzal Wilderness, Maricopa County, Ariz., September 6: The statement refers to the proposed drilling (to 1,000') of 3 sites by private parties who have located 22 mining claims in the Wilderness, which is part of the Tonto National Forest. The purpose of the action is that of determining the economic mineral potential of the claims. The operation would necessitate construction of an access road, the development of a water source (which could affect downstream riparian habitat) and the leveling of sites and the deposition of sludge with resultant lasting scars upon the landscape. This is in conflict with the basic philosophy of wilderness. If mining results, a portion of the wilderness could be lost. Comments made by: USDA, DOI, EPA, State agencies, and concerned citizens. (ELR Order No. 31465.) (NTIS Order No. EIS 73 1465-F.)

Cedar/Bassett Planning Unit, Gallatin, National Forest, Park County, Mont., August 31: Proposed is the implementation of a revised multiple use plan for the Cedar/Bassett Planning Unit of the Gallatin National Forest. Under the plan 80% of the Unit would remain in a roadless and undeveloped state; 20% would be committed to timber harvest and road construction. Opportunities for solitude and primitive type recreation experience will be temporarily reduced on portions of the Unit. Impacts to the natural landscape, vegetation, soil, water, and wildlife will occur (140 pages). (ELR Order No. 31445.) (NTIS Order No. EIS 73 1445-D.)

South Cottonwood Planning District, Gallatin National Forest, Gallatin County, Mont., August 31: Proposed is the implementation of the revised multiple use plan for the 16,400 acre South Cottonwood Planning Unit, Gallatin National Forest. Approximately 50% of the Unit will be maintained in a roadless state; 20% is presently roaded. The remaining 30% of the Unit will be developed for timber harvest activities, with road construction. Three minimum developed end-of-road facilities will be constructed. Opportunities for solitude and primitive type recreation will be reduced on portions of the area previously unroaded. Impact will occur due to alteration of the landscape and disturbance to vegetation, soil, water, and wildlife (52 pages). (ELR Order No. 31446.) (NTIS Order No. EIS 73 1446-D.)

Vegetation Manipulation with Herbicides, Rio Arriba and Catron Counties, N. Mex., September 6: The proposal is for the use of the herbicide 2, 4-D on several areas of the Apache and Santa Fe National Forests, in order to control invading sagebrush, rabbitbrush, snakeweed, and pinque (105 pages). Comments made by: DOI, EPA, State and private agencies. (ELR Order No. 31463.) (NTIS Order No. EIS 73 1463-F.)

Pinyon-Juniper Chaining, several counties in Utah, September 6: Proposed is a program for control of the growth of pinyon-juniper on 6,000 to 8,000 acres of National Forest lands in Utah annually. The proposed method is that of chaining. There will be disturbance of surface soils (121 pages). Comments made by: USDA, DOI, EPA, HEW, State, local, and private agencies. (ELR Order No. 31464.) (NTIS Order No. EIS 73 1464-F.)

SOIL CONSERVATION SERVICE

Final

Hurricane Creek Watershed, Humphreys and Dickson Counties, Tenn., September 6: The statement refers to a project which would include the use of land treatment measures and the construction of 7 floodwater retarding structures and 1 multipurpose (floodwater and industrial water supply) structure, in order to reduce floodwater damage and erosion on 4,820 acres of floodplain. Approximately 163 acres of upland wildlife habitat will be lost; 353 acres will be altered by construction; 239 acres will be periodically disturbed (47 pages). Comments made by: COE, HEW, TVA, DOI, EPA, State agencies, and one concerned citizen. (ELR Order No. 31466.) (NTIS Order No. EIS 73 1466-F.)

DEPARTMENT OF DEFENSE, ARMY CORPS

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs, Attn: DAEN-PAP, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-7168.

Draft

Talofofo Bay, Guam, September 5: Proposed is a shore protection plan which would provide 900 feet of revetment between the right bank of the Talofofo River mouth and the existing revetment at Gayloup Point. There will be temporary water turbidity from construction; access to the shoreline would be impaired by the structure (Honolulu District) (14 pages). (ELR Order No. 31459.) (NTIS Order No. EIS 73 1459-D.)

Indian Bend Wash, Maricopa County, Ariz., September 5: Proposed is the construction of flood control and recreational facilities in the cities of Scottsdale and Tempe. There will be an interceptor channel, a siphon, and a dike, a greenbelt floodway, and an outlet channel. Included also will be a wildlife sanctuary and a nature area, a park, and a fishing lake. Approximately 41 acres of land will be committed to the project; 790 acres of open space will be preserved (60 pages). (ELR Order No. 31456.) (NTIS Order No. EIS 73 1456-D.)

Cape Cod Canal Plant, Unit 2, Massachusetts, September 4: Proposed is the addition of a 560 MW oil fueled unit to the plant, removal of a 300-foot stack, and modification to Unit 1 to enable common use of a single 500-foot stack and a cooling water discharge system. The two utilities seeking the regulatory permits are the Canal Electric Company and the Montaup Electric Company. A total of 800 c.f.s. (an addition of 426 c.f.s.) of Cape Cod Canal seawater will be used for cooling, with discharge of 28° F above ambient. There will be entrainment and entrapment of marine biota (Waltham District) (2 volumes). (ELR Order No. 31450.) (NTIS Order No. EIS 73 1450-D.)

Final

Anna Marie Key, Manatee County, Fla., September 6: Proposed is the restoration of 3.2 miles of eroded beach along the Gulf shore of Anna Marie Key. Approximately 940,000 cu. yds. of material will be dredged from offshore and placed on the beach. Adverse impact will be to marine biota (Jacksonville District) (40 pages). Comments made by: USDA, USCG, DOT, EPA, DOC, DOI, OEO, state agencies, and concerned citizens. (ELR Order No. 31462.) (NTIS Order No. EIS 73 1465-F.)

Great Lakes Connecting Channels, Chippewa County, Mich., September 5: The document is a supplement to a final statement (ELR Order 1557, NTIS Order No. PB-199 855-F) which was filed with the Council on January 3, 1972. The additional action is the widening of a seventh channel bend of the St. Mary's River, in order to provide safer navigation for larger vessels using the waterway. Dredging and disposal operations will damage aquatic biota; recreational boating and fishing will be adversely affected; greater wave wash of larger vessels could contribute to shore erosion problems (Detroit District). Comments made by: EPA, DOC, USCG, DOI, USDA, FPC, and one Canadian agency. (ELR Order No. 31458.) (NTIS Order No. EIS 73 1458-F.)

Bay Ridge and Red Hook Channels, N.Y., September 7: The proposed project is the maintenance dredging of the existing navigation channel; with spoil being dumped in

the New York Bight. Temporary turbidity will adversely affect marine life (New York District). Comments made by: DOI, USDA, DOC, DOD, HEW, DOT, FPC, state, local, and regional agencies. (ELR Order No. 31470.) (NTIS Order No. EIS 73 1470–F.)

Buffalo Harbor, Tonawanda River, Erie County, N.Y., September 7: The proposed project consists of the construction and operation of a diked disposal area for containment of polluted maintenance dredge spoil from Buffalo River, Buffalo Harbor, Black Rock Channel, and Tonawanda Harbor. The disposal site is located immediately south of the south entrance of the Buffalo Outer Harbor and adjacent to the Bethlehem Steel Corporation's Lackawanna Plant. Adverse impacts of the project include turbidity of the water during construction, unsightliness during construction and filling, and possible noxious odors (approximately 100 pages). Comments made by: DOI, EPA, and state agencies. (ELR Order No. 31473) (NTIS Order No. EIS 73 1473–F.)

Thimble Shoal Channel, Va., September 7: The statement refers to the proposed maintenance dredging of the Thimble Shoal Channel which is located in the lower portion of the Chesapeake Bay Mouth between Hampton Roads and the Atlantic Ocean. The existing project provides for a channel 60,000' long, 1,000' wide, and 45' deep at mean low water, with auxiliary channels 450' feet wide and 32' deep at mean low water adjoining each side of the 1,000-foot channel. Spoil will be deposited in the Dam Neck disposal area. Adverse effects include the loss of benthic organisms and temporary turbidity and siltation (Norfolk District) (32 pages). Comments made by: EPA, DOC, DOI, and one state agency. (ELR Order No. 31471) (NTIS Order No. EIS 73 1471–F.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Sheldon Meyers, Director, Office of Federal Activities, Room 3630, Waterside Mall, Washington, D.C. 20460 (202) 755–0940.

Final

Sewage System, Hollywood and Pembroke Pines, Broward County, Fla., September 6: The statement refers to Federal grants assistance for the construction of a larger collection system and a more advanced wastewater treatment plant for Hollywood, and a transmission system which will route wastewater from Pembroke Pines to the treatment plant at Hollywood. Treatment at Hollywood will be upgraded from primary to secondary, with plant capacity remaining constant at 36 MGD. Effluent discharge will continue to be to the Atlantic Ocean. Six acres will be committed to the new facilities. (The statement "Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida," NTIS Order No. EIS 73 0491F, 3/22/73, should be considered with this.) Comments made by: USDA, COE, DOI, DOT, HEW, HUD, USN, state, local, and private agencies. (ELR Order No. 31460) (NTIS Order No. EIS 73 1460–F.)

FEDERAL POWER COMMISSION

Contact: Dr. Richard F. Hill, Acting Advisor on Environmental Quality, 441 G Street NW., Washington, D.C. 20426 (202) 386–6084.

Draft

LNG Importation, Eascogas and Distrigas, New York and Rhode Island, September 6: The statement refers to applications by Eascogas LNG, Inc., and Distrigas, Inc., for the importation of liquified natural gas from Algeria to terminals at Staten Island, New York, and Providence, Rhode Island. Facilities will be constructed to unload, store, revaporize, and distribute the gas. There will be construction on an unloading dock, two 900,000 barrel LNG storage tanks, vaporizer units, and appurtenant facilities. Distrigas has also filed an application to construct and operate 6,000 feet of 24 inch transmission line with a 2,675 foot, 30 inch underwater pipe loop. Environmental impact would occur with respect to man, vegetation, soils, wildlife, water and air quality, noise levels. (ELR Order No. 31461) (NTIS Order No. EIS 73 1461–D.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew F. Kauders, Executive Director of Environmental Affairs, General Services Administration, 18th and F Streets, NW., Washington, D.C. 20405, (202) 343–4161.

Draft

Sand Point Naval Air Station, Seattle, Wash., August 31: The statement refers to the proposed disposal of the 313 acre Station, with its 4,800' aircraft runway, 150 acres of paved taxiways and aprons, three large hangars, four storage buildings, and 52 other miscellaneous structures. Seventy acres (including an additional 25 acres to be acquired from the Navy) will be transferred to the National Oceanic and Atmospheric Administration; 108 acres will be conveyed to the State of Washington for airport use; 160 acres will be assigned to the Bureau of Outdoor Recreation for conveyance to the City of Seattle for park and recreation use (91 pages). (ELR Order No. 31449) (NTIS Order No. EIS 73 1449–D.)

Final

Federal Office Building, Oklahoma City, Okla., August 31: The proposal is for the construction of a new Federal Office building in Oklahoma City. The 441,000 gross sq. ft. building will house several Federal agencies, and will provide parking for 600 vehicles. The site is in an urban renewal area of the City. There will be adverse impact from construction disruption (108 pages). Comments made by: AEC, AHB, DOI, DOT, EPA and state agencies. (ELR Order No. 31448) (NTIS Order No. EIS 73 1448–F.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Acting Director, Office of Community and Environmental Standards, Room 7206, 451 7th Street SW., Washington, D.C. 20410 (202) 755–5980.

Final

St. Joseph Urban Renewal Project, Missouri, September 6: The statement refers to a conventional urban renewal project, which includes conservation, rehabilitation, clearance, and redevelopment activities for a forty block downtown area of St. Joseph. There will be adverse impact to historical areas, including some listed on the National Register of Historic Places (145 pages). Comments made by: AHP, EPA, DOC, DOI, COE, HEW, DOT, state, and local agencies. (ELR Order No. 31454) (NTIS Order No. EIS 73 1454–F.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240 (202) 343–3891.

BUREAU OF RECLAMATION

Draft

San Luis Water District, Merced and Fresno Counties, Calif., September 4: Proposed is the construction of an irrigation water distribution system, which will consist of a pressure pipeline system and five miles of open canal. Water will be supplied for 19,800 acres now irrigated; 15,800 acres presently not irrigated will be irrigated. The blunt-nosed leopard lizard and the San Joaquin kit fox, both endangered species, will lose a small part of habitat (50 pages). (ELR Order No. 31452) (NTIS Order No. EIS 73 1452–D.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Quality, 400 7th Street SW., Washington, D.C. 20590 (202) 426–4357.

FEDERAL AVIATION ADMINISTRATION

Final

Pratt Municipal Airport, Pratt County, Kans., September 5: The project consists of the preparation of a Master Plan for the Pratt Municipal Airport. Improvement recommended in the plan will take place over a 20-year planning period. Increased aircraft operations will result in an increase in noise and air pollution (56 pages). Comments made by: GSA, EPA, DOI, USDA and COF. (ELR Order No. 31457) (NTIS Order No. EIS 73 1457–F.)

FEDERAL HIGHWAY ADMINISTRATION

Final

SR 20, Florida, Lauderdale County, Ala., August 31: The proposed project is the relocation of 9.3 miles of Alabama Route 20. The facility will traverse the Burcham Creek causing increased erosion. Displacements will include 15 families and 2 businesses. Increases in noise and air pollution will occur (35 pages). Comments made by: COE, DOI, EPA, HUD and state and regional agencies. (ELR Order No. 31440) (NTIS Order No. EIS 73 1440–F.)

U.S. 280, Tallapoosa County, Ala., August 31: The statement refers to the proposed improvement of U.S. Highway 280 to provide an adequate four lane facility from the Tallapoosa River Bridge to Dadeville. Length of the project is 8.06 miles. Approximately 25 families and 3 businesses will be displaced. Adverse effects are erosion, water, air, and noise pollution, and destruction of some wildlife habitat (38 pages). Comments made by: DOC, USDA, HEW, EPA, DOI, HUD, DOD, DOT, and state agencies. (ELR Order No. 31442) (NTIS Order No. EIS 73 1442–F.)

Final

Shady Grove Road, Montgomery County, Md., August 31: The statement considers the construction of 2.5 miles of 4 lane roadway, between Maryland Routes 355 and 115. Approximately 37 acres of land would be acquired for right-of-way (51 pages). Comments made by: USDA, EPA, HEW, HUD, DOI, DOT, and state agencies. (ELR Order No. 31436) (NTIS Order No. EIS 73 1436–F.)

Rt. 183, Randolph Road, Montgomery County, Md., September 4: The proposed project is the relocation and redesign of Rt. 183 (Randolph Road) to a six land divided highway from Georgia Avenue to New Hampshire Avenue. Length is 2.9 miles. A 4(f) statement has been submitted to obtain 3.8 acres of land from the Northwest Branch Park (Wheaton Regional Park). An unspecified amount of land will be acquired. The project will increase noise and air pollution levels (296 pages). Comments made by: DOI, EPA, state and local agencies, and concerned citizens. (ELR Order No. 31453) (NTIS Order No. EIS 73 1453–F.)

Nebraska Highway No. 14, Nebr., August 31: The proposed project is the reconstruction of 3.5 miles of Nebraska Highway 14 between U.S. 136 and the Nelson City Limits. An unspecified amount of land will be acquired for right of way. A 4(f) review is required to

obtain land from a park, club and camp area. The project will increase noise and air pollution levels. Loss of wildlife will occur (61 pages). Comments made by: USDA, COE, DOI, DOT, EPA, and state agencies. (ELR Order No. 31441) (NTIS Order No. EIS 73 1441–F.)

State Highway 33, Delaware County, Okla., August 31: The proposed project consists of developing a 4-lane divided highway, primarily on new alignment for that segment of SH 33 from SH 10, easterly 12.7 miles to the Arkansas State line. Adverse impacts of the action include displacement of 27 single families dwellings and 7 businesses and the reduction of pasture lands (43 pages). Comments made by: DOI, EPA, and state agencies. (ELR Order No. 31439) (NTIS Order No. EIS 73 1439–F.)

Airport Road, El Paso County, Tex., August 31: The statement refers to the proposed improvement of Airport Road (FAM 5022)—Fred Wilson Road (FAM 5023) from Haan Road to U.S. 54, a distance of 2.35 miles. The action consists of eliminating the at-grade railroad crossing near Railroad Drive, minor realignment, widening of traffic lanes, overlaying of deficient pavement, and improvement of traffic signals, etc. (54 pages). Comments made by: COE, HEW, USDA, EPA, DOIS, and State and local agencies. (ELR Order No. 31437) (NTIS Order No. EIS 73 1437–F.)

State Highway 72, Karnes County, Tex., August 31: The proposed project consists of constructing a new pavement with paved shoulders. The project length is 2 miles with approximately one half on new location. Adverse effects on the environment include erosion, water pollution, destruction of plant vegetation, and urban congestion (13 pages). Comments made by: USDA, HEW, COE, DOI, EPA, and DOT. (ELR Order No. 31438) (NTIS Order No. EIS 73–1438–F.)

West Seattle Freeway, Washington, August 31: Proposed is the construction of a 3-mile limited access facility between Interstate 5 and 36th Avenue Southwest within the existing Spokane Street corridor. Major components of the project include twin high-level fixed span bridges over the West Waterway; interchanges at major arterials; a bascule bridge to provide for local circulation between Harbor Island and West Seattle; exclusive transit lanes; and landscaping. Approximately 20 families and 50 businesses will be displaced to acquire additional right-of-way (3 volumes). Comments made by: COE, EPA, HUD, DOT, USCG, and State and local agencies. (EIR Order No. 31435) (NTIS Order No. EIS 73 1435–F.)

U.S. WATER RESOURCES COUNCIL

Contact: Mr. Don Maughan, Director, 2120 L Street NW., 8th Floor, Washington, D.C. 20037 (202) 254–6303.

Final

Principles and Standards for Planning, September 4: The Principles and Standards for Planning Water and Related Land Resources are established to achieve cooperatively determined objectives through the coordinated actions of the Federal, State and Local governments; private enterprise and organizations and individuals. Objectives are to enhance national economic development and enhance the quality of the environment by management, conservation, preservation, creation, restoration or improvement (13 pages). (ELR Order No. 31451) (NTIS Order No. EIS 73 1451–F.)

The following statement was inadvertently deleted from its appropriate FEDERAL REGISTER listing. It was received by the Council on July 13, 1973.

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230 (202) 967–4335.

Final

Foreign Trade Sub-Zone 9A, Oahu County, Hawaii, July 13: Proposed is the modification of a grant for Foreign-Trade Sub-Zone 9A, issued to the State of Hawaii. The modification would permit the construction and operations of a synthetic natural gas plant at Ewa. Operation would be by Gasco, Inc. The gas will be piped 22 miles to Honolulu. Adverse impact will include the emission of 1,311 lbs/day of air pollution; and the emission of 20 gpm of process water into a disposal well (125 pages). Comments made by: EPA and one state agency and concerned citizens. (ELR Order No. 31169) (NTIS Order No. EIS 73 1169–F.)

TIMOTHY ATKESON,
General Counsel.

[FR Doc.73–19710 Filed 9–14–73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19773; FCC 73–933]

BROADCASTS OF SPORTS EVENTS

Order Further Extending Time for Filing Comments in Notice of Inquiry

In the matter of practices of licensees and networks in connection with broadcasts of sports events.

1. On June 13, 1973, the Commission adopted a Notice of Inquiry in the above-captioned proceeding. Publication was given in the FEDERAL REGISTER on June 29, 1973, 38 FR 17270. The comment date designated was July 30, 1973.

2. Subsequently, Columbia Broadcasting System, Inc., the National Hockey League, and the Commissioner of Baseball, by counsel, separately filed requests for an extension to and including Saturday, September 15, 1973, for filing of comments, and based upon the reasons set forth for their requests, the Commission on July 19, 1973, (38 FR 19915), ordered that the date for filing comments be extended to an including September 17, 1973.

3. On August 31, 1973, the American Broadcasting Companies, Inc. (ABC), by counsel, requested that the Commission further extend the time for filing comments in the above-captioned proceeding to and including October 15, 1973. ABC states that since it operates a television network which offers extensive sports programming, it desires to participate fully in this proceeding; that in order to respond fully and properly to the various factual questions, it has undertaken a comprehensive review of the many and varied contracts and other material which bear upon the matter, and that, furthermore, the legal issues attendant to the inquiry require careful examination and analysis. ABC states that while progress has been made in formulating responsive comments and many contracts already have been analyzed, it finds that additional time will be necessary to provide information of maximum assistance to the Commission, and that its task has been further complicated by conflicting commitments of ABC personnel and counsel. It states, finally, that other Commission proceedings of perhaps less significance and demanding less time to prepare comments, have allowed a longer period for commenting than here is requested.

4. Accordingly, because of the benefit of having meaningful data and comments from parties able to shed light on the subject of the inquiry, and based on ABC's representations, *It is ordered*, That the date for filing comments is extended to and including (Monday) October 15, 1973. However, as was stated in the prior Order extending the comment deadline, it is undersirable to delay this proceeding unduly. Therefore, it is not anticipated that further extensions of time will be granted.

5. This action is taken pursuant to authority found in Sections 4(i) and 303 (r) of the Communications Act of 1934, as amended.

Adopted September 6, 1973.

Released September 11, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73–19690 Filed 9–14–73;8:30 am]

[Report 665]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

SEPTEMBER 10, 1973.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the list below, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consid-

[1] All applications listed below are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

[2] The above alternative cutoff rules apply to those applications listed below as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (part 21 of the rules).

eration with those listed below if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attenton of any party in interest desiring to file pleadings pursuant to sec. 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

Applications Accepted For Filing:

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20218-C2-AL-74—Marie E. Tadlock d/b/as Tadlock's Radio Dispatch. Consent to Assignment of License from Marie E. Tadlock d/b/as Tadlock's Radio Dispatch, ASSIGNOR, to Terry Dorothy Garcia, Conservator of the person and estate of Marie E. Tadlock, d/b/as Tadlock's Radio Dispatch, ASSIGNEE. Station: KMA259, Guinda, California.

20219-C2-P-74—Telephone Communications, Inc. (New). C.P. for a new 2-way station to operate on 454.125 MHz at 4 South Genessee Street, Waukegan, Illinois.

20220-C2-P-74—Tel-Car Corporation (New). C.P. to change antenna system and location to 9200 South Dadeland Boulevard, South Miami, Florida, operating on 152.24 MHz (1-way) Loc. #3.

20221-C2-P-74—The Bell Telephone Company of Pennsylvania (KGC412). C.P. to change antenna system and location, replace transmitter and to change power, operating on 152.57 MHz at Tiadaghton, 1.9 miles south of Montoursville, Pennsylvania.

20222-C2-P-74—Ashtabula Telephone Company (New). C.P. for a new 1-way station to operate on 158.10 MHz, at 4616 Park Avenue, Ashtabula, Ohio.

20249-C2-P-74—Teton Radiocom, Inc. (New). C.P. for a new 1-way signaling station to operate on 158.70 MHz at 81 Willow Street, Jackson, Wyoming.

20250-C2-P-74—Teton Radiocom, Inc. (New). C.P. for a new 2-way station to operate on 152.03 MHz at 81 Willow Street, Jackson, Wyoming.

20251-C2-R-74—The Bell Telephone Company of Pennsylvania (KC7944). Renewal of License expiring 8-7-73. TERM: 8-7-73 to 8-7-74 (Developmental).

20252-C2-P-(2)-74—Wisconsin Telephone Company (KSA804). C.P. to change antenna system, antenna location, control point location, replace transmitter, and to change power operating on 152.63 and 152.57 MHz, at 5.0 miles South of Green Bay, Town of Glenmore, Brown County, Green Bay, Wisconsin.

Major Amendments

2953-C2-P-(3)-72—Empire Communications Company (New), Eugene, Oregon. Amend to change the location of control station #2 to 392 East 3rd Street, Eugene, Oregon. Also, change the frequency of the control station transmitter at Loc. #1 to 75.98 MHz. All other particulars are to remain as reported on PN # 571 dated November 22, 1972, and amended by PN #593, dated April 24, 1972.

2344-C2-P-73—Charles H. Beard d/b/as Grandbury Communications Company (New), Granbury, Texas. Amend to change base frequency to 152.03 MHz. All other particulars are to remain the same as reported on PN #618, dated 10-16-72.

Informative

It appears that the following applications may be mutually exclusive and subject to the Commission's Rules regarding ex parte presentations, by reasons of potential electrical interference.

Wisconsin

Racine Private Police, Inc. (New), 1172-C2-P-(2)-73.

Illinois

Northern Illinois Radio Phone (KTS200), 1942-C2-P-73.

Corrections

20192-C2-P-(2)-74—Aircall, Inc. (KIY779). Correct to read adding control facilities on 454.100 MHz and to change antenna system, antenna location, power, and to replace transmitter at base station location operating on 152.24 MHz.

8939-C2-P-(5)-73—South Central Bell Telephone Company (KIB389). Correct to read: relocating 454.375 and 454.525 MHz to a new site to be identified as Loc. #4 (Base), also freq.: 454.450 and 454.475 MHz, at Approx. 7.9 miles NE. of Signal Mountain, Tennessee. And to add test facilities 157.77, 157.89, 158.07, 459.450, and 459.475 MHz at 919 Lindsay St., Chattanooga, Tennessee.

POINT TO POINT MICROWAVE RADIO SERVICE

688-C1-P-74—American Television and Communications Corporation. (New) Charlotte, North Carolina. Lat. 35°10'52" N., Long. 80°46'33" W. C.P. for new station on frequency: 11,015H MHz toward Concord, North Carolina, on azimuth 31°21'.

689-C1-P-74—Same. (New) 0.5 mile North of Concord, North Carolina. Lat. 35°23'42.5" N., Long. 80°37'0.5" W. C.P. for a new station on frequency: 11,305V MHz toward Salisbury, North Carolina, on azimuth 22°00'.

690-C1-P-74—Same. (New) One mile North of Salisbury, North Carolina. Lat. 35°42'02" N., Long. 80°27'55" W. C.P. for a new station on frequency: 11,015V MHz toward Lexington, North Carolina, on azimuth 50°53'.

691-C1-P-74—Same. (New) One mile NE. of Lexington, North Carolina. Lat. 35°50'45.5" N., Long. 80°14'59" W. C.P. for a new station on frequency: 11,305H MHz toward High Point, North Carolina on azimuth 60°08'.

692-C1-P-74—Same. (New) One mile West of High Point, North Carolina. Lat. 35°58'59.5" N., Long. 80°03'41" W. C.P. for a new station on frequency: 6034.2V MHz toward Greensboro, North Carolina, on azimuth 55°34'. (NOTE.—A waiver of Section 2.1701(i) is requested by American Television & Communications Corp.)

693-C1-P-74—Same. (New) Greensboro, North Carolina. Lat. 36°03'46" N., Long. 79°48'54" W. C.P. for a new station on frequency: 6345.5H MHz toward Burlington, North Carolina, on azimuth 71°48'.

694-C1-P-74—Same. (New) Two miles NW. of Burlington, North Carolina. Lat. 36°08'25" N., Long. 79°31'23" W. C.P. for a new station on frequencies: 6286.2H MHz and 6345.5H MHz toward Chapel Hill, North Carolina, on azimuth 132°00'.

695-C1-P-74—Same. (New) Four miles SW. of Chapel Hill, North Carolina. Lat. 35°52'20" N., Long. 79°09'28.5" W. C.P. for a new station on frequencies: 6034.2H MHz and 6093.5H MHz toward Durham, North Carolina, on azimuth 80°41'.

696-C1-P-74—South Central Bell Telephone Company. (KJA21). 1316 Adams Street, Montgomery, Alabama. Lat. 32°22'26" N., Long. 86°17'24" W. C.P. to add a transmitter and frequency: 4010V toward Ramer, Alabama, on azimuth 174°08'.

697-C1-P-74—Same. (KJA22) Approx. 2.3 miles SSW. of Ramer, Alabama. Lat. 32°01'16" N., Long. 86°14'51" W. C.P. to add transmitter and frequencies: 3970H toward Troy, Alabama, on azimuth 129°21'; 3970V toward Houston Hills, Ala., on azimuth 354°10'.

698-C1-P-74—Same. (KJA25) 1 mile NE. of Troy, Alabama. Lat. 31°49'06" N., Long. 85°57'30" W. C.P. to add transmitter and frequencies: 3710H toward Rutledge, Ala., on azimuth 258°39'; 4010H toward Ramer, Ala., on azimuth 309°30'.

699-C1-P-74—Same. (KJN20) Approx. 1.8 miles N. of Rutledge, Ala. Lat. 31°45'26" N., Long. 86°18'42" W. C.P. to add transmitter and frequencies: 3750H toward Boykin, Ala., on azimuth 234°35'; 3750H toward Troy, Ala., on azimuth 78°28'.

700-C1-P-74—South Central Bell Telephone Company. (KJN22). Approx. 1 mile NE. of Evergreen, Alabama. Lat 31°26'48" N., Long. 86°56'24" W. C.P. to add transmitter and frequencies: 3750H toward Brewton, Ala., on azimuth 212°31'; 3750H toward Boykin, Ala., on azimuth 77°05'.

701-C1-P-74—Same. (KJG73) Approx. 1.2 miles West of Flomaton, Alabama. Lat. 30°59'53" N., Long. 87°17'23" W. C.P. to add transmitter and frequencies: 3970V toward Atmore, Ala., on azimuth 274°07'; 3970V toward Brewton, Ala., on azimuth 36°09'.

702-C1-P-74—Same. (KJN21) Boykin, Approx. 7.5 miles ESE. of McKenzie, Alabama. Lat. 31°30'54" N., Long. 86°35'24" W. C.P. to add transmitter and frequencies: 3710H toward Evergreen, Ala., on azimuth 257°15'; 3710H toward Rutledge, Ala., on azimuth 44°26'.

703-C1-P-74—Same. (KJN24) 6.5 miles NW. of Brewton, Ala. Lat. 31°09'26" N., Long. 87°09'16" W. C.P. to add transmitter and frequencies: 4010V toward Flomaton, Ala., on azimuth 216°13'; 3710H toward Evergreen, Alabama, on azimuth 32°25'.

704-C1-P-74—Same. (KJG71) West 14th Street, Bay Minette, Alabama. Lat. 30°53'33" N., Long. 87°47'36" W. C.P. to add transmitter and frequencies: 3970V toward Mobile, Ala., on azimuth 227°36'; 3970V toward Atmore, Alabama, on azimuth 64°10'.

705-C1-P-74—Same. (KJG72) 1.1 miles SW. of Atmore, Alabama. Lat. 31°00'41" N., Long. 87°30'27" W. C.P. to add transmitter and frequencies: 4010V toward Bay Minette, Ala., on azimuth 244°19'; 4010V toward Flomaton, Ala., on azimuth 94°01'.

706–C1–P–74—Same. (KJA85). 100 North Franklin Street, Mobile, Alabama. Lat. 30°41'31" N., Long. 88°02'50" W. C.P. to add transmitter and frequency 4010V toward Bay Minette, Alabama, on azimuth 47°29'.

707–C1–P–74—Southern Bell Telephone and Telegraph Company. (KJG26). Glassy Mountain; approx. 3 miles ENE. of Pickens, South Carolina. Lat. 34°54'00" N., Long. 82°39'36" W. C.P. to add a transmitter and frequencies: 6197.2H toward Anderson, South Carolina, on azimuth 179°03'; 6197.2V toward Clemson, South Carolina, on azimuth 214°00'.

708–C1–P–74—Same. (KIY63) 218 College Street, Greenville, South Carolina. Lat. 34°51'19" N., Long. 82°24'00". C.P. to add a transmitter and frequency: 5945.2V toward Glassy Mtn., South Carolina, on azimuth 281°52'.

709–C1–P–74—Same. (KJH51) 461 East Main Street, Spartanburg, South Carolina. Lat. 34°57'07" N., Long. 81°55'12" W. C.P. to replace transmitter operating on frequency 3910V, add transmitter and add frequencies: 5974.8H toward West Springs, South Carolina, on azimuth 148°09'; 6152.8H, 5974.8H toward Gaffney, S.C. on azimuth 67°22'.

710–C1–P–74—Southern Bell Telephone and Telegraph Company. (KJH52). 0.7 mile SE. of West Springs, South Carolina. Lat. 34°45'40" N., Long. 81°46'35" W. C.P. to add a transmitter and frequency: 10,875H toward Union, South Carolina, on azimuth 108°48'.

711–C1–P–74—Same. (KJX36.) 2 miles South of Gaffney, South Carolina. Lat. 35°02'55" N., Long. 81°38'14" W. C.P. to delete frequency 6204.6V MHz and add 6226.9H MHz, 6404.8H toward Filbert, South Carolina, on azimuth 90°15', and add frequency 6226.9V toward Spartanburg, S.C., on azimuth 247°31'.

712–C1–P–74—Same. (KIY61) 208 Broad Street, Clinton, South Carolina. Lat. 34°28'13" N., Long. 81°52'55" W. C.P. to change antenna system, add a transmitter, and frequency 6004.5H toward Greenwood, S.C., on azimuth 215°58'.

713–C1–P–74—Same. (KIN55) 5.5 miles North of Kershaw, South Carolina. Lat. 34°37'37" N., Long. 80°33'04" W. C.P. to add a transmitter and frequency: 11445V toward Pageland, S.C., on azimuth 41°42'.

714–C1–P–74—Same. (KJH41) 7 miles West of Hartsville, South Carolina. Lat. 34°21'25" N., Long 80°12'03" W. C.P. to add a transmitter and frequencies: 6345.5H toward Society Hill, S.C., on azimuth 66°12'; 6345.5V toward Kershaw, S.C., on azimuth 313°03'.

715–C1–P–74—Same. (KJH42) 2.2 miles SW. of Society Hill, South Carolina. Lat. 34°28'51" N., Long. 79°51'37" W. C.P. to add a transmitter and frequency: 6093.5H toward Bennettsville, S.C., on azimuth 47°16'.

716–C1–P–74—Same. (KJA97) 213 South Coit Street, Florence, South Carolina. Lat. 34°11'39" N. C.P. to add a transmitter and frequency: 6152.8V toward Marion, S.C., on azimuth 92°34'.

717–C1–P–74—Same. (KJA98) Pine at Harlee Street, Marion, South Carolina. Lat. 34°10'47" N., Long. 79°23'53" W. C.P. to add a transmitter and frequencies: 6404.8V toward Dillon, S.C., on azimuth 5°52'; 6375.2V toward Gurley, S.C., on azimuth 121°40'.

718–C1–P–74—Same. (KJA99) Harrison at 4th Avenue, Dillon, South Carolina. Lat. 34°25'02" N., Long. 79°22'07" W. C.P. to change antenna system, Freqs. 5937.8H, and 6056.4H.

719–C1–P–74—Same. (KJB48) 2 miles SE. of intersection of S.C. County Road No. 7 and No. 37, South Carolina. Lat. 34°07'26" N., Long. 80°24'41" W. C.P. to add transmitter and frequencies: 6226.9H toward Sumter, S.C., on azimuth 163°49'; 6226.9V, 6286.2V toward Bishopville, S.C., on azimuth 54°31'.

720–C1–P–74—Same. (KJA71) 1209 Broad Street, Camden, S.C. Lat. 34°14'57" N., Long. 80°36'26" W. C.P. to add a transmitter and add frequencies: 5974.8H via power split toward Pleasant Hill, S.C., on azimuth 349°59' and toward Spring Hill, S.C., on azimuth 127°32'; 6004.5V toward Pleasant Hill, S.C., on azimuth 349°59'.

721–C1–P–74—Southern Bell Telephone and Telegraph Company. (KJB49) 15 South Harvin Street, Sumter, South Carolina. Lat. 33°55'08" N., Long. 80°20'24" W. C.P. to add transmitter and frequencies: 5974.8V toward Spring Hill, S.C., on azimuth 343°51'; 6063.8V toward Manning, S.C., on azimuth 155°03'.

722–C1–P–74—Same. (KJW87) 2 miles NW. of Lake City, South Carolina. Lat. 33°53'-38" N., Long. 79°46'02" W. C.P. to add transmitter and frequencies: 375OH, 383OH toward Lane, South Carolina, on azimuth 195°36'.

723–C1–P–74—Same. (KJM86) 1 mile NW. of Lane, South Carolina. Lat. 33°32'08" N., Long. 79°53'12" W. C.P. to change antenna system, add transmitter and frequencies: 371OH, 379OH toward Moncks Corner, S.C., on azimuth 198°24'; 6004.5V toward Andrews, South Carolina, on azimuth 107°13'.

724–C1–P–74—Same. (KIY59) 1645 Hampton Street, Columbia, South Carolina. Lat. 34°00'29" N., Long. 81°01'42" W. C.P. to add a transmitter and frequency: 5974.8V toward Swansea, S.C., on azimuth 188°11'.

725–C1–P–74—Same. (KJC87) 1.7 miles East of Swansea, South Carolina. Lat. 33°44'42" N., Long. 81°04'25" W. C.P. to add transmitter and frequencies: 6226.9V via power split toward Orangeburg, S.C., on azimuth 144°29' and toward Blackville, S.C., on azimuth 208°09'; 6315.9H toward Orangeburg, S.C., on azimuth 144°29'.

726–C1–P–74—Same. (KJC88) Approx. 4 miles NNW. of Blackville, South Carolina. Lat. 33°24'55" N., Long. 81°17'02" W. C.P. to add a transmitter and add frequency: 6152.8V and H via power split toward Allendale, S.C., on azimuth 188°02' and toward Montmorenci, S.C., on azimuth 289°04'.

727–C1–P–74—Same. (KJC89) 3 miles NW. of Allendale, S.C. Lat. 33°01'56" N., Long. 81°20'53" W. C.P. to add a transmitter and frequency: 3970V toward Walterboro, S.C., on azimuth 107°30'.

728–C1–P–74—Same. (KJC90) 8.5 miles West of Walterboro, South Carolina. Lat. 32°53'16" N., Long. 80°48'34" W. C.P. to add transmitter and frequencies: 4010V toward Summerville, S.C., on azimuth 91°49'; 6152.8H toward Lobeco, S.C., on azimuth 171°22'.

729–C1–P–74—Same. (KJC91) 10 miles SW. of Summerville, South Carolina. Lat. 32°52'20" N., Long. 80°16'22" W. C.P. to add a transmitter and frequency: 3970V toward Charleston, S.C., on azimuth 160°59'.

730–C1–P–74—Same. (KJH35) 1.5 miles West of Montmorenci, South Carolina. Lat. 33°31'26" N., Long. 81°39'40" W. C.P. to add a transmitter and frequency: 10,875H toward Aiken, S.C., on azimuth 302°47'.

731–C1–P–74—Same. (KJH36) 231 Laurens St., Aiken, S.C. Lat. 33°33'30" N., Long. 81°43'30" W. C.P. to delete frequency 5967.4 and add frequencies: 6034.2H 6152.8H toward Johnston, S.C., on azimuth 347°09', change antenna system and replace transmitter.

732–C1–P–74—Southern Bell Telephone and Telegraph Company (KJJ71) 401 Addison Street, Johnston, South Carolina. Lat. 33°49'50" N., Long. 81°47'58" W. C.P. to change antenna system.

406–C1–P–74—The Mountain States Telephone (KLO83) 13.5 miles ESE. of Artesia, New Mexico. Lat. 32°48'14" N., Long. 104°10'40" W. C.P. to replace transmitter, change pts. of communication and add frequency 6004.5V toward Maroon Cliffs, N.M., on azimuth 138°19'.

759–C1–P–74—Florida Telephone Corporation. (KIL61) 54 East Second Street, Apopka, Florida. Lat. 28°40'29" N., Long. 81°30'35" W. C.P. to change antenna system, replace transmittter, and for additional facilities. Frequencies: 6226.9V, 6345.5V toward Leesburg, Fla., on azimuth 292°57'; 6286.2V, 6404.8V toward Winter Garden, Fla., on azimuth 212°45'.

760–C1–P–74—Same. (KIO44). Winter, Florida. Lat. 28°34'02" N., Long. 81°35'09" W. C.P. to change antenna system, replace transmitter, and for additional facilities. Frequencies: 6152.8H, 6034.2H toward Apopka, Fla., on azimuth 32°45'.

761–C1–P–74—Same. (KIO66) 425 North Third Street, Leesburg, Florida. Lat. 28°48'54" N., Long. 81°52'38" W. C.P. to change antenna system, replace transmitter, and for additional facilities. Frequencies: 5974.8V, 6093.5V toward Apopka, Fla., on azimuth 112°57'.

Informative

File nos. 762–C1–P–74 through 784–C1–P–74 (The Mountain States Telephone and Telegraph Company requests authorization to provide additional circuit capacity and one channel for video service by broadbanding and also proposes to change antenna system (KKK57, KKK68, KLU90).

Major Amendments

9949–C1–MP–73—Data Transmission Company. (WQP25) 5.0 miles SE. of Tuttle, Oklahoma. Mod. of C.P. (3001–C1–P–70). Change polarization of frequency 6152.8 MHz toward El Reno to vertical.

9953–C1–MP–73—Same. (WQP29) 4.0 miles NE. of Perkins, Oklahoma. Mod. of C.P. (3005–C1–P–70). Change frequency on azimuth 30°05' toward Camp Creek to 6404.8 MHz (H).

9954–C1–MP–73—Same. (WQP30) Camp Creek, 9.0 miles E. of Glencoe, Oklahoma. Mod. of C.P. (3006–C1–P–70). Change frequency on azimuth 216°12' toward Perkins to 6152.8 MHz (H). Change frequency on azimuth 78°23' toward Waresha Creek to 5945.2 MHz (H).

9955–C1–MP–73—Same. (WQP31) Waresha Creek, 5.0 miles E. of Osage, Oklahoma. Mod. of C.P. (3007–C1–P–70). Change frequency on azimuth 258°38' toward Camp Creek to 6197.2 MHz (V).

Informative

The above cited applications were initially filed June 20, 1973, as informal application for minor changes, and therefore did not appear on any previous public notice.

7009–C1–MP–73—Data Transmission Company. (WKR42) 6.0 miles W. of Spring, Texas. Change polarization and azimuth of frequency 6404.8 MHz toward Houston to horizontal and 160°10'. (All other particulars same as reported on Public Notice dated 4–2–73 and 9–4–73.)

3341–C1–P–73—American Television and Communications Corporation. (New) Station located 1 mile North of Reidsville, N.C. Lat. 36°23'46" N., Long. 79°39'43" W. Amendment to add points of communication. Frequency 6049.0V MHz (via power split) toward Burlington, North Carolina, on azimuth of 156°14'. (NOTE.—A waiver of Section 21.701(i) is requested by American.)

Applications filed pursuant to sec. 214 of the Communications Act of 1934, as amended:

TELEPHONE WIRE FACILITIES

P-C-8725—The Bell Telephone Company of Pennsylvania & The Ohio Bell Telephone Company INFORMAL (SECTION 63.03). For authority to supplement existing facilities between Sharon, Pennsylvania, and Youngstown, Ohio.

P-C-8726—American Telephone and Telegraph Company FORMAL (SECTION 63.01). For authority to supplement existing facilities between Dranesville, Virginia, and Faulkner, Maryland, and Arlington, Virginia, and Dranesville, Virginia.

P-C-8727—ITT World Communications, Inc., FORMAL (SECTION 63.01). For authority to lease and operate one voice-grade circuit between Washington, D.C., and Tuckerton, New Jersey.

P-C-8728—ITT Communications, Inc., Virgin Islands FORMAL (SECTION 63.01). For authority to lease one voice-grade circuit in the Magens Bay terminal of the Magens Bay/Tortola Microwave System to Compania Anonima Nacional Telefonos de Venezuela.

P-C-8729—Southern Pacific Communications Company INFORMAL (SECTION 63.03). For authority to supplement existing facilities between San Francisco, California, and Mount Vaca, California.

P-C-8612-1—New England Telephone and Telegraph Company INFORMAL (SECTION 63.03). For authority to supplement existing facilities between Hyannis, Massachusetts, central office and an existing radio repeater site in Barnstable, Massachusetts.

[FR Doc.73-19597 Filed 9-14-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. RP74-10]

ARKANSAS LOUISIANA GAS CO.

Notice of Proposed Changes in Rates Charged

SEPTEMBER 7, 1973.

Take notice that on August 17, 1973, the Arkansas Louisiana Gas Co. of Shreveport, Louisiana (Arkla) tendered for filing its First Revised Sheet No. 152 and Supplement No. 1 of Rate Schedule XFS-24 to Arkla's FPC Gas Tariff Original Volume No. 3. Arkla proposes to charge $0.20075 per M c.f. (Including $.00075 per M c.f. Tax Reimbursement) under the above rate schedule, and requests that the change in rates become effective October 1, 1973. Arkla states that its rate schedule concerns a gas purchase contract dated November 1, 1962, between Arkla and the Natural Gas Pipeline Company of America covering Arkla's interests in wells in Bryans Mill Field, Cass County, Texas.

Arkla states that the proposed increase amounts to approximately $330 per year and results from the normal operation of a periodic price escalation clause in Article Nine of the contract between the parties, and the tax reimbursement provided for in Article Ten of the contract. Arkla further states that notice of the proposed rate charge has been served upon all parties involved.

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 September 21, 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.73-19692 Filed 9-14-73;8:45 am]

[Docket No. CI74-163]

CITIES SERVICE OIL CO.

Notice of Application

SEPTEMBER 10, 1973.

Take notice that on September 4, 1973, Cities Service Oil Company (Applicant), P.O. Box 300, Tulsa, Oklahoma 74102, filed in Docket No. CI74-163 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Transwestern Pipeline Company from acreage in Eddy County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on August 13, 1973, within the contemplation of § 157.29 of the Regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for 22 months from October 12, 1973, within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicant proposes to sell approximately 275,000 M c.f. of gas per month at 52.0 cents per M c.f. until August 13, 1974, and 54.0 cents per M c.f. thereafter. The rates are subject to upward and downward Btu adjustment.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 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 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.73-19969 Filed 9-14-73;8:45 am]

[Docket Nos. E-8198 and E-8105, et al.]

CONNECTICUT LIGHT AND POWER CO.

Order Accepting Initial Rate Schedule, Initiating Investigation and Consolidating Proceedings

SEPTEMBER 10, 1973.

On May 14, 1973, Connecticut Light and Power Co. (C.L. & P.) filed with the Commission a Rate Schedule consisting of a Transmission Agreement (Agreement) dated April 1, 1973, between C.L. & P., The Hartford Electric Light Co. (HELCO) and Western Massachusetts Electric Co. (Western Massachusetts) (collectively, Northwest Utilities or NU) and Vermont Electric Power Co., Incorporated (VELCO). The Agreement provides for a transmission service to VELCO for the period from May 1, 1973, through October 31, 1973. C.L. & P. states that the execution of the Agreement was delayed pending the formalization and execution of underlying purchase agreements between VELCO and Consolidated Edison Co. of New York, Incorporated. C.L. & P. requests that the Commission waive its thirty-day notice requirement and permit the rate schedule to become effective as of May 1, 1973.

The filing was noticed on June 11, 1973, with protests and petitions to intervene due on or before July 6, 1973. No such petitions or protests were received.

We shall treat this filing as an initial filing and grant waiver of the notice requirements so as to allow for an effective date of May 1, 1973. The proposed rates, according to C.L. & P., would include overall rates of return for NU of 8.22 percent and a return on equity of 12.2 percent. Our review of the filing indicates that the proposed rates may not be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will institute an

investigation under Section 206 of the Federal Power Act to determine the justness and reasonablenes of the filed rates.

We note that the issues in this proceeding are substantially the same as those in Docket No. E-8105, et al., wherein we ordered, on July 10, 1973, a section 206 investigation into the justness and reasonableness of the rates as proposed in that docket. We shall therefore consolidate the investigation ordered herein with that instituted in that docket. Since the parties are presently preparing their evidence in Docket No. E-8105, adherence to the procedural dates set forth in that docket, which we order hereinafter, will not unduly prejudice the parties to this docket.

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 an investigation to determine if the rates and charges contained in C.L. & P.'s proposed rate schedule are in the public interest.

(2) Good cause exists to consolidate Docket Nos. E-8198 with E-8105, et al.

(3) The disposition of this proceeding should be expedited in accordance with the procedure set forth in Docket No. E-8105 et al., by our order issued July 10, 1973.

(4) Waiver of our notice requirements should be granted to permit an effective date of May 1, 1973, for the filing in Docket No. E-8198.

The Commission orders

(A) Pursuant to the authority of the Federal Power Act, particularly section 206 thereof, the Commission's rules of practice and procedure, and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be htld to determin if the rates, charges, classifications and services contained in C.L. & P.'s proposed rate schedule are in the public interest.

(B) Docket Nos. E-8198 and E-8105, et al., are hereby consolidated since the be held to determine if the rates, charges, issues of fact and law are substantially the same, and the disposition of Docket No. E-8198 shall be expedited in accordance with the procedures set forth in Docket No. E-8105, et al.

(C) Waiver of our notice regulations as to the filing in Docket No. E-8198 is granted and the rates are permitted to become effective May 1, 1973.

(D) The Secretary of the Commission shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-19697 Filed 9-14-73;8:45 am]

[Docket No. E-7723]

DELMARVA POWER AND LIGHT CO.

Notice of Motion for Approval of Settlement Agreement

SEPTEMBER 7, 1973.

Take notice that on August 30, 1973, Delmarva Power and Light Company (Delmarva) filed with the Commission a motion for approval of an attached Stipulation and Agreement which is intended to resolve all issues in the above-captioned proceedings. Delmarva also requests that all further proceedings be suspended pending resolution of its motion. Delmarva proposes an effective date of March 1, 1973, for the settlement agreement, the date the rates became effective subject to refund.

Under the proposed settlement, the increased charges presently in effect subject to refund are reduced in the aggregate amount of $170,000 based on 1972 revenues.

Copies of this filing are on file with the Commission and are available for public inspection. Any person desiring to comment upon the settlement offer should file such comments with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before September 14, 1973.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-19693 Filed 9-14-73;8:45 am]

[Docket No. RP74-7]

EL PASO NATURAL GAS CO.

Notice of Tariff Filing

SEPTEMBER 7, 1973.

Take notice that on August 1, 1973, El Paso Natural Gas Co. (El Paso) filed pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act, Second Revised Sheet No. 56 to its FPC Gas Tariff, First Revised Volume No. 3, applicable to its Northwest Division System. El Paso states that the purpose of the changes proposed by the tendered tariff sheet is to modify the Purchased Gas Cost Adjustment Provision (PGAC), as contained in said tariff, to permit El Paso to include in PGAC rate adjustments any changes in the current level of unit amounts per Mcf payable to owners of overriding royalty interests,[1] attributable to leases acquired by El Paso prior to October 7, 1969, which may hereafter be awarded by arbitration boards.

El Paso states that it concluded arbitration proceedings before a board of arbitrators on July 12, 1973, with Sun Oil Co. (Sun), pursuant to the terms of a Lease Sale Agreement dated September 26, 1952, for the determination of the unit amount per Mcf of the overriding royalty. El Paso states that it may be faced with paying increased royalty to Sun effective as of January 5, 1973, or a later date as may be established by the board of arbitrators and therefore requests waiver of notice requirements of § 154.22 of the Commission's Regulations and that the Commission accept the tendered tariff sheet for filing and permit it to become effective on that date or such later date as may be established by said board for any increase in the unit amount per Mcf awarded Sun. The decision of the board of arbitrators in this matter may be expected at sometime prior to September 1, 1973.

The filing includes as Appendix A a listing of all of El Paso's lease sale agreements containing arbitration provisions which have now reached a point in their respective terms where, failing agreement of El Paso and the overriding royalty interest owner on a redetermined price for a five-year period, arbitration can be expected to follow. The filing indicates in the attached Appendix B that El Paso's exposure for each 1¢ increase in the unit amount per Mcf of the subject overriding royalty under such lease agreements could approximate an increase of $107,868 annually in El Paso's Northwest Division System cost of gas which would result in an increase in El Paso's Northwest Division System rates now under suspension at Docket No. RP 73-109 by an average of 0.023¢ per Mcf.

El Paso further requests that waiver of the Commission's rules and regulations, including § 154.38(d)(4), be granted as may be necessary to implement the instant filing.

Any person desiring to be heard or to make any protest with reference to said tariff tender should, on or before September 28, 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 15.10). 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.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-19700 Filed 9-14-73;8:45 am]

[Docket No. CI73-521]

McCULLOCH OIL CORP.

Order Granting Intervention and Fixing Date for Hearing

SEPTEMBER 7, 1973.

The above-named Applicant has filed an application pursuant to section 7(c) of the Natural Gas Act,[1] and pursuant to § 2.75[2] of the Commission's general policy statements, the optional procedure for certificating new producer sales of

[1] The term overriding royalty refers to overrides and production payments, expressed in cents-per-M c.f., contained in certain of El Paso's lease salt agreements under which certain oil and gas leases were acquired by El Paso in the San Juan Basin area of northwestern New Mexico and southwestern Colorado. Such agreements provide for escalation of the unit amount per M c.f. of such overriding royalty up to a ceiling amount (usually at the end of fifteen years) and for redetermination thereafter; failing agreement of the parties to redetermine the unit amount per M c.f. for each subsequent five-year period, provision is made for arbitration.

[1] 15 U.S.C. section 717, *et seq.* (1970).

[2] 18 CFR 2.75.

natural gas set forth in Order No. 455,[3] (hereinafter § 2.75) for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce.

On February 5, 1973, McCulloch Oil Corp. (McCulloch) filed in Docket No. CI73-521 an application pursuant to § 2.75 of the Commission's rules of practice and procedure (18 C.F.R. § 2.75) for authorization to sell natural gas to Northern Natural Gas Co. (Northern) from the Olsen Prospect, Ellis County, Oklahoma (Hugoton-Anadarko Area). The sales contract, dated December 27, 1972, extends for a term of twenty (20) years, and provides for an initial price of 45.5 cents per Mcf with a 1.0 cent per Mcf escalation every year of the contract term. The contract further provides for upward and downward Btu adjustments from 1,000 Btu per cubic foot and reimbursement to McCulloch for 100 percent of any new or additional taxes.

Upon McCulloch's acceptance of a certificate, Northern is obligated to pay over $350,000 with recoupment to be accomplished by Northern withholding one-sixtieth (1/60) of the prepayment per month for the first five years of the contract term.

Initial deliveries were commenced pursuant to § 2.75n (18 CFR 2.75n) on June 5, 1973, at a rate of approximately 120,000 M c.f. per month.

Notice of McCulloch's application was issued on February 15, 1973, and published in the FEDERAL REGISTER on February 22, 1973 (38 FR 4811). Timely protests or petitions to intervene were due on or before March 12, 1973. Timely petitions to intervene were filed by the following parties:

American Public Gas Association
Associated Gas Distributors
Northern Natural Gas Company

A formal hearing has been requested, and we find a hearing is desirable to determine, on the record, whether the present and future public convenience and necessity will be served by certificating these sales, and whether the proposed rate is just and reasonable, taking into consideration all factors bearing on maintenance of an adequate and reliable supply of gas, delivered at the lowest reasonable cost.[4]

This hearing is not the proper forum for the relitigation of the propriety of the § 2.75 procedures; that matter is now before the Court of Appeals. See n. 3, supra. This hearing will be addressed solely to the issues of public convenience and necessity, and the justness and reasonableness, of the particular sale, and rate herein proposed.

Those parties and intervenors desiring to submit cost and non-cost data should structure their evidence to reflect the tests under § 2.75 for determining the justness and reasonableness of the rate sought.

No intervenor has questioned Northern's need for the additional natural gas supplies that will be available to it as a result of these purchases. Accordingly, we shall require Northern to present evidence as to whether or not a comparable supply of natural gas is available to it at any rate lower than the rates proposed in these applications.

The Commission finds

(1) It is necessary and in the public interest that the above-docketed proceeding be set for a formal hearing.

(2) It is desirable and in the public interest to allow the above-named petitioner to intervene in this proceeding.

The Commission orders

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7, 14, 15, and 16 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I) a public hearing on the issues presented by the applications herein shall be held commencing October 16, 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.

(B) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

(C) Applicant and all intervenors supporting the applications shall file their direct testimony and evidence on or before September 17, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, the Commission Staff, and all parties to these proceedings.

(D) The Commission Staff and all intervenors opposing the applications shall file their direct testimony and evidence on or before September 24, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, and all other parties to these proceedings.

(E) All rebuttal testimony and evidence shall be served on or before October 1, 1973. All parties submitting rebuttal testimony and evidence shall serve such testimony and evidence upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(F) The above-named petitioners are permitted to intervene in these proceedings subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and *Provided, further,* That the admission of such interests shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in these proceedings.

(G) The Administrative Law Judge's decision shall be rendered on or before November 23, 1973. All briefs on exceptions shall be due on or before November 30, 1973, and replies thereto shall be due on or before December 7, 1973.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-19696 Filed 9-14-73;8:45 am]

[Docket No. CP74-53]

SEA ROBIN PIPELINE CO.

Notice of Application

SEPTEMBER 7, 1973.

Take notice that on August 27, 1973, Sea Robin Pipeline Co. (Applicant), P.O. Box 1407, Shreveport, Louisiana, filed in Docket No. CP74-53 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, during the twelve-month period commencing September 1, 1973, and operation of natural gas purchase facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally coextensive with said system.

Applicant requests a waiver of paragraphs (1)(i) and (1)(ii) of § 157.7(b) of the Commission's Regulations under the Natural Gas Act, which limit Applicant under the requested authorization to a total of $7,000,000 worth of gas purchase facilities with no single project in excess of twenty-five percent of $7,000,000, so that it may construct under the requested authorization up to $10,000,000 worth of gas purchase facilities with no single project in excess of $2,500,000. Applicant asserts that this waiver is necessary because the facilities proposed herein will be constructed in deep water, at great distances from shore, with periods for safely conducted construction activities severely limited by capricious weather, all of which substantially increase construction costs.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 2, 1973, filed 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

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[3] Statement Of Policy Relating To Optional Procedure For Certificating New Producer Sales of Natural Gas, Docket No. R-441, — F.P.C. — (issued August 3, 1972, appeal pending *sub nom. John E. Moss, et al. v. F.P.C.*, No. 72-1837 (D.C. Cir.)

[4] *Opinion And Order Issuing Certificate Of Public Convenience and Necessity And Determining Just And Reasonable Rates*, Opinion No. 659, *Belco Petroleum Corporation, Agent, et al.*, Docket Nos. CI73-293, *et al.*, — F.P.C. —, — (issued May 30, 1973, slip op. at para. 21, p. 5).

Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19699 Filed 9-14-73;8:45 am]

[Docket No. RP73-99]

SOUTHWEST GAS CORP.

Notice of Postponement of Procedural Dates

SEPTEMBER 10, 1973.

On September 4, 1973, Commission Staff Counsel filed a motion for a postponement of the procedural dates set by the order issued on May 25, 1973, in the above-designated matter. Counsel states that no parties object to the motion.

Upon consideration, notice is hereby given that the procedural dates in this matter are postponed as follows:

Staff Service Date, September 25, 1973.
Prehearing Conference, October 2, 1973, 10 a.m., e.d.t.
Intervenor Service Date, October 9, 1973.
Southwest Gas Corporation, Rebuttal Service Date, October 23, 1973.
Hearing, November 6, 1973, 10 a.m., e.s.t.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 73-19696 Filed 9-14-73;8:45 am]

[Docket No. CI74-151]

ROY M. TEEL

Notice of Application

SEPTEMBER 10, 1973.

Take notice that on August 29, 1973, Roy M. Teel (Applicant), 3311 East 30th Street, Tulsa, Oklahoma 74114, filed in Docket No. CI74-151 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Company from acreage in Ouachita Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that he commenced the sale of natural gas on August 8, 1973, within the contemplation of § 157.29 of the Regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for one year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's Policy and Interpretations (18 CFR 2.70). Applicant proposes to sell approximately 15,000 M c.f. of gas per month at 45.0 cents per M c.f. at 15.025 p.s.i.a., subject to downward Btu adjustment.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19670 Filed 9-14-73;8:45 am]

[Docket No. CI74-164]

TERRA RESOURCES, INC.

Notice of Application

SEPTEMBER 10, 1973.

Take notice that on September 4, 1973, Terra Resources, Inc. (Applicant), 5416 South Yale Avenue, Tulsa, Oklahoma 74135, filed in Docket No. CI74-164 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of natural gas to El Paso Natural Gas Company from production in the Hat Top Area, Nolan, County, Texas, and delivery of said gas at Union Texas Petroleum's Perkins Natural Gasoline Plant in Coke 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 22,500 M c.f. of gas per month for two years at 45.0 cents per M c.f. at 14.65 p.s.i.a. 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 September 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 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.73-19671 Filed 9-14-73;8:45 am]

[Docket Nos. RP71-130, RP72-58]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Prehearing Conference

SEPTEMBER 7, 1973.

On May 31, 1973, Texas Eastern Transmission Co. (TETCO) filed with the Commission Revised Sheets to its FPC Gas Tariff which reflect a curtailment program consistent with the priorities set forth in the Commission Order 467-B (Docket No. R-469). On June 11, 1973, TETCO filed Substitute Second Revised Sheet No. 92 modifying the curtailment priorities by including in priority-of-service category 2 all firm industrial requirements of up to 300 M c.f. per day.

The Commission, by its order of August 30, 1973, accepted for filing the tendered sheets, suspended them for one day, and provided for a hearing to determine the justness and reasonableness of the provisions contained therein. TETCO filed a motion on September 4, 1973, placing the proposed tariff sheets into effect on September 5, 1973.

Many of the intervenors have requested that a conference be held prior to the hearing, which is scheduled to commence on November 13, 1973, in order to discuss, among other things, issues relating to the implementation of the new curtailment plan.

Accordingly, an informal conference, to be presided over by the Commission's Staff, will be held on Tuesday, September 18, 1973, at 10:00 a.m., in hearing room "A" of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19694 Filed 9-14-73;8:45 am]

[Docket No. RP72-64]

TEXAS GAS TRANSMISSION CO.

Notice of Petition for Extraordinary Relief

SEPTEMBER 7, 1973.

Take notice that on August 27, 1973, Jackson Utility Division, an agent of the City of Jackson, Tennessee (Jackson), filed a petition for extraordinary relief, requesting the Commission to grant it under expedited procedure the right to overrun its Quantity Entitlement for the 1973 Summer Season as contained in Texas Gas Transmission Corporation's (Texas Gas) FPC Gas Tariff, Third Revised Volume No. 1, by the amount of approximately 100,000 M c.f. and to reduce its 1973-74 Winter Season Entitlement contained in Texas Gas' FPC Gas Tariff by the actual amount of said overrun; and also to relieve it of the seasonal overrun penalty of $5.00 per M c.f. as provided in § 10.4 of the general terms and conditions of Texas Gas' FPC Gas Tariff.

Jackson states that the relief here sought will not modify its total entitlements on an annual basis and that its supplier, Texas Gas, is believed to have no objection to granting of the extraordinary relief requested.

Jackson alleges that during the months of April and May 1973, weather conditions and temperatures in its service area were approximately 41 percent colder than normal, resulting in additional gas requirements for its residential and commercial customers. It estimates that its requirements for the 1973 summer season will exceed its Quantity Entitlement by about 100,000 M c.f., thereby resulting in a penalty of about $500,000. It asserts that a grant of the relief requested will not adversely affect its ability to serve its firm residential and commercial customers.

Petitioner owns and operates a propane-air peak-shaving facility, but because of the very low turn-down ratio of the plant, it cannot inject sufficient propane-air into its system during low flow summer season periods to prevent the anticipated overrun. It has curtailed industrial interruptible usage during July-August 1973, but believes that maximum curtailment of gas for the remainder of the summer season cannot prevent the estimated seasonal overrun.

Texas Gas has advised Jackson and its other customers that Texas Gas does not contemplate curtailing present Quantity Entitlements prior to the end of the 1973-74 winter season.

It appears reasonable and consistent with the public interest in this proceeding 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 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) on or before September 14, 1973. The notices and petitions for intervention previously filed in this proceeding will not operate to make those parties interveners or prostestants with respect to the instant filing. 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 in accordance with the Commission's rules. This filing which was made with the Commission is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19695 Filed 9-14-73;8:45 am]

[Docket No. CI74-155]

UNION OIL COMPANY OF CALIFORNIA

Notice of Application

SEPTEMBER 10, 1973.

Take notice that on August 30, 1973, Union Oil Co. of California (Applicant), P.O. Box 7600, Los Angeles, California 90051, filed in Docket No. CI74-155 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Company from the South Corbin Morrow Field, Lea County, New Mexico, 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 15,000 M c.f. of gas per month for three years at 45.0 cents per M c.f. at 14.65 p.s.i.a. subject to upward and downward Btu adjustment within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

It appears reasonable and consistent with the public interest in this case to provide 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 September 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 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.73-19672 Filed 9-14-73;8:45 am]

FEDERAL RESERVE SYSTEM

FORT WORTH NATIONAL CORP.

Order Approving Acquisition of Bank

The Fort Worth National Corporation, Fort Worth, Texas, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3 (a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares (less directors' qualifying shares) of Levelland State Bank, Levelland, Texas.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls six banks[1] with aggregate deposits of approximately $878 million, representing 2.5 percent of the total deposits of commercial banks in the State. Applicant ranks as the fifth largest multibank holding company in Texas and the largest in the Fort Worth banking market, where it controls approximately 31 percent of the total commercial bank deposits in that market. (All banking data are as of December 31, 1972, and reflect bank holding company formations and acquisitions approved by the Board through July 15, 1973.)[2] In addition, Applicant controls between 24.4 percent and 24.9 percent of the voting shares of two other banks located in the Fort Worth market, holding aggregate deposits of $74.1 million. Applicant also owns in excess of 5 percent of the shares of the First National Bank, Paducah, Texas. Upon consummation of the acquisition of Bank ($27.4 million in deposits), Applicant's share of commercial bank deposits in the State would increase by 0.07 percent and its rank would remain unchanged.

Bank is the largest of 4 banks in the Hockley County banking market and controls 56.6 percent of the commercial bank deposits therein. The second largest bank in the market holds 31.1 percent of total deposits and is affiliated within a holding company system. Consummation of the proposal would constitute Applicant's initial entry into the relevant market.

Applicant's subsidiary bank closest to Bank is located in Amarillo, 130 miles north of Levelland, and it appears that there is no meaningful competition between any of Applicant's subsidiary banks and Bank. Furthermore, in view of the distances involved and the restrictive branching laws in Texas, it appears unlikely that any significant amount of competition would develop in the future between any of these institutions. Although Applicant could enter Bank's market de novo, this method of expansion is not likely because of the market's declining population and relatively low population to banking office ratio compared with the State average. On the basis of the record before it, the Board concludes that consummation of the proposed transaction would not have an adverse effect on competition in any relevant area.

The financial and managerial resources of Applicant and its subsidiaries appear satisfactory and future prospects for all are favorable. Bank's managerial resources are satisfactory and its future prospects are considered to be good; the financial condition of Bank is satisfactory in light of Applicant's commitment to inject additional equity capital upon consummation of this proposal. There is no evidence in the record to indicate that the banking needs of the residents of Bank's market are not being adequately served. Upon consummation, however, Applicant intends to improve the trust services of Bank, increase the capital available for industrial and agricultural development, provide more long-term mortgage financing, and introduce computer facilities to Bank. Introduction of these new facilities and increased service capabilities should enable Bank to continue to adequately serve the community. Therefore, considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority. Further, the transaction shall not be consummated until there has been compliance with § 3(e) of the Act (12 U.S.C. 1842(e)) which requires that every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured bank as such term is defined in § 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

By order of the Board of Governors,[3] effective September 6, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-19647 Filed 9-14-73;8:45 am]

[1] Bank of Fort Worth, Riverside State Bank, and Tarrant State Bank, all located in Fort Worth, are deemed subsidiaries for purposes of the Bank Holding Company Act by virtue of Applicant's fiduciary holdings in said banks and section 2(a)(5)(A) of the Act.

[2] The above banking data do not reflect Board action on separate applications by Applicant to acquire The First State Bank of Stratford, Stratford, Texas (deposits of $21.6 million) approved by Order dated August 16, 1973 and Commercial Bank & Trust Co., Midland, Texas (deposits of $30.3 million) approved by Order of August 23, 1973.

[3] Voting for this action: Vice Chairman Mitchell and Governors Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns and Governor Daane.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 73-72]

PRECISION CONTROL PRODUCTS CORP.

Notice of Intent To Grant Exclusive Patent License

Notice is hereby given of intent to grant to Precision Control Products Corporation, Waltham, Massachusetts, a limited, exclusive, revocable license to practice the invention described in U.S. Patent No. 3,750,067 for "Ferrofluidic Solenoid", issued on July 31, 1973 to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years, will provide for payment of royalties to the U.S. Government and will contain other appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR § 1245.2, as revised April 1, 1972. NASA will grant the exclusive license unless, on or before October 17, 1973, the Chairman, Inventions and Contributions Board, NASA, Washington, DC, 20546, receives in writing any of the following, together with supporting documentation: (i) a statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed exclusive license; or (ii) an application for a nonexclusive license under such invention, in accordance with § 1245.206(b) in which applicant states that he has already brought or is likely to bring the invention to practical application within a reasonable period. The Board will review all written responses to the Notice and then recommend to the Administrator whether to grant the exclusive license.

SEPTEMBER 11, 1973.

R. TENNEY JOHNSON,
General Counsel.

[FR Doc.73-19691 Filed 9-14-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 7-4442]

BANISTER CONTINENTAL LTD.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

SEPTEMBER 10, 1973.

In the matter of application of the PBW Stock Exchange, Inc., for unlisted trading privileges in a certain Security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Banister Continental Ltd. File No. 7-4442 (Alberta)

Upon receipt of a request, on or before September 26, 1973, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the

said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-19648 Filed 9-14-73;8:45 am]

[File No. 7-4449]

ESMARK, INC.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

SEPTEMBER 10, 1973.

In the matter of applications of the Pacific Stock Exchange, Inc., for unlisted trading privileges in certain securities.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

Esmark, Inc. ..... File No. 7-4449

Upon receipt of a request, on or before September 26, 1973, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-19655 Filed 9-14-73;8:45 am]

[File No. 7-4441]

TELEPROMPTER CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

SEPTEMBER 10, 1973.

In the matter of application of the PBW Stock Exchange, Inc., for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Teleprompter Corporation.. File No. 7-4441

Upon receipt of a request, on or before September 26, 1973, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-19651 Filed 9-14-73;8:45 am]

[File No. 7-4447]

MOTOROLA, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

SEPTEMBER 10, 1973.

In the matter of application of the PBW Stock Exchange, Inc., for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Motorola, Inc. (Delaware) File No. 7-4447

Upon receipt of a request, on or before September 26, 1973, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-19650 Filed 9-14-73;8:45 am]

[File No. 7-4448]

MERRILL LYNCH & CO., INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

SEPTEMBER 10, 1973.

In the matter of application of the PBW Stock Exchange, Inc., for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Merrill Lynch & Co., Inc. File No. 7-4448

Upon receipt of a request, on or before September 26, 1973, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Marketing Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-19654 Filed 9-14-73;8:45 am]

[File No. 74446]

MERRILL LYNCH & CO., INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

SEPTEMBER 10, 1973.

In the matter of application of the Boston stock exchange, for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Merrill Lynch & Co., Inc.---- File No. 7-4446

Upon receipt of a request, on or before September 26, 1973, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-19653 Filed 9-14-73;8:45 am]

[File No. 7-4444]

ICN PHARMACEUTICALS, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

SEPTEMBER 10, 1973.

In the matter of application of the Boston stock exchange, for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

ICN Pharmaceuticals, Inc.--- File No. 7-4444

Upon receipt of a request, on or before September 26, 1973, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-19652 Filed 9-14-73;8:45 am]

[File No. 7-4440]

ESMARK, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

SEPTEMBER 10, 1973.

In the matter of application of the PBW Stock Exchange, Inc., for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Esmark, Inc.---------- File No. 7-4440

Upon receipt of a request, on or before September 26, 1973, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-19649 Filed 9-14-73;8:45 am]

TARIFF COMMISSION

[AA1921-131]

CALCIUM PANTOTHENATE FROM JAPAN

Notice of Investigation and Hearing

Having received advice from the Treasury Department on September 6, 1973, that calcium pantothenate from Japan is being, or is likely to be, sold at less than fair value the United States Tariff Commission on September 12, 1973, instituted investigation No. AA1921-131 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, NW., Washington, D.C. 20436, beginning at 10:00 a.m., est, on Tuesday, November 6, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Thursday, November 1, 1973.

Issued September 13, 1973.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-19799 Filed 9-14-73;8:45 am]

Committee for Statistical Annotation of Tariff Schedules

COLLECTION OF F.O.B. AND C.I.F. DATA ON IMPORTS

Notice Regarding Interim Application of General Statistical Headnote 1 of the Tariff Schedules of the United States Annotated (TSUSA)

For purposes of facilitating compliance with the amended general statistical headnote 1 of the TSUSA published in the FEDERAL REGISTER of August 7, 1973 (38 FR 21323), requiring additional statistical data with respect to imports entered, or withdrawn from warehouse, for consumption on or after October 1, 1973, the Committee hereby gives notice that with respect to imports entered or withdrawn on or before November 30, 1973, Customs officers may accept as compliance therewith reasonable estimates with respect to any of the additional data specified in the amended headnote that is not readily available to the persons making entry or withdrawal of articles imported into the United States.

Issued September 13, 1973.

For the Committee.

[SEAL] A. F. PARKS, *Chairman.*

[FR Doc.73-19798 Filed 9-14-73;8:45 am]

[AA1921-130]

EXPANDED METAL, OF BASE METAL, FROM JAPAN

Notice of Investigation and Hearing

Having received advice from the Treasury Department on August 31, 1973, that expanded metal, of base metal, from Japan is being, or is likely to be, sold at less than fair value, the United States Tariff Commission on September 11, 1973, instituted investigation No. AA1921-130 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

HEARING. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets NW., Washington, D.C. 20436, beginning at 10 a.m., e.d.t., on Wednesday, October 24, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Thursday, October 18, 1973.

Issued: September 12, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

[FR Doc.73-19714 Filed 9-14-73;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

BGS SHOE CORP.

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 by the BGS Shoe Corp., Manchester, N.H. (Report No. TEA-W-193) 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 women's dress and casual shoes and components thereof, 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 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 the investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C. 20210 on or before September 29, 1973.

Signed at Washington, D.C., this 10th day of September 1973.

GLORIA G. VERNON,
Director, Office of Foreign Economic Policy.

[FR Doc.73-19703 Filed 9-14-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[No. 35874]

ARGO-COLLIER TRUCK LINES, INC., ET AL.

Petition for Declaratory Order—Loading/Unloading Contracts

SEPTEMBER 6, 1973.

Notice is hereby given that on July 16, 1973, Argo-Collier Truck Lines, Inc., Central & Southern Truck Lines, Inc., Clay Hyder Trucking Lines, Inc., Colonial Refrigerated Transportation, Inc., Indiana Refrigerator Lines, Inc., Refrigerated Transport Co., Inc., Watkins Motor Lines, Inc., and Wilson Brothers Truck Lines, motor common carriers of foodstuffs, filed a joint petition seeking to broaden the issues pending in No. 35809, Central & Southern Motor Freight Tariff Association, Inc.—Petition for Declaratory Order Loading/Unloading Contracts, to include other issues relating specifically to the delivery and unloading of foodstuffs, particularly at warehouse locations, and to have the Commission's Bureau of Enforcement participate in the proceeding for the purpose of developing such evidence as may be appropriate, or in the alternative, for the institution of a separate proceeding concerning those issues. By order of the Commission, Division 2, entered on July 27, 1973, the said petition was denied insofar as it sought to broaden the issues in No. 35809, but it was further ordered that the pleading be considered as requesting the institution of a separate proceeding for the purposes of determining the additional matters therein presented, after appropriate public notice had been provided.

The petition stems from what are described as unique problems and circumstances relating to the delivery and unloading of loose carcass meat and other perishable articles, including frozen foods. Petitioners maintain various tariff provisions which eliminate carrier responsibility for unloading, and others which provide for an allowance to be paid to a consignee for providing unloading service. Petitioners state that often they are not permitted by consignees, or their agents to unload articles of perishable food at particular locations, for example, stores, chain store warehouses, meat packinghouse branch houses, and military installations. They may offer as reasons the existence of local health regulations, or display signs with rules governing unloading, or refer to requirements that particular persons known to the consignee or employed by the consignee do the unloading. Shipments have been rejected, or unloading unduly delayed, because of carrier refusal or inability to enter into contracts for consignee unloading. Petitioners further state that consignees coerce carrier personnel into accepting the assistance of consignees' employees or unknown parties who appear at the premises of the consignees for the purpose of unloading.

Despite the existence of tariff provisions governing the payment to consignees of loading and unloading allowances, petitioners allege that consignees or their agents have attempted by various means to exact sums in excess of published tariff allowances.

Petitioners further allege that the above-described practices are in widespread use and raise questions whether any or all of such practices violate sections 216, 225 and other sections of the Interstate Commerce Act. Since carriers of perishable commodities transport articles of limited shelf life, petitioners assert that they are vulnerable to the most intense kind of coercion regarding consignee unloading contracts.

Petitioners also raise additional questions for declaratory determination relating to loading and unloading practices, specifically as follows:

(1) Is it lawful for a receiver to require the use by a carrier of others, directly or indirectly, for the purpose of unloading? If not, what remedy does a carrier of perishable have on the spot, and what liability, if any, does he have to the shipper for his failure to deliver the merchandise?

(2) Where an allowance is published, is it lawful for a receiver to require the use of so-called outsiders under any conditions? If it is, may the outsider extract unloading charges in excess of the published tariff allowance? What remedies are there in connection with these questions against the consignee?

(3) Is the shipper of the merchandise liable to the carrier for any additional unloading charges encountered by the carrier beyond the carrier's tariff responsibilities, and if so, under what circumstances, and to what extent?

(4) To the extent that a carrier, under its appropriate tariffs, is responsible for unloading, does that responsibility end when the load is tendered and the consignee refuses to permit the driver to unload?

(5) Should the existence of local health regulations in particular localities which would prohibit the driver from unloading serve as an elimination of carrier responsibility for unloading, placing that responsibility on the consignee rather than exist as an excuse for compelled use of others?

(6) Does the payment or demand for payment of unloading charges in the absence of tariff allowance or in excess of tariff allowance, or both, constitute violations of the Elkins Act? Will consignees and warehouses be prosecuted if these are violations?

(7) Where the use of outsiders for unloading is compelled or demanded by consignees, do these outsiders become agents or employees of the consignee, at least for the purposes of enforcement of the Elkins Act?

(8) What is the effect of the existence of secret union contracts established between national food chain store warehouses and so-called independent unloading crews? Is the consignee obligated to disclose the existence of such contracts, requiring the use of particular persons for unloading, to the carrier and to the Commission? Does the existence of such union contracts requiring the use of such crews for unloading eliminate carrier responsibility for unloading? Does the existence of such contracts establish for purposes of the Elkins Act that the unloading crews are agents and/or employees of the consignee? Must a carrier or carrier employee file unfair labor practice charges with the National Labor Relations Board in respect to such contracts, or are there remedies existing with respect to such contracts under the Interstate Commerce Act or the Elkins Act?

(9) To what extent may military installations require the use of off-duty military personnel or others to perform unloading service? Do receiving officers making such demands or requirements act as agents of the United States or individually for purposes of the Elkins Act? Are they subject to criminal prosecution?

(10) To the extent that military installations establish requirements for unloading in terms of qualifications which are unreasonable, or may not be reasonably met by carrier personnel, does this discharge the carrier from responsibility for unloading? If not, what is a carrier to do?

(11) May a carrier through tariff publication eliminate the responsibility to unload? To what extent and under what circumstances is a carrier obligated to load or unload freight? To what extent and under what circumstances do actions of the shipper or consignee eliminate the obligation to unload? To what extent and in what way may carriers establish tariff regulations limiting or eliminating the duty to unload on all traffic or particular classes of traffic?

Any person interested in the matter which is the subject of the petition and who wishes to participate actively in any further proceedings herein shall notify this Commission, by filing with the Office of Proceedings, Room 5342, 12th Street and Constitution Avenue NW., Washington, D.C. 20423, on or before October 15, 1973, an original and one copy of a statement of his intention to participate. Although individual participation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interest should endeavor to consolidate their presentations to the greatest extent possible. There after, the nature of further proceedings herein, if any, will be designated. The petition and statements of intent to participate, if any, will be available for public inspection at the offices of the Interstate Commerce Commission during the regular business hours.

A copy of this notice will be served upon the petitioners, and notice of the filing of the petition will be given to the general public by depositing a copy of this notice in the Office of the Secretary of the Commission at Washington, D.C., and by delivering a copy hereof to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-19721 Filed 9-14-73;8:45 am]

[Notice No. 342]

ASSIGNMENT OF HEARINGS

SEPTEMBER 12, 1973.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 5227, Sub 6, Economy Movers, Inc., now being assigned hearing September 28, 1973 (1 day), at Omaha, Nebr., in the Sapphire Room, New Paxton Hotel, 14th and Farnam St.

MC 99284 Sub 6, Sullivan's Motor Delivery, Inc., now assigned October 15, 1973, at Chicago, Ill., will be held in Room 204A, Everett McKinley Dirksen Bldg., 219 S. Dearborn St.; now assigned October 18, 1973, at Milwaukee, Wis., will be held in Room 301C, City Hall, 200 East Wells St.

MC 106497 Sub 51, Parkhill Truck Company, application dismissed.

MC 138227, Rodney H. Blackwell, DBA Miss-Lou Truck Line, now assigned September 24, 1973, at Jackson, Miss., is cancelled and reassigned at Picayune, Miss., City Hall.

MC-F-11673, Reliance Truck Company—Purchase—Daigh & Stewart Truck Company & MC-54567 Sub 12, Reliance Truck Co., now assigned September 17, 1973, at Phoenix, Ariz., is cancelled.

MC 106497 Sub 81, Parkhill Truck Company, now being assigned October 2, 1973 (1 day), in U.S. Customs, Court Room 1057, 909 First Avenue, Seattle, Washington.

No. 35265, Anglo-Canadian Pulp and Paper Mills, Limited, et al., v. Aberdeen and Rockfish Railroad Company, et al., now being assigned hearing October 29, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 11424 Sub 4, Shippers Truck Service, Inc., now assigned October 1, 1973, at New York, N.Y., will be held in Room B-2231, 26 Federal Plaza.

W-406 Sub 11, Ohio Barge Line, Inc., now assigned October 15, 1973, at Pittsburgh, Pa., is postponed to November 14, 1973, at Pittsburgh, Pa., in a hearing room to be later designated, now assigned December 10, 1973, at Washington, D.C., is postponed to January 15, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-19723 Filed 9-14-73;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

SEPTEMBER 12, 1973.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the General Rules of Practice (49 CFR 1100.40) and filed by October 2, 1973.

FSA No. 42745—*Lumber and Lumber Articles from Roundup, Montana.* Filed by Trans-Continental Freight Bureau, Agent (No. 486), for interested rail carriers. Rates on lumber and lumber articles, in carloads, as described in the application, from Roundup, Montana, to points in western trunk-line and Illinois territories. Grounds for relief—Market and carrier competition.

Tariffs—Supplements 28 and 158 to Trans-Continental Freight Bureau, Agent, tariffs 18-R and 28-Q, I.C.C. Nos. 1847 and 1750, respectively. Rates are published to become effective on October 12, 1973.

FSA No. 42746—*Iron and Steel Articles from Geneva, Utah.* Filed by Western Trunk Line Committee, Agent (No. A-2690), for interested rail carriers. Rates on iron and steel articles, in carloads as described in the application, from Geneva, Utah, to points in Illinois and western trunk-line territories; also Kentucky.

Grounds for relief—Market competition.

Tariff—Supplement 180 to Western Trunk Line Committee, Agent, tariff 130–M, I.C.C. No. A–4663. Rates are published to become effective on October 15, 1973.

By the Commission

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73–19726 Filed 9–14–73;8:45 am]

[Rev. I.C.C. Order No. 79; Amdt. 5]

ST. JOHNSBURY & LAMOILLE COUNTY RAILROAD

Rerouting or Diversion of Traffic

SEPTEMBER 12, 1973.

Upon further consideration of Revised I.C.C. Order No. 79 (St. Johnsbury & Lamoille County Railroad) and good cause appearing therefor:

It is ordered, That:

Revised I.C.C. Order No. 79 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., September 30, 1973, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., September 10, 1973, and that this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., September 7, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[FR Doc.73–19724 Filed 9–14–73;8:45 am]

Office of Proceedings

[Notice No. 123]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 11, 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 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, on or before October 12, 1973. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 4405 (Sub-No. 505 TA), filed August 30, 1973. Applicant: DEALERS TRANSIT, INC., 2200 E. 170th Street, Lansing, Ill. 60438. Applicant's representative: L. L. Bennett (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers and trailer chassis*, other than those designed to be drawn by passenger automobiles in initial truckaway and driveaway service and (2) tractors, in secondary driveaway service only when drawing trailers moving in initial driveaway service, (1) from Lubbock, Tex., to all points in the United States (except Alaska and Hawaii) and (2) from Lubbock, Tex., to points in Arizona, Nevada, Oregon, and Vermont, for 180 days. SUPPORTING SHIPPER: W. D. Reed, Traffic Manager, Lubbock Manufacturing Co., LMC, P.O. Drawer 1589, Lubbock, Tex. 79408. SEND PROTESTS TO: District Supervisor Robert G. Anderson, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Bldg., 219 S. Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 22301 (Sub-No. 15 TA), filed August 29, 1973. Applicant: SIOUX TRANSPORTATION COMPANY, INC., 1230 Steuben Street, P.O. Box 3088 (Box zip 51102), Sioux City, Iowa 51105. Applicant's representative: Paul Beck (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats and meat products*, from the plant sites of Iowa Beef Processors, Inc., at Dennison, Fort Dodge, and LeMars, Iowa, and West Point, Nebr., to points in Illinois on and east of U.S. Highway 51 and on and north of U.S. Highway 24; and in addition the cities of Bloomington, Pekin, and Peoria, Ill., for 180 days. SUPPORTING SHIPPER: Iowa Beef Processors, Inc., H. L. Dennison, Supervisor, Transportation & Research, P.O. Box 515, Dakota City, Nebr. 68731. SEND PROTESTS TO: District Supervisor Carroll Russell, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 25798 (Sub-No. 243 TA), filed August 27, 1973. Applicant: CLAY HYDER TRUCKING LINES, INC., 502 E. Bridgers Avenue, Post Office Box 1186, Auburndale, Fla. 33823. Applicant's representative: Tony G. Russell (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, from Madison, Nebr., to points in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, 5720 SW. 17th St., Room 105, Miami, Fla. 33155.

No. MC 26396 (Sub-No. 91 TA), filed August 27, 1973. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, 201 W. Park, Mlg.: P.O. Box 990, Livingston, Mont. 59047. Applicant's representative: David R. Kemp (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crushed automobile bodies* in straight or mixed shipments, with scrap automobile engine blocks and transmissions, from points in Montana, to points in Oregon and Washington, for 180 days. SUPPORTING SHIPPER: Carl Weissman & Sons, Inc., 300 Third Avenue South, Great Falls, Mont. 59405. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 222, U.S. Post Office Bldg., Billings, Mont. 59101.

No. MC 35628 (Sub-No. 353 TA), filed August 28, 1973. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, 134 Grandville Ave. SW., Grand Rapids, Mich. 49502. Applicant's representative: Leonard D. Verdier, Jr., 900 Old Kent Building, Grand Rapids, Mich. 49502. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plant site of Madison Foods, Inc., at Madison, Nebr., to points in Arkansas, Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 225 Federal Building, Lansing, Mich. 48933.

No. MC 88380 (Sub-No. 10 TA), filed August 31, 1973. Applicant: CHEROKEE

FREIGHTWAYS, INC., 2400 Cold Springs Road, Fort Worth, Tex. 76106. Applicant's representative Dennis Fuchshuber (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bituminized or indurated fibre conduit or pipe*, from the plant site of McGraw-Edison Company, Fibre Products Division, in Grayson County, Tex., to points in Plymouth, Norfolk, Essex, Middlesex, Suffolk Counties, Mass., for 180 days. SUPPORTING SHIPPER: W. Kyle Avery, McGraw-Edison Company, Fibre Products Division, Marketing Supervisor, Rt. 2, Box 142, Sherman, Tex. 75090. SEND PROTESTS TO: H. C. Morrison, Sr., District Supervisor, Interstate Commerce Commission, Room 9A27, Federal Building, Forth Worth, Tex. 76102.

No. MC 105007 (Sub-No. 28 TA), filed August 28, 1973. Applicant: MATSON TRUCK LINES, INC., 1407 St. John Avenue, Albert Lea, Minn. 56007. Applicant's representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Reinforced concrete slabs, sections, slats, and beams*, from Hollandale, Minn., to points in Iowa, Nebraska, Illinois, South Dakota, Wisconsin, and Missouri, for 180 days. SUPPORTING SHIPPER: Karsjens Bros. Concrete Products, Inc., Hollandale, Minn. 56045. SEND PROTESTS TO: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building & U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 106398 (Sub-No. 682 TA), filed August 31, 1973. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, P.O. Box 51096, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings* in sections, mounted on wheeled undercarriages, from the plantsite of Westville Homes Corporation in Westville, N.H., to points in Maine, Vermont, Massachusetts, Rhode Island, New York, and Connecticut, for 180 days. SUPPORTING SHIPPER: Westville Homes Corporation, Peter S. Kurzina, P.O. Box 1, Westville, N.H. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Rm. 240, Old P.O. Bldg., 215 NW. Third, Oklahoma City, Okla. 73102.

No. MC 107403 (Sub-No. 849 TA), filed August 24, 1973. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lead oxide*, in bulk, in tank vehicles, from Indianapolis, Ind., to Louisville, Ky., for 180 days. SUPPORTING SHIPPER: James H. Thrash, Vice President-Purchasing, RSR Corporation, 2727 North Westmoreland Street, P.O. Box 6195, Dallas, Tex. 75222. SEND PROTESTS TO: Ross A. Davis, District Supervisor, Interstate Commerce Commission, Bureau of Operations, William J. Green, Jr., Federal Bldg., 600 Arch Street, Room 3238, Philadelphia, Pa. 19106.

No. MC 107403 (Sub-No. 857 TA), filed August 31, 1973. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic liquors*, NOI, in bulk, in tank vehicles, from Tullahoma, Tenn., to Schenley, Pa., for 180 days. SUPPORTING SHIPPER: R. H. Haberle, General Traffic Manager, Schenley Distillers, Inc., 36 E. Fourth Street, Cincinnati, Ohio 45202. SEND PROTESTS TO: Ross A. Davis, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Arch Street, Room 3238, Philadelphia, Pa. 19106.

No. MC 107496 (Sub-No. 905 TA), filed August 28, 1973. Applicant: RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, P.O. Box 855 (Box zip 50304), Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid sugar*, in bulk, in tank vehicles, from Grimes, Iowa, and Muncie, Kans., to points in Kansas, Nebraska, and Missouri, for 150 days. SUPPORTING SHIPPER: The Amalgamated Sugar Company, P.O. Box 1520, Ogden, Utah 84402. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 107496 (Sub-No. 906 TA), filed August 29, 1973. Applicant: RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, P.O. Box 855 (Box zip 50304), Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid feed and liquid feed supplements*, in bulk, in tank vehicles, from Oskaloosa, Iowa, to points in Illinois, for 150 days. SUPPORTING SHIPPER: International Multifoods Corporation, 1200 Investors Building, Minneapolis, Minn. 55402. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Bldg., Des Moines, Iowa 50309.

No. MC 108207 (Sub-No. 372 TA), filed August 28, 1973. Applicant: FROZEN FOOD EXPRESS, INC., 318 Cadiz Street, P.O. Box 5888 (Box zip 75222), Dallas, Tex. 75207. Applicant's representative: J. B. Ham (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, 273, and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite and storage facilities of Madison Foods, Inc., Madison, Nebr., to points in California, Arizona, New Mexico, Tennessee, Oklahoma, Arkansas, Mississippi, Louisiana, and Texas, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Transportation Specialist Gerald T. Holland, Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 112148 (Sub-No. 57 TA), filed August 23, 1973. Applicant: WORSTER-IOWA, INC., Gay Road, Rd. #1, North East, Pa. 16428. Applicant's representative: William L. Fairbank, 900 Hubbell Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and warehouse facilities of Madison Foods, Inc., at or near Madison, Nebr., to points in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor John J. England, Interstate Commerce Commission, Bureau of Operations, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pa. 15222.

No. MC 113267 (Sub-No. 307 TA), filed August 24, 1973. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 3385 Airways Blvd., Memphis, Tenn. 38116. Applicant's representative: Lawrence A. Fischer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite and storage facilities utilized by Madison Foods, Inc., at or near Madison, Nebr., to points in Kentucky, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, North Carolina, and South Carolina, for 180 days. SUPPORTING SHIPPER:

Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor Floyd A. Johnson, Interstate Commerce Commission, Bureau of Operations, 435 Federal Office Building, 167 North Main Street, Memphis, Tenn. 38103.

No. MC 113843 (Sub-No. 196 TA), filed August 29, 1973. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, Boston, Mass. 02210. Applicant's representative: William J. Boyd, 29 South LaSalle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the plant site of Madison Foods, Inc., at Madison, Nebr., to points in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: John B. Thomas, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 150 Causeway Street, Boston, Mass. 02114.

No. MC 114273 (Sub-No. 146 TA), filed August 30, 1973. Applicant: CEDAR RAPIDS STEEL TRANSPORTATION, INC., 3930 16th Avenue SW., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Robert E. Konchar, P.O. Box 1943, Cedar Rapids, Iowa 52406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite of Madison Foods, Inc., at Madison, Nebr., to points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Pennsylvania, Vermont, Virginia, West Virginia, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 114632 (Sub-No. 61 TA), filed August 28, 1973. Applicant: APPLE LINES, INC., 225 S. Van Epps Ave., P.O. Box 507, Madison, S. Dak. 57042. Applicant's representative: Robert A. Appelwick (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and articles distributed by meat packinghouses* as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite of Madison Foods, Inc., at or near Madison, Nebr., to points in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, North Dakota, South Dakota, and Wisconsin, for 180 days. SUPPORTING SHIPPER: Donald A. Chute, Manager, Transportation & Distribution, Fresh Meats Division, Armour and Company, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 115841 (Sub-No. 456 TA), filed August 29, 1973. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., Off.: 1215 Bankhead Highway West, P.O. Box 10327, Birmingham, Ala. 35202. Applicant's representative: Roger M. Shaner (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses* (except hides and commodities in bulk), from the plantsite of Madison Foods, Inc., at Madison, Nebr., to points in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Michigan, Indiana, Ohio, Pennsylvania, New Jersey, Maryland, Delaware, West Virginia, Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Mississippi, Alabama, Georgia, and Florida and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Clifford W. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 814, 2121 Building, Birmingham, Ala. 35203.

No. MC 117119 (Sub-No. 483 TA), filed August 29, 1973. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72738. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration (except commodities in bulk, in tank vehicles), from the plantsite and warehouse facilities of Kraft Foods at or near Springfield, Mo., to points in California, Colorado, and New Mexico, restricted to points in named origins and destined to points in named destinations, for 180 days. SUPPORTING SHIPPER: Kraft Foods Div. of Kraftco Corporation, 2340 Forest Lane, Garland, Tex. 75040. SEND PROTESTS TO: District Supervisor William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 118202 (Sub-No. 15 TA), filed August 23, 1973. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 East Bridge Street, Winona, Minn. 55987. Applicant's representative: Eugene A. Schultz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts* as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk and hides), from the plant site and warehouse facilities utilized by Yankton Sioux Industries at Wagner, S. Dak., to points in Arkansas, Connecticut, Delaware, the District of Columbia, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Maine; and *meats, meat products, and meat byproducts* as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk and hides) and *materials, supplies, and equipment* used by meat packers in the conduct of their business, from points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, Texas, and Wisconsin to the plantsite and warehouse facilities utilized by Yankton Sioux Industries at Wagner, S. Dak., for 180 days. SUPPORTING SHIPPER: Yankton Sioux Industries, 301 North Fifth Street, Minneapolis, Minn. 55403. SEND PROTESTS TO: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building & U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 119789 (Sub-No. 177 TA), filed August 29, 1973. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, 1612 E. Irving Blvd., Dallas, Tex. 75222. Applicant's representative: James K. Newbold, Jr., P.O. Box 6188, Dallas, Tex. 75222. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic fiber*, from Covington, Va., to Miami, Okla., for 180 days. SUPPORTING SHIPPER: Ozark Industries, Inc., P.O. Box 1245, Miami, Okla. 74354. SEND PROTESTS TO: Transportation Specialist Gerald T. Holland, Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 123556 (Sub-No. 6 TA), filed August 28, 1973. Applicant: RAHIER TRUCKING, INC., 1822 South First

Street, Yakima, Wash. 98903. Applicant's representative: Warren L. Dewar, Jr., 303 East D Street, Yakima, Wash. 98901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials and supplies*, from Pittsburgh and Santa Clara, Calif., to points in Yakima, Benton, Franklin, Walla Wala, Columbia, Garfield, Asotin, Whitman, Adams, Grant, Kittitas, Klickitat, Chelan, Douglas, and Okanogan Counties, Wash., for 180 days. SUPPORTING SHIPPER: Zellerbach Paper Company, 1225 West Popular, Walla Walla, Wash. 99362; Valley Roofing, 105 East Beech St., Yakima, Wash. 98901; Sid Thiel doing business as Thiel Roofing Company, 205 N. Fruitland, Kennewick, Wash. 99336; and Wagner Roofing Company, 1507 South 18th Avenue, Yakima, Wash. 98902. SEND PROTESTS TO: District Supervisor W. J. Huetig, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, 319 SW. Pine, Portland, Oreg. 97204.

No. MC 124078 (Sub-No. 559 TA), filed August 31, 1973. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis. 53215. Applicant's representative: Richard H. Prevette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement dust*, in bulk, from Nazareth, Pa., to Neptune, Elizabeth, and Port Reading, N.J., for 180 days. SUPPORTING SHIPPER: Lipari Pumice Aggregate Co., Box 691, Westport, Conn. 06880 (Richard C. Bonser, President). SEND PROTESTS TO: John E. Ryden, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 124078 (Sub-No. 560 TA), filed August 31, 1973. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis. 53215. Applicant's representative: Richard H. Prevette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement dust*, in bulk, from Nazareth, Pa., to Bayonne and Metuchen, N.J., and Staten Island and Flushing, N.Y., for 180 days. SUPPORTING SHIPPER: Lipari Pumic Aggregate Co., Box 691, Westport, Conn. 06880 (Richard C. Bonser, President). SEND PROTESTS TO: John E. Ryden, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 124236 (Sub-No. 58 TA), filed August 23, 1973. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 1200 Simons Bldg., Dallas, Tex. 75201. Applicant's representative: Leroy Hallman, 4555 First National Bank Bldg., Dallas, Tex. 75202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry silicate of soda*, in bulk, from Dallas, Tex., to Wrens, Ga., for 180 days. SUPPORTING SHIPPER: Diamond Shamrock Chemical Co., 1100 Superior Avenue, Cleveland, Ohio 44114. SEND PROTESTS TO: Gerald T. Holland, Transportation Specialist, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 126489 (Sub-No. 19 TA), filed August 31, 1973. Applicant: GASTON FEED TRANSPORTS, INC., 1203 West 4th Street, P.O. Box 1066, Hutchinson, Kans. 67501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat scrap, blood meal, bone meal and tankage*, (1) from Dodge City, Garden City, Emporia, Liberal, Wichita, Mankato, Ellis, Coffeyville, and Kansas City, Kans., to points in Missouri, Nebraska, Iowa, Oklahoma, Arkansas, Colorado, and Texas; (2) from Kansas City, St. Louis, and St. Joe, Mo., to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Mississippi, Nebraska, New Mexico, Oklahoma, Tennessee, and Texas; (3) from Empire, La., to points in Arkansas, Iowa, Kansas, Mississippi, Missouri, Nebraska, Oklahoma, and Tennessee; (4) from Gulf Port, Miss., to points in Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, and Tennessee; (5) from Clovis, Albuquerque, and Roswell, N. Mex., to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, and Texas; (6) from Ada, Collinsville, Henryetta, Lawton, Oklahoma City, Tulsa, Okla., to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Nebraska, Tennessee, Texas, Missouri, and Mississippi; and (7) from Amarillo, Bastroys, Cameron, Crowley, Dallas, El Paso, Ft. Worth, Galveston, Hereford, Houston, Palestine, Pampa, Perryton Port Allen, San Angelo, and Triona, Tex., to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Nebraska, Oklahoma, and Tennessee, for 180 days. SUPPORTING SHIPPER: Wellens and Company, 6700 Frances Avenue South, Minneapolis, Minn. 55435. SEND PROTESTS TO: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Building, Wichita, Kans. 67202.

No. MC 128633 (Sub-No. 10 TA), filed August 27, 1973. Applicant: LAUREL HILL TRUCKING COMPANY, 614 New County Road, Secaucus, N.J. 07094. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by department stores, and *supplies and equipment* used in the conduct of such business, for the account of Atlantic Department Stores, Inc., New York, N.Y., between points in the New York, N.Y., Commercial Zone as defined by the Commission, on the one hand, and, on the other, Dearborn, Detroit, Lincoln Park, Pontiac, Roseville, Mich.; and Akron, Belford, Cleveland, Cuyahoga Falls, Middleburg Heights, Rocky River, Tallmadge, and Wickliffe, Ohio, for 180 days. SUPPORTING SHIPPER: Atlantic Department Stores, Inc., Director of Traffic & Distribution L. J. Lewison, 111 Eighth Avenue, New York, N.Y. 10011. SEND PROTESTS TO: District Supervisor Robert E. Johnston, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Newark, N.J. 07102.

No. MC 129876 (Sub-No. 6 TA), filed August 31, 1973. Applicant: DUBOIS TRUCKING, INC., Box 502, Montpelier, Vt. 05602. Applicant's representative: John P. Monte, 61 Summer Street, Barre, Vt. 05641. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Kerosens*, from South Portland, Maine and Rensselaer, N.Y., to Berlin, Vt., for 180 days. SUPPORTING SHIPPER: Green Mountain Power Corp., 1 Main Street, Burlington, Vt. 05401. SEND PROTESTS TO: District Supervisor Paul D. Collins, Interstate Commerce Commission, Bureau of Operations, 52 State Street, Montpelier, Vt. 05602.

No. MC 133119 (Sub-No. 25 TA), filed August 31, 1973. Applicant: HEYL TRUCK LINES, INC., 235 Mill Street, P.O. Box 206, Akron, Iowa 51001. Applicant's representative: Roger Heyl (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts*, from ports of entry on the International Boundary line between the United States and Canada located in Minnesota and North Dakota, to Minneapolis, Minn., for 180 days. SUPPORTING SHIPPER: Burns, Ltd., Art Lennington, General Traffic Mgr., P.O. Box 1300, Calgary, Alberta, Canada. SEND PROTESTS TO: District Supervisor Carroll Russell, Bureau of Operations, Interstate Commerce Commission, 711 Federal Office Bldg., Omaha, Nebr. 68102.

No. MC 133977 (Sub-No. 18 TA), filed August 22, 1973. Applicant: GENE'S, INC., 10115 Brookville Salem Road, Clayton, Ohio 45315. Applicant's representative: Paul F. Beery, 88 East Broad Street, Suite 1660, Columbus, Ohio 43215. Authoriy sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic polystyrene, foam shapes and forms* (except commodities in bulk), from the plantsite of the Huntsman Container Corporation at Troy, Ohio, to points in Arkansas, North Carolina, South Carolina, Florida, North Dakota, South Dakota, Colorado, New Mexico, Wyoming (restricted to those portions in North Dakota, South Dakota, Colorado, New Mexico and Wyoming on and east of U.S. Highway 85), Louisiana, Virginia, Mississippi, Georgia, Tennessee, Oklahoma, Massachusetts, Connecticut, New Hampshire, Maryland, New Jersey, Maine, Nebraska, Kansas, Alabama, Delaware, Vermont, Rhode Island, and the District of Columbia and

(2) *returned, rejected, or damaged shipments of the commodities described in* (1) above, from the destination states described above to the plantsite of Huntsman Container Corporation at Troy, Ohio, for 180 days. SUPPORTING SHIPPER: Huntsman Container Corporation, 1261 Brukner Drive, P.O. Box 639, Troy Ohio. SEND PROTESTS TO: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5514–B Federal Bldg., 550 Main St., Cincinnati, Ohio 45202.

No. MC 136176 (Sub-No. 4 TA), filed August 23, 1973. Applicant: INDEPENDENT TRANSPORTATION, INC., Kanopolis, Kans. 67454. Applicant's representative: Patrick E. Quinn, 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, between points in Nebraska, Kansas, Iowa, Minnesota, Missouri, and Colorado, restricted to traffic having a prior movement by barge or rail and further restricted to a transportation service to be performed under a continuing contract or contracts with Independent Salt Company of Kanopolis, Kans., for 180 days. SUPPORTING SHIPPER: Independent Salt Company, P.O. Box 36, Kanopolis, Kans. 67454. SEND PROTESTS TO: Thomas P. O'Hara, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 234 Federal Building, Topeka, Kans. 66603.

No. MC 136956 (Sub-No. 6 TA), filed August 29, 1973. Applicant: ROYAL TRANSPORTS, INC., P.O. Box 1451, Kansas City, Kans. 66117. Applicant's representative: Patrick E. Quinn, 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except anhydrous ammonia, and fertilizer), in bulk, in tank vehicles, between points in Kansas and Missouri, under contract with Reese Oil Company, Kansas City, Mo., for 180 days. SUPPORTING SHIPPER: Reese Oil Company, P.O. Box 11598, Kansas City, Mo. 64138. SEND PROTESTS TO: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 139034 (Sub-No. 1 TA), filed August 31, 1973. Applicant: CHARLES MACE, doing business as MACE TRUCKING CO., 5808 17th Street, Apt. C–4, Great Bend, Kans. 67530. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from LaCrosse, Kans., to Denver, Colo.; Des Moines, Iowa; Detroit, Mich.; Kansas City, Mo.; Lansing, Mich.; Pittsburgh, Pa.; Salt Lake City, Utah; San Francisco, Calif; and Springfield, Mo., for 180 days. SUPPORTING SHIPPER: LaCrosse Furniture Co., P.O. Box 99, LaCrosse, Kans. 67548. SEND PROTESTS TO: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Bldg., Wichita, Kans. 67202.

No. MC 139042 TA, filed August 27, 1973. Applicant: DON KING, doing business as KING GRAIN CO., 206 NE. 18th, Guymon, Okla. 73942. Applicant's representative: John C. Sims, 1607 Broadway, Lubbock, Tex. 79401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Livestock feedstuff and livestock feedstuff ingredients*, from points in Oklahoma, New Mexico, Texas, Kansas, and Colorado, to points in Cimarron, Texas, Beaver, and Harper Counties, Okla., and Seward County, Kans., for 180 days. SUPPORTING SHIPPERS: Ralston Purina Company, 710 E. 13th, Wichita, Kans. 67214; Hitch Ranch, Inc., Box 1308, Guymon, Okla. 73942; Texas County Feed Yards, Inc., Box 1029, Guymon, Okla. 73942; Panhandle Feedyard, Turpin, Okla. 73950; and Tyler Feed Store, Box 1091, Guymon, Okla. 73942. SEND PROTESTS TO: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box HO4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 139043 TA, filed August 29, 1973. Applicant: JOSEPH F. SACCOMANNO, doing business as JFS TRANSPORTATION, East 428 14th, Spokane, Wash. 99208. Applicant's representative: Donald A. Ericson, 708 Old National Bank Bldg., Spokane, Wash. 99201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, wine, and related advertising material moving therewith*, from points in Napa, San Francisco, Alameda, Santa Clara, San Joaquin, Kern, and San Mateo Counties, Calif., to points in Spokane County, Wash., for 180 days. SUPPORTING SHIPPER: B & B Distributors, Inc., North 1004 Ruby, Spokane, Wash. 99202. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Building, Seattle, Wash. 98104.

No. MC 139044 TA, filed August 30, 1973. Applicant: DALLAS TOWING SERVICE, INC., 2308 South Kentucky, Evansville, Ind. 47714. Applicant's representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked and disabled vehicles and replacement vehicles*, in wrecker service, between points in Indiana within a 50 mile radius of Vanderburgh County, Ind., including Vanderburgh County, on the one hand, and, on the other, points in Illinois and Kentucky within a 50 mile radius of Vanderburgh County, Ind., for 180 days. SUPPORTING SHIPPERS: There are approximately 10 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: District Supervisor James W. Habermehl, Bureau of Operations, Interstate Commerce Commission, 802 Century Bldg., 36 S. Penn St., Indianapolis, Ind. 46204.

By The Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73–19722 Filed 9–14–73;8:45 am]

[Ex Parte No. 241; Rule 19, Exemption 49]

PENN CENTRAL TRANSPORTATION CO.

Exemption Under Mandatory Car Service Rules

SEPTEMBER 12, 1973.

TO: Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees

It appearing, that because of abnormal operating conditions, the Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees, is unable to perform regular switching at the plant of the B. F. Goodrich Manufacturing Company, New Brunswick, New Jersey; that there are numerous freight cars available in that plant for reloading; and there is urgent need to utilize these cars for certain shipments from that plant.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, the Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees, be, and it is hereby, authorized to accept from B. F. Goodrich Company, New Brunswick, New Jersey, shipping instructions for the movement of the following cars without regard to the requirements of Car Service Rule 2.

B&O 470612.	Rdg 111233.
B&O 479028.	SL–SF 7286.
C&O 19154.	Soo 177386.
CBQ 47340.	Sou 29083.
DH 18647.	Sou 45872.
GN 23434.	Sou 46027.
GN 36156.	Sou 49298.
NP 2619.	TP 120787.

Effective.—September 7, 1973.
Expires.—September 14, 1973.

Issued at Washington, D.C., September 7, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[FR Doc.73–19725 Filed 9–14–73;8:45 am]

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PART II

DEPARTMENT OF LABOR

Employment Standards Administration

■

BLACK LUNG BENEFITS

Claims Under Federal and State Law

Title 20—Employees' Benefits

CHAPTER VI—EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR

SUBCHAPTER B—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, AS AMENDED

PART 725—CLAIMS FOR BLACK LUNG BENEFITS PAYABLE UNDER PART C OF TITLE IV OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT, AS AMENDED

On November 30, 1972, 20 CFR, Chapter VI, was amended by adding thereto a new Part 725 (37 FR 25440–25466). Due to the requirement contained in the Federal Coal Mine Health and Safety Act, as amended, that certain sections of the Longshoremen's and Harbor Workers' Compensation Act which did not become effective until November 26, 1972, be incorporated in this Part 725, it was not possible to provide for notice, public procedure, and delayed effective date in accordance with 5 U.S.C. 553 and comply with the requirement contained in the Federal Coal Mine Health and Safety Act, as amended, that Part 725 be published in final form by November 30, 1972. The time for comments was, however, extended until February 1, 1973, to permit public participation to as full a degree as possible.

Some comments, recommendations, and objections were received after the November 30, 1972, promulgation date concerning this Part 725. Each of these has been carefully considered and changes and clarifications in Part 725 were made where appropriate.

The vast majority of changes which appear in this revised Part 725 serve to clarify and amplify the various procedural steps which were first described in the November 30, 1972, publication of Part 725. There are few major substantive variations between this document and the November 30, 1972, document. Those changes which should be especially noted are as follows:

(1) A number of changes have been made in Subpart B to reflect the decision that the Social Security Administration will continue claims taking responsibilities for an indefinite period after December 31, 1973;

(2) Section 725.102 has been revised to reflect the decision made to permit certain Social Security Administration black lung claimants to file for benefits under this Part 725;

(3) Subpart D, especially §§ 725.311–725.325, has been substantially revised to clarify the procedures to be used by the Department of Labor for purposes of identifying the coal mine operator who shall be responsible for the payment of benefits under this part;

(4) Sections 725.400–725.487 have been revised to more clearly describe the procedures to be followed upon the conclusion of any formal hearing proceedings conducted;

(5) Section 725.541–725.544 have been revised to more clearly describe the nature of medical benefits which shall become available to certain claimants after December 31, 1973; and

(6) New §§ 725.551 and 725.552 have been added to clarify the availability of vocational rehabilitation services.

Considering the need to have a comprehensive and complete set of guidelines available to the public and to the officials of the Department of Labor who are charged with the responsibility for administering the Black Lung Benefits Program, I find it appropriate and in the best interest of all concerned parties to republish Part 725 in its entirety, incorporating those amendments made.

This amended Part 725 shall become effective on September 17, 1973. Any additional comments, recommendations, or objections received at any time after such date shall be considered and acted upon where appropriate.

Special note should be made that § 725.516(d), which concerns the procedure for reducing benefits awarded under this part by State workmen's compensation benefits received has been reserved. Two alternative proposals concerning this paragraph appear in this edition of the FEDERAL REGISTER. Upon evaluation of the public comments on the alternative proposals, the Department shall amend § 725.516 to add a paragraph (d) which will reflect the decision subsequently made concerning this issue.

Part 725 is revised as follows:

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Authority.—Title IV, Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742 (30 U.S.C. 901 et seq.), as amended by Public Law 92-303, 86 Stat. 156, and pursuant to such Act under 44 Stat. 1424 (33 U.S.C. 901 et seq.), as amended by Public Law 92-576, 86 Stat. 1251; (5 U.S.C. 301) Secretary of Labor's Order 13-71; 36 FR 8755.

Subpart A—General

INTRODUCTION

§ 725.1 Statutory provisions.

(a) Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, provides for the payment of prescribed benefits to coal miners who are totally disabled due to pneumoconiosis and to surviving widows, children, parents, brothers, and sisters as provided in the Act in case of death of a coal miner who is receiving disability benefits under the Act or is totally disabled by pneumoconiosis at the time of his death or whose death is due to pneumoconiosis.

(b) Part B of Title IV of the Act provides for the determination and the payment by the Federal Government of such benefits on disability claims filed before January 1, 1974, and on death claims filed before such date or within 6 months of the death of a miner who dies before such date, whichever is the later date. In the case of claims filed before such terminal date, Federal payment of benefits to which entitlement is established under Part B of Title IV of the Act continues beyond such terminal filing date so long as the claimant remains eligible therefor, except in those cases which are subject to special provisions terminating liability for Federal payment of benefits under Part B at the end of the Part B filing period with respect to claims therefor which were not filed before July 1, 1974.

(c) In the case of claims for benefits under Part B of Title IV of the Act filed after June 30, 1973, and subject to the special provisions mentioned in paragraph (b) of this section, section 415 of Part B provides for the filing of such claims at the places and in the manner provided for by joint regulations of the Secretary of Labor and the Secretary of Health, Education, and Welfare and for the transfer of such claims to the Secretary of Labor who is to determine such claims in accordance with the procedures provided in section 415 and regulations promulgated thereunder by the Secre-

tary after consultation with the Secretary of Health, Education, and Welfare. Under section 415, benefits to which the claimant is determined to be entitled under Part B of Title IV are to be paid by the Secretary of Labor for the period from the filing date to the date of termination of Federal Part B payments as provided in the special provisions mentioned in paragraph (b) of this section. For periods thereafter, liability for continued payment of benefits is placed in the responsible coal mine operators as determined in accordance with Part C of Title IV of the Act and section 422 thereof or, if a workmen's compensation law of a State is found by the Secretary to provide adequate coverage for pneumoconiosis, under such workmen's compensation law as provided in section 421 of Part C. For any periods after December 31, 1973 when the payment by a responsible operator of benefits to which the claimant is found entitled pursuant to section 415 of the Act is not assured, or the payment of equivalent or greater benefits under an applicable State workmen's compensation law is not assured, the Secretary of Labor is to make benefit payments from Federal funds pursuant to the provisions of section 415 of Part B and section 424 of Part C as appropriate. These provisions are intended to assure the uninterrupted receipt of benefits by claimants filing therefor on or after July 1, 1973 during the period of transition from full Federal liability for benefits under Part B of Title IV to mine operators' liability under Part C or under adequate State workmen's compensation laws identified as provided in Part C of Title IV of the Act.

(d) Part C of Title IV of the Act makes provision for payment of pneumoconiosis disability and death claims filed on or after January 1, 1974. Under the provisions of Part C, in States having a workmen's compensation law meeting the criteria set forth in Part 722 of this subchapter, such claims are to be filed pursuant to such State law. In periods when no such law is applicable, the Secretary of Labor is charged with administering a program following the provisions of the Longshoremen's and Harbor Workers' Compensation Act under which responsibility for payment of pneumoconiosis benefits is placed upon operators of coal mines in which the miners who contracted pneumoconiosis were employed. Benefit payments by the Secretary of Labor are made in cases where payments to which a claimant is entitled are not available from the sources specified.

§ 725.2 Purpose and scope of this part.

(a) This Part 725 sets forth the rules applicable to the filing of claims for black lung benefits with the Secretary of Labor after December 31, 1973, and the rules for processing, determining and adjudicating, and paying benefits pursuant to Part C of Title IV of the Act as amended, with respect to black lung claims filed by any eligible miner, widow, child, parent, brother or sister.

(b) This Subpart A describes generally the statutory framework governing the manner in which claims filed between January 1, 1974 and December 30, 1981 are to be processed and paid, as well as the applicability of other related parts contained in this subchapter to such claims.

(c) Subpart B of this part prescribes the procedure by which an individual claimant shall file his claim for black lung benefits with the Secretary of Labor after December 31, 1973, and sets forth the rules for the preliminary processing of claims for such benefits.

(d) Subpart C of this part sets forth the relationship and dependency requirements for widows, children, parents, brothers, and sisters and relationship and dependency requirements which affect the amount of benefits to which any miner and/or widow is entitled.

(e) Subpart D of this part prescribes the criteria and procedures which shall be followed by the Secretary of Labor in determining the identity and establishing the liability of any coal operators responsible under Title IV of the Act for the payment of black lung benefits after December 31, 1973.

(f) Subpart E of this part sets forth the rules which shall be applied by the Secretary of Labor in the determination and adjudication of claims for black lung benefits pursuant to Part C of Title IV of the Act.

(g) Subpart F of this part sets forth the rules under which the Secretary of Labor shall provide for payment of benefits to eligible claimants determined to be entitled thereto pursuant to the procedures enumerated in Subpart E of this part.

Applicability of Other Parts in this Subchapter B

§ 725.5 Applicability of Part 715 of this chapter.

All of the matter contained in Part 715 of this chapter is fully applicable to this Part 725 unless otherwise indicated.

§ 725.6 Inapplicability of 20 CFR Part 717.

Part 717 of this chapter is a joint regulation promulgated by the Secretary of Health, Education, and Welfare and the Secretary of Labor which sets out the procedure for filing claims for black lung benefits in the transition period during which the primary Federal responsibility for the administration of new claims under the Act is transferred from the Secretary of Health, Education, and Welfare to the Secretary of Labor. The procedures for filing claims contained in Part 717 of this chapter are applicable only to that transition period and are not applicable to claims filed with the Secretary of Labor after December 31, 1973, under Part C of Title IV of the Act.

§ 725.7 Applicability of Part 718 of this chapter.

(a) Part 718 of this chapter incorporates in this Subchapter B the applicable medical standards and presumptions promulgated by the Secretary of Health, Education, and Welfare for determining whether a coal miner's total disability or death was due to pneumoconiosis or whether a coal miner was totally disabled by pneumoconiosis at the time of his death. Section 422(h) of Part C of Title IV of the Act makes these standards applicable to claims filed with the Secretary of Labor for benefits under Part C.

(b) The medical standards and presumptions incorporated by Part 718 of this chapter are, therefore, applicable to all claims filed for black lung benefits which must be determined pursuant to this Part 725, except that for the purpose of determining the applicability of the presumption established by section 411 (c)(4) of the Act to claims filed under Part C of Title IV of the Act, section 430 of the Act provides no period of employment after June 30, 1971, shall be considered in determining whether a miner was employed for at least 15 years in one or more underground mines.

§ 725.8 Inapplicability of Part 720 of this chapter.

Part 720 of this chapter sets out the procedures for processing, determining and adjudicating claims and paying benefits in respect to the Secretary of Labor's responsibility for administering the provisions of section 415 of Part B of Title IV of the Act. No section of that Part 720 is incorporated by reference in this Part 725. Part 720 of this chapter relates exclusively to the transition period claims to be determined by the Secretary as provided in section 415 of the Act and is inapplicable to any new claims filed after December 31, 1973, which are to be processed, adjudicated, and paid pursuant to Subparts A–F of this Part 725.

§ 725.9 Applicability of Part 726 of this chapter.

Part 726 of this chapter relates to the criteria to be used by the Secretary of Labor in determining whether a coal mine operator in appropriate circumstances has taken the necessary steps to comply with insurance requirements which section 423 of Title IV of the Act prescribes for securing the payment of black lung benefits by qualifying as a self-insurer or contracting with an authorized insurance carrier. Part 726 of this chapter is applicable to this Part 725 insofar as it affects the responsibility of coal operators to fulfill their obligations under Title IV of the Act.

Subpart B—Filing and Preliminary Processing of Claims

General

§ 725.101 Scope and applicability of this subpart.

All claims for black lung benefits filed on or after January 1, 1974, under Part C of Title IV of the Act (except claims within the purview of a workmen's compensation law of a State listed in § 722.152 of this subchapter) shall be filed and preliminarily processed pursuant to the provisions of this subpart. This subpart does not apply to the filing of claims for black lung benefits under Part B of Title IV, or to any claims filed before January 1, 1974. Claims filed prior to July 1, 1973, under Part B of Title IV

shall be filed with the Social Security Administration pursuant to the provisions of Part 410 of this title. Claims filed on or after July 1, 1973, under section 415 of Part B of Title IV shall be filed pursuant to Part 717 of this Subpart B.

§ 725.102 Treatment of claims previously filed with the Social Security Administration.

(a) *Approved claims.*—Claims filed prior to July 1, 1973, with the Social Security Administration pursuant to the applicable provisions of Part B of Title IV of the Act shall be processed, adjudicated, and paid by the Administration if the miner's total disability or death on which the claim is predicated is determined to have occurred prior to July 1, 1973. Such claimant may file a new claim with the Department pursuant to section 422 of Part C, of Title IV of the Act and the regulations contained in this part in order to obtain such additional benefits, including medical benefits, as may become available beginning January 1, 1974, as provided by Part C of Title IV of the Act.

(b) *Denied claims.*—Any claimant who has filed a claim for benefits under Part B of Title IV of the Act prior to July 1, 1973 and whose claim has been finally denied by the Social Security Administration for any reason, may file a new claim for benefits with the Department and may be awarded benefits, where appropriate, under Part C of Title IV of the Act and the applicable regulations contained in this part.

(c) *Claims in process.*—Any claimant who has filed a claim for benefits under Part B of Title IV of the Act prior to July 1, 1973 and whose claim has not been finally adjudicated by the Social Security Administration, may not be awarded benefits pursuant to this Part 725 until such time as the Administration has completed its adjudication of such claim. A claim filed prior to July 1, 1973 shall be considered finally adjudicated at any time after a decision has been rendered in respect of the claimant's entitlement to benefits by a Social Security Administration adjudication officer and no review, reconsideration, reopening or appeal is being pursued by such claimant. If such review, reconsideration, reopening, or appeal is later pursued by such claimant the Department shall suspend the evidentiary development of the case and hold the final adjudication of the case in abeyance pending the outcome of such review, reconsideration, reopening, or appeal.

(d) *Protective filing.*—Any claimant who has filed a "protective writing" with the Social Security Administration prior to July 1, 1973, and who timely perfects such protective writing (see § 410.229 of this title) with the Social Security Administration on some date subsequent to June 30, 1973, shall, as of the date of such perfection of the protective writing, be considered to have filed a new protective writing with the Department of Labor (see § 725.126).

Who May File Claims

§ 725.111 Who may execute a claim.

The Office of Workmen's Compensation Programs (OWCP) determines who is the proper party to execute a claim in accordance with the following rules:

(a) If the claimant has attained the age of 18, is mentally competent, and is physically able to execute the claim, the claim shall be executed by him. Where, however, paragraph (d) of this section applies, the claim may also be executed by the claimant's legal guardian, committee, or other representative.

(b) If the claimant is between the ages of 16 and 18, is mentally competent, has no legally appointed guardian, committee, or other representative, and is not in the care of any person, such claimant may execute the claim upon filing a statement indicating capacity to act on his own behalf.

(c) If the claimant is mentally competent but has not attained age 18 and is in the care of a person, the claim may be executed by such person.

(d) If the claimant (regardless of his age) has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or representative.

(e) If the claimant (regardless of his age) is mentally incompetent or is physically unable to execute the claim, it may be executed by the person who has the claimant in his care or by a legally appointed guardian, committee, or other representative.

(f) Where the claimant is in the care of an institution and is not mentally competent or physically able to execute a claim, the manager or principal officer of such institution may execute the claim.

(g) For good cause shown, the Office may accept a claim executed by a person other than one described in paragraph (a), (b), (c), (e), or (f) of this section.

§ 725.112 Evidence of authority to execute a claim on behalf of another.

Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, submit evidence of his authority to execute the claim on behalf of such claimant in accordance with the following rules:

(a) If the person executing the claim is the legally appointed guardian, committee, or other legal representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(b) If the person executing the claim is not such a legal representative, the evidence shall be a statement describing his relationship to the claimant, the extent to which he has the care of such claimant, or his position as an officer of the institution of which the claimant is an inmate. The Office may, at any time, require additional evidence to establish the authority of any such person.

§ 725.113 Claimant must be alive when claim is filed.

For a claim to be effective, the claimant must be alive at the time the claim is filed.

Filing of Claims

§ 725.121 Place of filing claim.

Claims for benefits under Part C of Title IV of the Act and this Part 725 may be delivered, mailed, or otherwise presented for filing at any of the various district offices of the Social Security Administration throughout the United States, or in the case of a foreign claim, such claim may be submitted to any office maintained by the Foreign Service of the United States.

§ 725.122 Claims forms.

Claims shall be filed on approved forms as are prescribed by the Office of Workmen's Compensation Programs (OWCP).

§ 725.123 Inquiry and assistance.

(a) *Information requests.*—Inquiries or requests concerning claims and claims forms may be made by any individual by mail or in person to the Division of Coal Mine Workers' Compensation, Office of Workmen's Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, or any of the district offices of the Social Security Administration which are located in various places throughout the United States and in Washington, D.C. When appropriate, in response to inquiries or requests the Office or Administration shall tender to prospective claimants explanations of eligibility under the Act, of statutory requirements concerning disability and death claims, and of procedures for filing and processing of claims.

(b) *Assistance in the preparation of claims forms.*—The Social Security Administration will assist claimants, if necessary, in completing their claims forms, including the listing of information required to establish previous periods of a miner's coal mine employment and to determine which of these periods of employment were spent in the service of any particular coal mine operator. The Administration will also assist claimants in securing other evidence necessary to support their claims.

(c) *Development of employment history.*—The Social Security Administration will assist any claimant in establishing a chronological history of all employment. Such development entails the acquisition of such facts as are necessary to identify the dates of employment with each coal mine operator with whom a disabled or deceased miner was employed. It may be necessary to secure documentary evidence to support a claimant's allegations in respect to these periods of employment. If, however, a claimant desires to utilize the medical presumption prescribed in section 411(c)(4) of Part B of Title IV of the Act and section 422(f)(2) of Part C of Title IV of the Act, documentary evidence of coal mine

employment during the 15-year period must be obtained. No period of employment after June 30, 1971, may be considered as part of such 15-year period. The Office and the Social Security Administration will assist any claimant in obtaining the necessary evidence required to establish a right to utilize this presumption (see also Part 718 of this Subchapter B).

§ 725.124 Time limits for filing claim.

(a) Every claim for benefits filed under this part must be filed within 3 years of the discovery of total disability due to pneumoconiosis or, in the case of death due to or while totally disabled by pneumoconiosis, within 3 years of the date of such death.

(b) Any claim for benefits in the case of a disabled miner filed under Part C of Title IV of the Act and this Part 725 on the basis of eligibility under section 411(c)(4) of Part B of Title IV of the Act, must be filed within 3 years from the date of last exposed employment in a coal mine or, in the case of death from a respiratory or pulmonary impairment for which benefits would be payable under section 411(c)(4), incurred as a result of employment in a coal mine, such claim must be filed within 15 years from the date of last exposed employment in a coal mine.

(c) The time limitations described in paragraphs (a) and (b) of this section are mandatory and may not be waived or otherwise avoided for any reason.

§ 725.125 When a claim is considered to have been filed; time of filing claim.

(a) *Date of receipt.*—(1) Except as otherwise provided in this section, for the purposes of determining when a claim has been filed within the meaning of Part C of Title IV of the Act, a claim is considered to have been filed only as of the date it is received at an office of the Social Security Administration or by an employee of the Administration who is authorized to receive such claims.

(2) Claims submitted to any other agency or subdivision of the United States Government shall be forwarded promptly to an office of the Administration. Such a claim shall be deemed filed with the Administration as of the date it was received by the other governmental unit.

(3) Claims by or on behalf of a claimant residing outside the United States, submitted to an office maintained by the Foreign Service of the United States, shall be considered to have been filed with the Administration as of the date it is received at such office of the Foreign Service.

(b) *Date of mailing.*—If the claim is deposited in and transmitted by the United States mail and the fixing of the date of delivery as the date of filing would result in a loss or impairment of benefit rights, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence may be used to establish the mailing date.

(c) *Prospective filing of a claim.*—A claim which is filed before the first month in which the claimant meets the requirements for entitlement to benefits is a valid claim only if the claimant meets such requirements before a final decision on his claim is made.

(d) *Abandoned claims.*—A claim considered as abandoned claim pursuant to § 725.4 shall, if once again pursued by the same claimant within 1 year from the date on which the claim was deemed abandoned, be considered filed for purposes of § 725.124 as of the date the claim which was abandoned was filed.

§ 725.126 When a written statement is considered a claim.

(a) *Written statement filed by claimant on his own behalf.*—Where an individual files a written statement which indicates an intention to claim benefits and such statement bears his signature or his mark properly witnessed, the filing of such written statement shall be considered to be the filing of a claim for benefits: *Provided*, That,

(1) the claimant or a proper person on his behalf (see § 725.111) executes a prescribed claims form (see § 725.122) that is filed with the Administration during the claimant's lifetime and within the period prescribed in paragraph (c)(1) of this section; or

(2) in the case of a claimant who dies prior to the filing of such prescribed claims forms within the period prescribed in paragraph (c)(1) of this section, a prescribed claims form is filed with the Administration within the period prescribed in paragraph (c)(2) of this section by a person acting on behalf of the deceased claimant's estate.

(b) *Written statement filed by an individual on behalf of another.*—A written statement filed by an individual which indicates an intention to claim benefits on behalf of another person shall, unless otherwise indicated thereon, be considered to be the filing of a claim for such purposes: *Provided*, That;

(1) The written statement bears the signature (or mark properly witnessed) of the individual filing the statement; and

(2) A prescribed claims form (see § 725.122) is executed and filed in accordance with the provisions of paragraph (c)(1) of this section.

(c) *Period within which prescribed claims forms must be filed.*—After the Administration has received from an individual a written statement as described in paragraph (a) or (b) of this section—

(1) Notice in writing shall be sent to the claimant or to the individual who filed the written statement on his behalf, stating that an initial determination will be made with respect to such written statement if a prescribed claim form executed by the claimant or by a proper party on his behalf is filed with the Administration within 6 months from the date of such notice; or

(2) If notice is received that the death of such claimant occurred before the mailing of the notice described in paragraph (c)(1) of this section, or within the 6-month period following the mailing of such notice but before the filing of a prescribed claims form by or on behalf of such individual, notification in writing shall be sent a person acting on behalf of his estate, or to the deceased's last known address. Such notification will include information that an initial determination with respect to such written statement will be made only if a prescribed claims form is filed within 6 months from the date of such notification.

(3) If, after the notice as described in this paragraph (c) has been sent, a prescribed claims form is not filed (in accordance with the provisions of paragraph (a) or (b) of this section) within the applicable period prescribed in paragraphs (c)(1) or (2) of this section, it will be deemed that the filing of the written statement to which such notice refers is not to be considered the filing of a claim for the purposes set forth in paragraphs (a) and (b) of this section.

§ 725.127 Withdrawal of a claim.

(a) *Before adjudication of claim.*—A claimant (or an individual who is authorized to execute a claim on his behalf under § 725.111), may withdraw his previously filed claim provided that:

(1) He files a written request for withdrawal with the OWCP;

(2) The claimant is alive at the time his request for withdrawal is filed;

(3) An appropriate adjudication officer approves the request for withdrawal; and

(4) The request for withdrawal is filed on or before the date such adjudication officer makes a determination on the claim.

(b) *After adjudication of claim.*—A claim for benefits may be withdrawn by a written request filed after the date the appropriate adjudication officer of the Department makes a determination on the claim, provided that:

(1) The conditions enumerated in paragraphs (a)(1) through (3) of this section are met; and

(2) There is repayment of the amount of benefits previously paid because of the claim that is being withdrawn or it can be established to the satisfaction of the Office that repayment of any such amount is assured.

(c) *Effect of withdrawal of claim.*—Where a request for withdrawal of a claim is filed and such request for withdrawal is approved by the appropriate Department official, such claim will be deemed not to have been filed. After the withdrawal (where made before or after the date of a determination) further action will be taken only upon the filing of a new claim, except as provided in § 725.128.

(d) *Cessation of evidentiary development.*—In the event a request that a claim be withdrawn prior to adjudication is approved, the Office shall immediately notify the Social Security Administration office in which the claim was filed. Upon such notification all eviden-

ary development which is being undertaken by such Social Security office shall be discontinued.

§ 725.128 Cancellation of a request for withdrawal.

Before or after a written request for withdrawal has been approved, the claimant (or a person who is authorized under § 725.111 to execute a claim on his behalf) may request that the request for withdrawal be canceled and that the withdrawn claim be reinstated. Such request for cancellation must be in writing and must be filed, in a case where the requested withdrawal was approved, no later than 60 days after such approval. The claimant must be alive at the time the request for cancellation of the request for withdrawal is filed with the Office.

§ 725.129 Requests and notices to be in writing.

Any request for a determination or a decision relating to an individual's right to benefits, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for, by, or pursuant to this part, shall be in writing and shall be signed by the person authorized to execute a claim under § 725.111.

PREPARATION AND FILING OF CLAIM FOR ADJUDICATION

§ 725.130 Action to be taken by Social Security Administration.

(a) Immediately upon the filing of a claim pursuant to § 725.123, the Social Security Administration office in which the claim is filed shall notify the Office of Workmen's Compensation Programs that such claim has been filed. The OWCP shall establish a case file for the claim and assign a claim number to each case.

(b) The Social Security Administration office in which the claim is filed shall assist the claimant in obtaining whatever medical and other evidence which may be necessary for such claimant to establish his entitlement to benefits. The accumulation of any evidence and the steps necessary or pertinent thereto shall be accomplished pursuant to the provisions of this Subpart B and under the supervision of the OWCP. Upon the receipt of supporting evidence by the Social Security Administration office in which the claim was filed, such evidence together with the completed claim form shall be noted as received and immediately forwarded to the OWCP.

(c) No Social Security Administration office shall make any determination of the ultimate validity of any evidence with respect to any claim. All evidence or information submitted in support of a claim shall be forwarded to the OWCP. The sole functions of the Social Security Administration in respect of claims filed pursuant to this part shall be to receive claims forms, receive and transmit evidence, to assist claimants in obtaining such evidence, and to disseminate information to claimants to assist them in establishing the validity of their claims.

§ 725.131 Action to be taken by the Office—general.

When a claim filed pursuant to the provisions of this subpart has been received by the Office from the filing office it shall be examined together with the supporting evidence transmitted with respect thereto. The Office shall promptly take such further action as may be necessary to assure that sufficient information, medical evidence, and a properly executed claims form have been submitted and that the claim is complete and ready for adjudication. The claim and supporting documents shall then be filed with the deputy commissioner. In the following sections the action to be taken in circumstances described therein is set forth in more detail.

§ 725.132 Development of evidence—general.

(a) *Employment history.*—The claimant shall furnish a complete and detailed history of the miner's coal mine employment which is pertinent to the claimant's eligibility for benefits and to the liability of any coal mine operator for payment of the benefits.

(b) *Matters of record.*—In appropriate cases it shall be necessary to develop evidence pertaining to or obtain proof of age, marriage, or termination of marriage, death, relationship of parent and child, other relationship or dependence, or any other fact which may be proven as a matter of public record. (For substantive requirements as to relationship and dependency see Subpart C of this part.) Evidence pertaining to these matters shall be obtained by the claimant and submitted to an office of the Social Security Administration or sent directly to the OWCP. For purposes of claims under this part, the Office and the deputy commissioner may require this evidence to be submitted in such manner as would be acceptable for Social Security Act benefit applications under the regulations of the Social Security Administration (see § 410.240(g) of this title).

(c) *Documentary evidence.*—In developing documentary evidence as to any matter, the "best evidence rule" shall be applicable. This rule requires that the original document or a certified copy thereof must be produced if available. Secondary evidence in this regard may be used only in those cases where the original document is unaccounted for and an adequate explanation is given as to why it cannot be produced.

(d) *Certification of evidentiary documents.*—In cases where a copy of record document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of any such record or by an employee of the Office authorized to make certification of any such evidence.

(e) *Evidence of miner's death due to or while disabled by pneumoconiosis.*—Any reliable and probative evidence shall be admissible as part of the case record if such evidence supports a claimant's allegation that the death of the miner on whose death a claim is predicated was due to pneumoconiosis or that such miner was totally disabled by pneumoconiosis at the time of his death.

(f) *Insufficient evidence of eligibility.*—Whenever a claimant for benefits has submitted no evidence or insufficient evidence of eligibility, the Office will inform the claimant what evidence is necessary for a determination of eligibility and will request him to submit such evidence within a specified reasonable time which may be extended for a further reasonable time upon the claimant's request. The claimant's failure to submit such evidence as requested shall be a basis for determining that the conditions of eligibility concerning which such evidence was requested have not been met.

§ 725.133 Initial medical examination—miner.

(a) Upon completion of the appropriate claims form the Social Security Administration office in which the claim is filed shall tender to each miner-claimant a list of physicians or authorized medical testing facilities in the vicinity of the miner's residence designated and approved by the Secretary to conduct examinations in connection with the black lung benefits program.

(b) If an initial medical examination is required, the miner may select a physician or authorized facility from such list. Such miner may select a physician not on the list if he so chooses.

(c) The Social Security Administration office shall promptly arrange for a medical examination to be conducted, at a time and place convenient to both the miner and the approved physician or facility, and as soon as is practicable.

(d) The designated physician or facility will complete an examination of the miner to determine the nature and extent of the miner's impairment enter his findings on the appropriate form pursuant to the instruction contained in such form, and transmit the form together with a bill for medical services rendered within 20 days from the date of the examination to the OWCP (see § 725.130(a)).

(e) The deputy commissioner responsible for initially adjudicating the claim shall have the power, in his discretion, to charge the cost of medical examinations conducted under this section to a notified operator, if he is a self-insurer, or to an operator's insurance carrier, or if there is no responsible operator, to the OWCP.

(f) Proceedings and all evidentiary development shall be suspended and no benefits shall be payable for any period during which a claimant-miner may refuse to submit to medical examination under this section.

(g) Paragraphs (b), (c), and (d) of § 725.134 shall apply with respect to examinations conducted pursuant to the provisions of this section as is appropriate in light of the fact that initial medical examinations may be arranged by officials of the Social Security Administration.

§ 725.134 Additional medical evidence.

(a) *Report of examination by physician.*—In the event that medical questions are raised at any time in any case of a miner's claim for benefits an adjudication officer may cause the claimant to be examined by a physician employed or selected by the Office and may obtain from such physician a report containing his estimate of the miner's disability and such information as may be appropriate. Any party in interest (see § 725.411) who is dissatisfied with such report may request a review or reexamination of the miner by one or more different physicians. The appropriate adjudication officer shall order such review or reexamination unless he finds that it is clearly unwarranted. Such review or reexamination shall be completed within 2 weeks from the date ordered unless the deputy commissioner finds that because of extraordinary circumstances a longer period is required.

(b) *Conduct of examination.*—No other physician selected by the operator, his insurance carrier, or the miner shall be present at or participate in any manner in such examinations, nor shall conclusions of such physicians as to the nature or extent of impairment or the cause of impairment be available to the examining physician unless otherwise ordered, for good cause, by the appropriate adjudication officer. Such operator or carrier shall, upon request, be entitled to have the miner examined immediately thereafter and upon the same premises by a qualified physician in the presence of such physician as the miner may select, if any.

(c) *Submittal to examination at place designated.*—The miner shall submit to a physical examination under paragraph (a) of this section at such place as the appropriate adjudication officer may require. The place, or places, shall be designated by the appropriate adjudication officer and shall be reasonably convenient for the miner. Proceedings shall be suspended and no benefits shall be payable for any period during which the miner may refuse to submit to examination.

(d) *Examination by disinterested physician.*—The Office or appropriate adjudication officer may employ or select any impartial physician for the purpose of making examinations or reviews under paragraph (a) of this section.

(e) *Payment for examination.*—The deputy commissioner shall have the power in his discretion to charge the cost of examination or review under this section to the notified operator, if he is a self-insurer, or to the operator's insurance carrier, or if there is no responsible operator to the Office.

§ 725.135 Fees for medical services.

(a) All fees and other charges for medical examinations, treatment, or service shall be limited to such charges as prevail in the community in which the physician, medical facility, or supplier is located.

(b) Any complaint concerning a physician's fee shall be directed to the Office of Workmen's Compensation Programs in Washington, D.C.

(c) The Office shall investigate the complaint or may on its own initiative investigate a fee and where appropriate inform a physician that his fee is in excess of the permissible amount for the services performed. The physician may then adjust his fee to within the permissible limits or contest the determination of the Office. In the event that the fee is contested, a physician may request a hearing pursuant to Subpart E of this part.

(d) Any physician who refuses to comply with a final decision and order concerning his fee or refuses to adjust his fee pursuant to paragraph (c) of this section within 30 days from the date he is notified that his fee is in excess of a permissible amount, shall forthwith be removed from the Secretary's list of approved physicians and shall not otherwise be authorized to conduct black lung examinations or treatments. No subsequent treatments or examinations conducted by a physician barred under this section shall be reimbursable medical expenses pursuant to § 725.136 and no debarred physician shall be reinstated on the Secretary's list until such time as the physician affirmatively demonstrates that he shall adjust his fees to within permissible levels.

§ 725.136 Reimbursement for reasonable expenses in obtaining medical evidence.

(a) Claimants for benefits under this part shall be reimbursed by the Office of Workmen's Compensation Programs or the responsible operator or his insurance carrier for reasonable medical expenses incurred by them for services from medical sources of their choice in establishing their claims, including the reasonable and necessary cost of travel incident thereto. A medical expense generally is not "reasonable" when the medical evidence for which the expense was incurred is of no value in the adjudication of a claim. Medical evidence will be considered to be of "no value" when, for instance, it is wholly duplicative or when it is wholly extraneous to the medical issue of whether the claimant is disabled or, in the case of death claims, whether the miner's death occurred due to pneumoconiosis or while totally disabled therefrom. In order to minimize inconvenience and expense to the claimant, he should not generally incur any medical expense for which he intends to claim reimbursement without first contacting the Office to determine what types of evidence not already available may be useful in adjudicating his claim, what types of medical evidence may be reimbursable, and what would constitute a "reasonable medical expense" in a given case. However, a claimant's failure to contact the Office before the expense is incurred will not preclude the Office from later approving reimbursement for any reasonable medical expense. Where a reasonable expense for medical evidence is ascertained, the Office in appropriate cases may authorize direct payment to the provider of such evidence.

(b) Medical services required for the processing of claims and those to which a miner-beneficiary is entitled under the Act shall be considered "benefits" provided by the Act.

§ 725.137 Action to be taken by the Office—miner's claim.

(a) Upon receipt by the Office of Workmen's Compensation Programs of a completed medical report, the Office shall tentatively determine whether the medical evidence of record indicates an impairment for which benefits may be paid as determined with reference to standards promulgated by the Secretary of Health, Education and Welfare as Subpart D of Part 410 of this title (see Part 718 of this subchapter, which incorporates these standards).

(b) If it appears that the claimant may be considered disabled in accordance with the standards published in Subpart D of Part 410 of this title, then the claim shall be prepared for filing and filed with the deputy commissioner as provided in § 725.140 pending the receipt of any additional evidence developed and obtained pursuant to § 725.134 of this subchapter and the notification and reply of any possibly responsible operator as provided in §§ 725.151 and 725.152.

(c) In cases where the evidence received by the Office in respect to any claim does not support a claim for benefits, the claimant will be advised of the deficiency in his claim and directed by the Office to obtain such additional evidence as is appropriate and ordered by the Office. Medical evidence obtained at the direction of the Office shall be paid for by the Office or notified operator, as appropriate (see § 717.125 of this subchapter).

(d) In the event that the evidence received by the Office pursuant to paragraph (c) of this section does not provide credible support for the miner's claim for benefits, any further evidentiary investigations shall be discontinued until further notice. Any additional evidence submitted by the claimant shall be obtained at the claimant's expense, and shall not be reimbursable pursuant to § 725.136.

(e) If a miner whose claim is not considered to be supported by the evidence desires a further adjudication of the issue of his entitlement, the claim will be made ready for filing with the deputy commissioner and filed with him as provided in § 725.140. Thereafter a hearing or informal conference may be arranged pursuant to Subpart E of this part.

§ 725.138 Action to be taken by the OWCP—widows' or dependent survivor's claim.

(a) Upon receipt of a completed claims form, the Office shall tentatively determine whether the evidence of record indicates that the deceased miner's death was due to pneumoconiosis or that the miner was totally disabled by pneumoconiosis at the time of his death. Such determination shall be made with reference to the standards promulgated by the Secretary of Health, Education and Welfare contained in Subpart D of Part

410 of this title (see Part 718 of this subchapter which incorporates these standards).

(b) The Office shall also determine whether the evidence of record supports the claimant's allegation that he meets the relationship and dependency requirements for eligibility contained in Subpart C of this Part 725.

(c) If it appears that the conditions existing when the miner's death occurred satisfy the medical standards and the relationship and dependency conditions referred to in paragraph (a) and (b) of this section, then the claim shall be prepared for such further action by the deputy commissioner, as provided in § 725.140, as may be appropriate, including consideration of the receipt of any additional evidence developed and obtained pursuant to § 725.132 and the notification and reply of any possible responsible operator as provided in §§ 725.151 and 725.152.

(d) In cases where the medical evidence received by the Office in respect to any claim does not indicate that the circumstances of a miner's death are sufficient under such Department of Health, Education, and Welfare medical criteria (see Part 718 of this subchapter) to support a claim for benefits, the claimant will be advised of the deficiency in his claim and invited to submit any additional medical evidence. Any additional reasonably necessary medical evidence or other documentary evidence shall be secured at the Department's, or the operator's, or carrier's expense at the case may be (see § 725.136).

(e) In the event that the evidence received by the Office pursuant to this subpart does not provide credible support for the survivor's claim for benefits, any further evidentiary investigations shall be discontinued until further notice.

(f) If a survivor whose claim is not considered to be supported by the evidence desires a further adjudication of the issue of his entitlement, the claim will be made ready for filing with the deputy commissioner and filed with him as provided in § 725.140. Thereafter a hearing or informal conference may be arranged pursuant to Subpart E of this part.

§ 725.139 Referral to State agency.

If a deputy commissioner determines that the claim is one subject to adjudication by a State agency of a State having a workmen's compensation law which provides black lung benefits and has been listed in 20 CFR Part 722 as a law meeting the criteria of the Secretary of Labor prescribed pursuant to section 421 of Part C of Title IV of the Act, the deputy commissioner shall advise the claimant of such determination and of the Act's requirement that under such circumstances his claim for benefits must be filed under the applicable State workmen's compensation law. In such a case, evidence submitted to the OWCP in support of the claim, including claims forms, will be forwarded to the appropriate State compensation agency. The claimant's case will then be held in abeyance pending the outcome of a State claim filed, if any. Such claimant whose State pneumoconiosis claim is denied may, within 60 days from such denial, begin the prosecution of his Federal claim. In such a case the claim will be deemed to have been filed as of the date of the original Federal claim.

§ 725.140 Filing of claim with deputy commissioner.

(a) After the Office of Workmen's Compensation Programs has received a completed claim form and completed medical evaluation reports pursuant to § 725.130, the Office will make a tentative determination on the basis of information contained in the claim and any other available information, as to the identity or probable identity of any coal mine operator who may be liable for the payment of black lung benefits to the claimant for any month after December 31, 1973 (see § 725.311). The claim will then be filed with a deputy commissioner who shall, to the extent appropriate, follow the procedures provided in section 19 of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 919). The date upon which a claim is filed with the deputy commissioner pursuant to this section shall be noted on a form provided for this purpose and such form shall be kept in the office of the deputy commissioner with whom the claim is filed.

(b) The deputy commissioner shall, after the filing of a claim with him as provided in this section, review the case file and, if he is satisfied that the claim is one within the jurisdiction of the Secretary of Labor under section 422 of the Act, shall proceed with the tentative determination of the identity of any responsible coal mine operator made pursuant to the criteria set forth in Subpart D of this Part 725, insure that any such operator is notified as provided in § 725.151, and take any other action he deems necessary to prepare the claim for adjudication or other final disposition. The deputy commissioner may require such further development of evidence and may cause to be made such investigations as he considers necessary in respect to the claim, and take other action as authorized under Subpart E of this part.

Coal Mine Operator Participation

§ 725.151 Notice of claim and issue of liability.

(a) Before a claim for benefits under Title IV of the Act is filed with a deputy commissioner for determination, the Office will have ascertained, to the extent possible, the identity of any coal mine operators whose liability as responsible operators for payment of benefits to the claimant for any month or months after December 31, 1973, may be established by the evidence submitted or obtained in connection with the claim. From the information in the case file the deputy commissioner will then make his tentative determination as to whether there are any such operators and, if there are, which operator should be alleged to have such liability (see §§ 725.131, 725.135). Each such operator and his insurance carrier, if any, will promptly thereafter be notified of the pending claim filed with the deputy commissioner and of the fact that such operator's liability for payment of benefits will be one of the issues to be resolved in the determination of the claim. Notification to the operator or carrier will include copies of the claimant's completed claim form and of the pertinent medical evaluation reports, with a cover letter informing such operator or carrier of the nature of the evidence relied on by the Office to support, *prima facie*, a determination that the operator is liable for payment of benefits to the claimant. The notification shall advise the operator and carrier that a response to the notice as provided in § 725.152 shall be made as soon as possible and that in the event of a failure to respond within 20 days from the date of mailing of the notice the Office will proceed to the final determination of the claim.

(b) This notification will be made by certified mail, with proof of delivery requested.

§ 725.152 Operator's response to notification.

(a) Within the 20-day period described in § 725.151 a notified coal mine operator shall respond to the notice.

(b) If the operator or his insurance carrier, if any, does not desire to present any evidence relevant to determination of the claim or desires the opportunity to do so, he shall so state either:

(1) By letter mailed to the Division of Coal Mine Workers Compensation, Office of Workmen's Compensation Programs, U.S. Department of Labor, Washington, D.C. 20210; or

(2) By completing and mailing the form provided for this purpose.

(c) If a notified operator or his carrier questions such operator's liability for payment of benefits to the claimant for any period, he shall so state by transmitting to the Office a completed form setting forth generally his reasons for questioning such liability along with a detailed description of any evidence relied upon to negate his liability.

§ 725.153 Operator's medical evidence.

(a) Any operator or carrier who is dissatisfied with the medical record compiled by the Office in respect to a particular case may make a timely request for a review or reexamination of a miner by one or more different physicians. Such review or reexamination shall be ordered and conducted subject to the provisions of § 725.134, unless it is found to be clearly unwarranted.

(b) In the event that any claimant refuses to submit to a medical examination ordered under this section, the deputy commissioner shall be promptly notified. The deputy commissioner shall forthwith notify the claimant that no further action on his claim may be had until such claimant is in compliance with the order for the examination.

FURTHER ACTION ON CLAIM

§ 725.161 Proceedings for determination of claim.

(a) *No responsible operator.*—If after the deputy commisioner has received all the evidence developed with respect to a claim as provided in this subpart and there is no identifiable responsible operator, he shall proceed to a final determination of the claim purusant to Subpart E of Part 725.

(b) *Claim for which operator may have liability.*—If after the deputy commissioner has received all the evidence developed with respect to a claim as provided in this subpart and has identified and notified an operator who may be liable for payment of benefits to the claimant, a response has been received pursuant to § 725.152 or the time for such response has expired, he shall proceed to a final determination of the claim as provided in Subpart D and E of this Part 725.

Subpart C—Relationship and Dependency

§ 725.200 Relationship and dependency—general.

(a) In order to establish entitlement to benefits, a widow, child, parent, brother, or sister, must meet relationship and dependency requirements with respect to the miner or widow, as applicable, prescribed by or pursuant to the Act.

(b) In order for an entitled miner or widow to qualify for augmented benefits because of one or more dependents, such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act.

(c) References in §§ 725.210(c), 725.220(c), 725.230(d), and 725.235, to the "same right to share in the interstate personal property" of a deceased miner (or widow), refer to the right of an individual to share in such distribution in his own right and not by right of representation.

§ 725.210 Determination of relationship—wife.

An individual will be considered to be the wife of a miner if:

(a) The courts of the State in which such miner is domiciled would find that such individual and the miner were validly married; or

(b) The courts of the State in which such miner is domiciled would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's wife; or

(c) Under State law, such individual has the same right she would have if she were the wife to share in the miner's intestate personal property; or

(d) (1) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment would have been a valid marriage. However, such purported marriage shall not be considered a valid marriage if such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household in the month in which there is filed a request that the miner's benefits be augmented because such individual qualifies as his wife. The provisions of this paragraph shall not apply, however, if the miner's benefits are or have been augmented under § 725.507 because another person qualifies or has qualified as his wife and such other person is, or is considered to be, the wife of such miner under paragraph (a), (b), or (c) of this section at the time such request is filed.

(2) The qualification for augmentation purposes of an individual who would not be considered to be the wife of such miner but for this paragraph (d), shall end with the month before the month in which (i) the Office determines that the benefits of the miner should be augmented on account of another person, if such other person is (or is considered to be) the wife of such miner under paragraph (a), (b), or (c) of this section, or (ii) if the individual who previously qualified as a wife for purposes of § 725.625(c), entered into a marriage valid without regard to this paragraph, with a person other than such miner.

§ 725.215 Determination of relationship—divorced wife.

An individual will be considered to be the divorced wife of a miner if her marriage to such miner has been terminated by a final divorce on or after the 20th anniversary of the marriage: *Provided*, That if she was married to and divorced from him more than once, she was married to him in each calendar year of the period beginning 20 years immediately before the date on which any divorce became final and ending with the year in which that divorce became final.

§ 725.220 Determination of relationship—widow.

An individual will be considered to be the widow of a miner if:

(a) The courts of the State in which such miner was domiciled (see § 725.280) at the time of his death would find that the individual and the miner were validly married; or

(b) The courts of the State in which such a miner was domiciled (see § 725.280) at the time of his death would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual was the miner's widow; or

(c) Under State law, such individual has the same right she would have as if she were the miner's widow to share in the miner's intestate personal property; or

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment (see § 725.275) would have been valid marriage. However, such purported marriage shall not be considered a valid marriage if such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household at the time of the miner's death. The provisions of this paragraph shall not apply if another person is or has been entitled to benefits as the widow of the miner and such other person is, or is considered to be, the widow of such miner under paragraph (a), (b), or (c) of this section at the time such individual files her claim for benefits.

§ 725.225 Determination of relationship—surviving divorced wife.

An individual will be considered to be the surviving divorced wife of a deceased miner if her marriage to such miner had been terminated by a final divorce on or after the 20th anniversary of the marriage: *Provided*, That, if she was married to and divorced from him more than once, she was married to him in each calendar year of the period beginning 20 years immediately before the date on which any divorce became final and ending with the year in which the divorce became final.

§ 725.230 Determination of relationship—child.

As used in this section, the term "beneficiary" means only a widow entitled to benefits at the time of her death (see § 715.207), or a miner, except where there is a specific reference to the "father" only, in which case it means only a miner. An individual will be considered to be the child of a beneficiary if:

(a) The courts of the State in which such beneficiary is domiciled (see § 725.280) would find, under the law they would apply in determining the devolution of the beneficiary's intestate personal property, that the individual is the beneficiary's child; or

(b) Such individual is the legally adopted child of such beneficiary; or

(c) Such individual is the stepchild of such beneficiary by reason of a valid marriage of his parent or adopting parent to such beneficiary; or

(d) Such individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) Such individual is the natural son or daughter of a beneficiary but does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if the beneficiary and the mother or the father, as the case may be, of such individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.275) would have been a valid marriage.

(f) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the bene-

ficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if:

(1) Such beneficiary, prior to his entitlement to benefits has acknowledged in writing that the individual is his son or daughter, or has been decreed by a court to be the father of the individual, or he has been ordered by a court to contribute to the support of the individual (see § 725.290(c)) because the individual is his son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

§ 725.235 Determination of relationship—parent, brother, or sister.

An individual will be considered to be the parent, brother, or sister of a miner if the courts of the State in which such miner was domiciled (see § 725.280) at the time of his death would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's parent, brother, or sister.

Where, under such law, the individual does not bear the relationship to the miner of parent, brother, or sister, but would, under State law, have the same status (*i.e.*, right to share in the miner's intestate personal property) as a parent, brother, or sister, the individual will be deemed to be such.

§ 725.240 Determination of dependency—wife.

An individual who is the miner's wife (see § 725.210) will be determined to be dependent upon the miner if:

(a) She is a member of the same household as the miner (see § 725.285); or

(b) She is receiving regular contributions from the miner for her support (see § 725.290(c)); or

(c) The miner has been ordered by a court to contribute to her support (see § 725.290(e)); or

(d) She is the natural mother of the son or daughter of the miner; or

(e) She was married to the miner (see § 725.210) for a period of not less than 1 year.

§ 725.245 Determination of dependency—divorced wife.

An individual who is the miner's divorced wife (see § 725.215) will be determined to be dependent upon the miner if:

(a) She is receiving at least one-half of her support from the miner (see § 725.290(g)); or

(b) She is receiving substantial contributions from the miner pursuant to a written agreement (see § 725.290 (c), (f)); or

(c) There is in effect a court order for substantial contributions to her support to be furnished by such miner (see § 725.290(c)).

§ 725.250 Determination of dependency—widow.

An individual who is the miner's widow (see § 725.220) will be determined to have been dependent on the miner if, at the time of the miner's death:

(a) She was living with the miner (see § 725.285); or

(b) She was dependent upon the miner for support or the miner has been ordered by a court to contribute to her support (see § 725.290); or

(c) She was living apart from the miner because of his desertion or other reasonable cause; or

(d) She is the natural mother of his son or daughter; or

(e) She had legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18; or

(f) He had legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18; or

(g) She was married to him at the time both of them legally adopted a child under the age of 18; or

(h) She was married to him for a period of not less than 9 months immediately prior to the day on which he died (but see paragraph (i) of this section).

(i) Waiver of 9-month requirement.

(1) *General.*—Except as provided in paragraph (g) of this section, the requirement in paragraph (h) of this section that the surviving spouse of a miner must have been married to him for a period of not less than 9 months immediately prior to the day on which he died in order to qualify as such miner's widow, shall be deemed to be satisfied where such miner dies within the applicable 9-month period, if his death:

(i) Is accidental (as defined in paragraph (i)(2) of this section), or

(ii) Occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in § 404.1013 (f) (2) and (3) of this chapter), and such surviving spouse was married to such miner for a period of not less than 3 month immediately prior to the day on which he died.

(2) *Accidental death.*—For purposes of paragraph (i)(1)(i) of this section, the death of a miner is accidental if such individual receives bodily injuries solely through violent, external, and accidental means, and as a direct result of the bodily injuries and independently of all other causes, loses his life not later than 3 months after the day on which he receives such bodily injuries. The term "accident" means an event that was unpremeditated and unforeseen from the standpoint of the deceased individual. To determine whether the death of an individual did, in fact, result from an accident the Office will consider all the circumstances surrounding the casualty. An intentional and voluntary suicide will not be considered to be death by accident; however, suicide by an individual who is so insane as to be incapable of acting intentionally and voluntarily will be considered to be death by accident. In no event will the death of an individual resulting from violent and external causes be considered a suicide unless there is direct proof that the fatal injury was self-inflicted.

(3) *Applicability.*—The provisions of this section shall not apply if the Office determines that at the time of the marriage involved, the miner would not reasonably have been expected to live for 9 months.

§ 725.255 Determination of dependency—surviving divorced wife.

An individual who is the miner's surviving divorced wife (see § 725.225) will be determined to have been dependent on the miner if, for the month preceding the month in which the miner died:

(a) She was receiving at least one-half of her support from the miner (see § 725.290(g)); or

(b) She was receiving substantial contributions from the miner pursuant to a written agreement (see § 725.290 (c), (f)); or

(c) There was in effect a court order for substantial contributions to her support to be furnished by such miner (see § 725.290 (c), (f)).

§ 725.260 Determination of dependency—child.

(a) For purposes of augmenting the benefits of a miner or widow (see § 725.625(c)), the term "beneficiary" as used in this section means only a miner or widow entitled to benefits (see §§ 725.205, 715.207); or, for purposes of an individual's entitlement to benefits as a surviving child (see § 715.211), the term "beneficiary" as used in this section means only a deceased miner or a deceased widow who was entitled to benefits for the month prior to the month of her death. An individual who is the beneficiary's child (see § 725.230) will, as applicable, be determined to be, or to have been dependent on the beneficiary, if the child:

(b) Is unmarried; and

(c)(1) Is under 18 years of age; or

(2) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d). For purposes of entitlement to benefits as a surviving child (see § 715.211), such disability must have begun before the child attained age 18, or, in the case of a student, before he ceased to be a student (see paragraph (c) of this section).

(3) Is 18 years of age or older and is a student.

(d)(1) The term "student" means a "full-time student" as defined in section 202(d)(7) of the Social Security Act, 42 U.S.C. 402(d)(7), (see § 404.320(c) of this chapter) or an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State or by a State-recognized or nationally-recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof, providing courses of not less than 3 months' duration that prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be "pursuing a full-time course of study or training at an institution" if he is enrolled in a noncorrespondence course and carrying a subject load which is considered full-time for day students under the institution's standards and practices. However, a student will not be considered to be "pursuing a full-time course of study or training" if he is enrolled in a course of study or training of less than 13 school weeks' duration. A student beginning or ending a full-time course of study or training in part of any month will be considered to be pursuing such course for the entire month.

(3) A child is deemed not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and he shows to the satisfaction of the Office that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim; or

(ii) During periods of reasonable duration during which, in the judgment of the Office, he is prevented by factors beyond his control from pursuing his education.

(4) A student whose 23d birthday occurs during a semester or other enrollment period in which he is pursuing a full-time course of study or training shall continue to be considered a student for as long as he otherwise qualifies under this section until the end of such period.

§ 725.265 Determination of dependency—parent, brother, or sister.

An individual who is the miner's parent, brother, or sister will be determined to have been dependent on the miner if, during the 1-year period immediately prior to such miner's death:

(a) Such individual and the miner were living in the same household (see § 725.285); and

(b) Such individual was totally dependent on the miner for support (see § 725.290(h)).

§ 725.270 Time of determinations.

(a) *Relationship and dependency of wife or child.*—With respect to the wife or child of a miner entitled to benefits, and with respect to the child of a widow entitled to benefits, the determination as to whether an individual purporting to be a wife or child is related to or dependent upon such miner or widow shall be based on the facts and circumstances with respect to the period of time as to which such issue of relationship or dependency is material.

(b) *Relationship and dependency of widow.*—The determination as to whether an individual purporting to be the widow of a miner was related to or dependent upon such miner is made after such individual effectively files a claim for benefits as a widow. Such determination is based on the facts and circumstances with respect to the time of the miner's death. A prior determination that such individual was, or was not, the wife of such miner, pursuant to §§ 725.210 and 725.240, for purposes of augmenting the miner's benefits for a certain period, is not determinative of the issue of whether the individual is the widow of such miner or of whether she was dependent on such miner.

(c) *Relationship and dependency of surviving divorced wife.*—The determination as to whether an individual purporting to be a surviving divorced wife of a miner was related to or dependent upon such miner is made when such individual effectively files a claim for benefits as a surviving divorced wife. Such determination is made with respect to the time of the miner's death. A prior determination that such individual was, or was not, the divorced wife of such miner, pursuant to §§ 725.215 and 725.245, for purposes of augmenting the miner's benefits for a certain period, is not determinative of the issue of whether the individual is the surviving divorced wife of such miner or of whether she was dependent on such miner.

§ 725.275 Legal impediment.

For purposes of this Subpart C, "legal impediment" means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

§ 725.280 Domicile.

(a) For purposes of this Subpart C, the term "domicile" means the place of an individual's true, fixed, and permanent home to which, whenever he is absent, he has the intention of returning.

(b) The domicile of a deceased miner or widow is determined as of the time of his death or her death.

(c) The domicile or a change in domicile of a beneficiary or other individual is determined with respect to the period or periods of time as to which the issue of domicile is material.

(d) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied as if such individual were then domiciled there.

§ 725.285 Member of the same household—"living with," "living in the same household," and "living in the miner's household".

(a) *Defined.*—(1) The term "member of the same household" as used in section 402(a)(2) of the Act (with respect to a wife); the term "living with" as used in section 402(e) of the Act (with respect to a widow); and the term "living in the same household" as used in §§ 725.210(d) and 725.250(d) of this subpart, means that a husband and wife were customarily living together as husband and wife in the same place of abode.

(2) The term "living in the miner's household" as used in section 412(a)(5) of the Act (with respect to a parent, brother, or sister) means that the miner and such parent, brother, or sister were sharing the same residence.

(b) *Temporary absence.*—The temporary absence from the same residence of either the miner, or his wife, parent, brother, or sister (as the case may be), does not preclude a finding that one was "living with" the other, or that they were "members of the same household," etc. the absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months, and neither individual was outside the United States, and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together at some time in the reasonably near future.

(c) *Death during absence.*—Where the death of one of the parties occurred while away from the residence for treatment or care of an illness or an injury (*e.g.*, in a hospital), the fact that the death was foreseen as possible or probable does not, in and of itself, preclude a finding that the parties were "living with" one another or were "member[s] of the same household," etc., at the time of death.

(d) *Absences other than temporary.*—In situations other than those described in paragraphs (b) and (c) of this section, the absence shall not be considered temporary, and the parties may not be found to be "living with" one another or to be "member[s] of the same household, etc." A finding of temporary absence would not be justified where one of the parties was committed to a penal institution for life or for a period exceeding the reasonable life expectancy of either, or was under a sentence of death; or where the parties had ceased to live in the same place of abode because of marital or family difficulties and had not resumed living together before death.

(e) *Relevant period of time.*—(1) The determination as to whether a widow had been "living with" her husband shall be based upon the facts and circumstances as of the time of death of the miner.

(2) The determination as to whether a wife is a "member of the same household" as her husband shall be based upon the facts and circumstances with respect to the period or periods of time as to which the issue of membership in the same household is material.

(3) The determination as to whether a parent, brother, or sister was "living in the miner's household" shall take account only of the 1-year period immediately prior to the miner's death.

§ 725.290 Contributions and support.

(a) *"Support" defined.*—The term "support" includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the person supported.

(c) *"Contributions" defined.*—The term "contributions" refers to contributions actually provided by the contributor from his own property, or the use thereof, or by the use of his own credit.

(c) *"Regular contributions" and "substantial contributions" defined.*—The terms "regular contributions" and "substantial contributions" mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support.

(d) *Contributions and community property.*—When a wife receives and uses for her support, income from her services or property and such income, under applicable State law, is the community property of herself and the miner, no part of such income is a "contribution" by the miner to his wife's support regardless of any legal interest the miner may have therein. However, when a wife receives and uses for her support, income from the services and the property of the miner and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the miner to his wife's support.

(e) *"Court order for support" defined.*—References to support orders in §§ 725.230(f)(1), 725.240(c), and 725.250(b) mean any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(f) *"Written agreement" defined.*—The term "written agreement" in the phrase "substantial contributions * * * pursuant to a written agreement" (see §§ 725.245(b), 725.255(b)) means an agreement signed by the miner providing for substantial contributions by him for the individual's support. It must be in effect at the applicable time but it need not be legally enforceable.

(g) *"One-half support" defined.*—The term "one-half support" means that the miner made regular contributions, in cash or in kind, to the support of a divorced wife (see § 725.245(a)), or of a surviving divorced wife (see § 725.255(a)), at the specified time or for the specified period, and that the amount of such contributions equalled or exceeded one-half the total cost of such individual's support at such time or during such period.

(h) *"Totally dependent for support" defined.*—The term "totally dependent on the minor for support" as used in § 725.265(b), means that such miner made regular contributions to the support of his parent, brother, or sister, as the case may be, and that the amount of such contributions at least equaled the total cost of such individual's support.

Subpart D—Responsible Coal Mine Operators

General Provisions

§ 725.301 Scope and policy.

(a) In enacting the Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972 ("the Act" as used in this part means such Act as amended), Congress sought to transfer the responsibility for the payment of black lung benefits, to the greatest extent possible, from the Federal Government to the coal mine operators as of January 1, 1974. It is the policy of the Department of Labor to implement and execute in this part this congressional intent as fully and fairly as is practicable.

(b) The provisions of this Subpart D apply to coal mine operators in States whose workmen's compensation laws have not been listed by the Secretary in Part 722 of this chapter, pursuant to section 421 of Title IV of the Act and such Part 722, as providing adequate coverage for pneumoconiosis. Reference should also be made to Part 726 of this chapter, which sets forth insurance requirements for securing the payment of black lung benefits under the Act which are applicable to every coal mine operator in any State not listed in Part 722 of this chapter.

(c) The rules in this Subpart D prescribe the manner in which the identity of a responsible operator will be determined, the extent of any responsible operator's liability for the payment of pneumoconiosis benefits in any particular case, and the nature and extent of such coal operators' duties and responsibilities as prescribed in Part C of Title IV of the Act. Included in the latter are those duties and responsibilities incorporated by reference in section 422 of Part C of the Act to certain specific provisions of the Longshoremen's and Harbor Workers' Compensation Act as amended (44 Stat. 1424, 33 U.S.C. 901 as amended by Public Law 92-576, effective November 26, 1972).

§ 725.302 Operator defined.

Section 3(d) of the Act defines "operator" for purposes of the Act to mean "any owner, lessee, or other person who operates, controls, or supervises a coal mine." In keeping with the Congressional mandate that operators assume liability for pneumoconiosis benefits to the fullest extent possible the above cited definition of operator shall be liberally construed by the Department and its adjudication officers. In each case an effort shall be made to attribute liability to that individual or business entity most directly responsible for the operation and control of any particular coal mine. However, in appropriate cases where, for instance, the individual or business entity most directly connected with the mine site, has not obtained insurance or been authorized to self-insure and is insolvent or does not have sufficient assets to guarantee the payment of future benefits and such individual or business entity is a subsidiary corporation or a part of a joint venture or partnership, or is substantially controlled or owned by another business entity, such other corporation, partnership, joint venture or other business entity, regardless of the primary or diverse nature of its business activity, may be considered an "operator" for purposes of sections 415, 422 and 423 of Title IV of the Act. In addition, any other business entity, including general and independent contractors, whose employees may be considered miners as defined in section 402(d) of Title IV of the Act by virtue of the fact that such employees are employed in a coal mine as defined in section 3(h) of the Act, may be considered operators for purposes of sections 415, 422 and 423 of Title IV of the Act with respect to such employees. Standard workmen's compensation tests may be applied to determine the real identity of the employer of any particular employee.

§ 725.303 Responsible operator defined.

A "responsible operator", within the meaning of this subchapter, is a coal mine operator (see § 725.302) who, (a) under the provisions of section 422 or section 415 of Title IV of the Federal Coal Mine Health and Safety Act, as amended, and of this subchapter is liable for the payment of benefits for any month or months after December 1973, to any individual entitled thereto under the Act on account of death or disability of a coal miner, due to pneumoconiosis arising at least in part out of his employment in a mine during a period when it was operated by such operator, or (b) is liable for payment of such benefits as provided in § 725.203.

§ 725.304 Prior operator, successor operator.

(a) In accordance with section 422(i) of the Act, any coal mine operator who, on or after December 30, 1969, acquired his mine or substantially all the assets of his mine from a prior operator who was an operator of that mine on or after December 30, 1969, shall be liable for and shall, in accordance with section 423 of the Act and Part 726 of this subchapter, secure the payment of all benefits which would have been payable by the prior operator with respect to miners previously employed in that mine if the acquisition had not occurred and the

prior operator had continued to operate the mine.

(b) Paragraph (a) of this section notwithstanding, any prior operator may, under appropriate circumstances and in accordance with the requirements of due process of law and considerations of fairness and equity, be held liable for the payment of all benefits awarded pursuant to the Act.

DETERMINING RESPONSIBLE OPERATOR

§ 725.311 Criteria for identifying a responsible operator.

The following criteria shall apply in determining the identity of the responsible operator:

(a) *Periods of employment.*—From the evidence presented of the miner's employment history, the identity of the coal mine operator or operators with whom the miner had the most recent periods of cumulative employment of not less than 1 year and the beginning and ending dates of such periods shall be ascertained. However, no period of employment occurring more than 15 years prior to the miner's last date of coal mine employment shall be accumulated for the purposes of establishing the one year period described in this paragraph. No periods of layoff or other interruptions (not including sick leave or vacation periods) in the successive employment of the miner with the same operator in excess of 30 consecutive days shall be counted as part of the 1-year period described in this paragraph.

(b) *Financial responsibility of operators.*—The financial responsibility of the operators identified pursuant to paragraph (a) shall be determined, if an question, as provided in § 725.321.

(c) *Determination of responsible operator.*—From the foregoing information the responsible operator shall be determined as follows:

(1) The operator with whom the miner had the most recent periods of cumulative employment of not less than 1 year (see paragraph (a) of this section) shall, if financially responsible, be deemed to be the responsible operator.

(2) If the operator described in paragraph (c)(1) of this section is a prior operator as described in § 725.304 of this subpart who, on or after December 30, 1969, transferred his mine or substantially all the assets thereof to a successor operator or if such mine was subsequently transferred to a successor to such seccessor operator as described in § 725.304, such successor operator who has most recently acquired the mine in question or substantially all of the assets thereof shall if financially responsible be deemed the responsible operator. If such successor operator is not financially responsible any prior operator or any opperator in the chain of succession, beginning with the most recent operator, who acquired the mine in question or substantially all of the assets thereof on or after December 30, 1969, and who is financially responsible may be determined to be the responsible operator. Any successor operator may be determined to be the responsible operator whether or not the miner on whose total disability or death the claim is predicated was employed by such successor operator for any period of time. However, no operator shall be deemed the responsible operator on account of his succession if the chain of succession was commenced by a transfer of the mine in question or substantially all of the assets thereof prior to December 30, 1969.

(3) If no operator or successor or operator described in paragraph (c) (1) or (2) of this section is financially responsible, then the responsible operator shall be deemed to be the financially responsible operator with whom the miner had the latest period of cumulative employment of not less than 1 year. Each determination made pursuant to this subparagraph shall be subject to the provisions of subparagraph (2) of this paragraph.

(4) No determination of responsibility made pursuant to paragraph (c) (1), (2), or (3) of this section shall be construed to limit the authority of the Secretary to determine that any individual or business entity is a coal mine operator within the meaning of section 3 of the Act and § 715.101(a)(6) of this chapter.

(5) In the event that a coal mine operator is determined to be a "responsible operator" pursuant to the provisions of paragraph (c) (1), (2), or (3) of this section, there shall be a presumption that the miner's work-related pneumoconiosis arose in whole or in part sufficiently to occasion liability, out of his employment with such operator during the period or periods when he was employed in a mine or mines operated by such operator. The responsible operator as so determined shall accordingly be liable for payment and securing of benefits awarded to the claimant on account of the disability or death of the miner who was so employed.

§ 725.312 Procedure for determination of operator's liability.

(a) At any time after a mine operator notified pursuant to § 725.151 has responded to the allegations of his liability pursuant to § 725.152, the deputy commissioner with whom the case has been filed may proceed with the determination of the claimant's entitlement to benefits and the operator's liability for payment. The deputy commissioner may schedule a conference, to be held at a time and place convenient to all parties, or he may refer the case to the Chief Administrative Law Judge for a formal hearing before an administrative law judge when it appears that resolution of all issues necessary to a determination of entitlement to benefits or liability of an operator cannot be accomplished without such a hearing. The particulars describing the organization and conduct of both the conference and the formal hearing are described fully in Subpart E of this part.

(b) In the event that the operator does not contest his liability he shall be deemed the responsible operator and the deputy commissioner if he determines the claimant is entitled to benefits, shall without further proceedings order the payment by the operator of such benefits to commence as of a specified date, and shall so notify the operator.

(c) If a notified operator does not respond within the 20-day period described in § 725.151 the deputy commissioner shall proceed to the determination of the claim. In such a case a conference may be scheduled pursuant to Subpart E of this part. The alleged responsible operator will be given at least 10 days' notice by certified mail of the conference, and advised by such notice that if he or his representative does not appear at the conference and at that time contest his liability, an order may be issued requiring such operator to pay any benefits to which the claimant may be found to be entitled upon determination of the claim. If no appearance is made at the conference by such operator, the deputy commissioner may order payment as provided in paragraph (b) of this section.

(d) If at any time after the running of the 20-day period described in § 725.151 but prior to the issuance of a decision and order, an allegedly responsible operator seeks to be heard, that operator may be required to complete and transmit a notice of controversion to the appropriate adjudication officer.

(e) No operator may be bound by any determination as to his liability to pay benefits to any claimant unless he has been properly notified of the proceedings therefor and offered an opportunity to participate. An operator may be permitted to participate in the proceedings at any time prior to final adjudication of his alleged liability to pay benefits, but a final determination of a claimant's entitlement to benefits will not be reopened at the instance of any operator who did not avail himself of any opportunity to controvert such entitlement provided by a timely notice of a prior determination proceeding.

§ 725.313 Determination of operator's liability in formal hearing.

(a) If, as provided in § 725.312, a formal hearing is ordered to be conducted pursuant to Subpart E of this part, the operator will be given 10 days' notice by certified mail of the time and place of the hearing and he or his authorized representative may appear at and fully participate in the formal hearing, and the liability of the operator to pay benefits shall be adjudicated therein. If an allegedly responsible operator does not appear at the formal hearing and has not filed an answer to the allegations of his liability, then it shall be presumed that such operator does not contest his liability and the administrative law judge shall proceed to the conduct of the formal hearing and shall issue findings of fact, conclusions of law, and an order for benefits pursuant to Subpart E of this part. At such time when the decision and order of the administrative law judge becomes final the notified operator shall be bound by this determination and may not thereafter contest his liability for the payment of benefits to the claimant. Nothing in this part shall be construed

to require any operator to pay any benefits for any month prior to January 1, 1974.

(b) In the event that a notified coal mine operator or his representative does not appear at the formal hearing and has not responded to the claim filed against him, the hearing shall nevertheless be conducted and stenographically reported pursuant to Subpart E of this Part 725. In respect to the issue of such notified coal mine operator's liability, the administrative law judge shall admit into the record the medical evidence contained in the physician's reports, evidence of the employment history of the miner, and any other information deemed pertinent to the question of the notified mine operator's liability. Upon this record, the administrative law judge shall base his findings of fact, conclusions of law, and decision and order, and shall determine and in his written opinion state whether or not and the extent, if any, to which such notified coal mine operator is the operator responsible for the payment of benefits to the claimant for any months after December 31, 1973.

§ 725.314 Deferred identification of responsible operator; liability determination.

If at the time a claim under the Act is ready for determination there appears to be no known or identifiable responsible operator, the claimant's entitlement to benefits shall be determined and payment of benefits, if any, authorized from Federal funds as provided in this part. However, if at any time during or after the adjudicatory proceedings the claimant or the Secretary of Labor becomes aware of the existence of a possibly responsible operator, that operator shall be given notice of the claim, informed that he may be held liable for payment of benefits, supplied with copies of the record of all proceedings already conducted, and given 20 days within which to submit the answer specified in § 725.152.

OPERATOR'S FINANCIAL RESPONSIBILITY

§ 725.321 Financial responsibility defined.

Within the meaning of this part a coal mine operator shall be deemed "financially responsible" and capable of assuming his liability for the payment of benefits under the provisions of Part C of Title IV of the Act and this subchapter if he has:

(a) Obtained a policy or contract of insurance pursuant to section 423 of Title IV of the Act and Part 726 of this chapter, or;

(b) Qualified as a self-insurer pursuant to section 423 of the Act and Part 726 of this chapter, or;

(c) If such operator is an individual, partnership, joint venture, corporation, or other business entity, determined under this Subpart D to be the "responsible operator" (see § 725.311), and possessed of any assets that may be made available for the payment of benefits as provided in this Part 725 or through an action brought as provided in section 424 of the Act.

§ 725.322 Insurance coverage.

(a) Pursuant to the provisions of section 423 of the Act (see 20 CFR Part 726), coal mine operators shall be subject to the following requirements: During any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of Title IV of the Act and 20 CFR Part 722, each operator of a coal mine in such State shall secure the payment of benefits for which he may be found liable under section 422 of the Act or section 415 of the Act for claims filed after June 30, 1973, but before January 1, 1974, which are payable by a responsible operator beginning on or after January 1, 1974, and this Part 725 by—

(1) Qualifying as a self-insurer as provided in Part 726 of this Chapter VI, or

(2) Insuring and keeping insured the payment of such benefits with an authorized insurance carrier in accordance with the provisions of Part 726 of this chapter.

(b) Under section 422 of the Act and section 15 of the Longshoremen's Act:

(1) No agreement by a miner to pay any portion of a premium paid to a carrier by the operator of a coal mine in which such miner is employed, or to contribute to a benefit fund or department maintained by such operator for the purpose of providing benefits or medical services and supplies as required by this part, shall be valid; and any operator who makes a deduction for such purpose from the pay of any miner entitled to the benefits of the Act under this part shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000;

(2) No agreement by a miner to waive his right to benefits under the Act and the provisions of this part shall be valid.

§ 725.323 Benefits a lien against assets.

Pursuant to the provisions of section 422 of the Act and section 17 of the Longshoremen's Act as incorporated therein, any person entitled to benefits under the provisions of the Act shall have a lien against the assets of the carrier or operator for such benefits without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or operator, or both, be entitled to preference and priority in the distribution of the assets of such carrier or operator, or both.

§ 725.324 Security for payments of benefits.

Whenever the deputy commissioner deems it advisable he is authorized, pursuant to section 422 of the Act and section 14(i) of the Longshoremen's Act, to require any operator to make a deposit with the Treasurer of the United States to secure the prompt and convenient payment of benefits, and payments therefrom upon any awards shall be made upon order of the deputy commissioner.

§ 725.325 Liability of operator for Federal payments made.

In any case where the Secretary has paid benefits to a miner or his widow, child, parent, brother, or sister because the responsible coal miner operator has not obtained a policy or contract of insurance or has not qualified as a self-insurer as provided in Part 726 of this subchapter or has not paid such benefits within a reasonable time, such operator shall be liable to the United States in a civil action in an amount equal to the amount paid to such beneficiary under Title IV of the Act (Act, sec. 424).

OPERATOR'S PAYMENTS

§ 725.331 Scope of payment obligations.

Benefits shall be paid to claimants entitled thereto under the Act by a responsible coal mine operator as provided in this Subpart D and Subpart F of this Part 725, and in accordance with the obligations imposed on coal mine opertors by section 422 of the Act, including those obligations of employers under the Longshoremen's Act with respect to payment of disability or death benefits thereunder to employees which are incorporated by reference in such section 422 and implemented by the rules in this Part 725.

§ 725.332 Prompt payment.

Where entitlement of an individual to benefits under the Act has been determined or is not controverted, and liability as a responsible operator for payment of such benefits has been determined, such operator shall pay benefits periodically as provided in this part, promptly, and directly to the person entitled thereto. The first installment shall be due as provided in § 725.502.

§ 725.333 Defaulted payments.

(a) In case of default by an operator in the payment of benefits due from him under any award for a period of 30 days after the benefits are due and payable, the person to whom such benefits are payable may, within 1 year after such default, make application to the deputy commissioner for a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in Subpart E of this part, the deputy commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the final decision and order. In case the payment in default is an installment of the award, the deputy commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the operator has his principal place of business or maintains an office. In case such principal place of business or office is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the United States District Court for the District of Columbia. Such supplementary order of the deputy commissioner shall be final,

and the court shall upon the filing of the copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later benefits order upon presentation of a certified copy thereof to the court.

(b) In cases where judgment cannot be satisfied by reason of an insolvency or other circumstances precluding payment, the Secretary shall make payment pursuant to section 424 of Part C of Title IV of the Act upon any award made under this Act, and in addition, provide any necessary medical, surgical, and other treatment required by section 7 of the Longshoremen's Act in any case of disability where there has been a default in furnishing medical treatment by reason by the insolvency of the operator. Such an operator shall be liable to the United States for payment of the amounts paid by the Secretary of Labor under this subsection; and for the purpose of enforcing this liability, the Secretary of Labor shall be subrogated to all the rights of the person receiving such payments or benefits, including the right of lien and priority provided for by section 17 of the Longshoremen's Act, as against the operator and may by a proceeding in the name of the Secretary of Labor under section 18 or under subsection (c) of section 21 of the Longshoremen's and Harbor Workers' Compensation Act, or both, seek to recover the amount of the default or so much thereof as in the judgment of the Secretary is possible, or the Secretary may settle and compromise any such claim.

§ 725.334 Payment of interest.

In the event that an operator or carrier defaults on the payment of benefits as described in § 725.333 and it is later determined that the claimant was entitled to benefits for any time subsequent to the default, such operator or carrier shall be liable for the past benefits owed and, in addition, an amount equal to 6 percent simple annual interest, computed on the basis of all past due benefits.

§ 725.335 Suspension of payments.

(a) There may be no suspension in the payment of benefits except upon notice to the deputy commissioner pursuant to § 725.341 and to the party or parties to whom benefits are being paid. Any suspension of benefit payments which is not preceded by such notice shall be considered late and defaulted payments pursuant to § 725.333.

(b) If at any time during which benefits are being paid to an eligible individual an operator determines to suspend his payments on any grounds, the deputy commissioner shall make such investigations, cause such medical examinations to be made, or refer for such hearings, and take such further action as he considers will properly protect the rights of all parties.

(c) In the event that the deputy commissioner, or the administrative law judge to whom the matter was assigned for hearing, determines that the suspension of payments was invalid, such deputy commissioner or judge shall order the reinstatement of benefits and shall order the operator or carrier to pay to the entitled individual all unpaid amounts due for the periods during which the payment of benefits was suspended, with interest as provided in § 725.334.

§ 725.336 Receipt for payment.

A disabled miner or in case of death, his dependents or personal representative, shall give receipts for payment of benefits to the operator paying the same and such operator shall produce the same for inspection by the deputy commissioner, whenever required.

§ 725.337 Reporting requirements.

(a) *First payment, suspension of payments.*—Upon making the first payment, and upon suspension, reduction, or increase of payment for any cause, the operator shall immediately notify the deputy commissioner, in accordance with a form prescribed by the Office, that payment of benefits has begun or has been increased, reduced, or suspended, as the case may be.

(b) *Final payment of benefits.*—Within 16 days after final payment of benefits has been made, the operator shall send to the deputy commissioner a notice, in accordance with a form prescribed by the Office, stating that such final payment has been made, the total amount of benefits paid, the name of the miner and of any other person to whom benefits have been paid, the date of the disability or death, and the date to which benefits have been paid. If the operator fails to so notify the deputy commissioner within such time the Secretary shall assess against such operator a civil penalty in the amount of $100.

Subpart E—Adjudicatory Process

General

§ 725.401 Scope and applicability of this subpart.

Every dispute arising in respect to any claim for benefits or any action taken by an adjudication officer pursuant to this Part 725, and any other issue of fact or law arising out of the Department of Labor's administration of any of the provisions of Part C of Title IV of the Act as amended shall be determined or adjudicated pursuant to the procedures enumerated in this supart, except as otherwise specifically provided in this Part 725 or as elsewhere provided by statute or treaty. Disputes arising out of or in respect to claims for benefits under section 415 of Part B of Title IV of the Act filed before January 1, 1974, shall be determined or adjudicated pursuant to procedures contained in Part 720 of this subchapter.

§ 725.402 Adjudication officers.

(a) *Who are adjudication officers.*—The deputy commissioner, the administrative law judge, or the Benefits Review Board before whom a benefit claim proceeding under the Act is pending are the Department's adjudication officers with respect to such claim.

(b) *Deputy commissioner.*—The deputy commissioner is that official of the Office of Workmen's Compensation Programs or his designee authorized to make initial determinations with respect to any case and to insure that any case is developed and processed according to these regulations. He may also under appropriate circumstances conduct conferences, prepare or issue motions and orders as provided in this part, prepare documents for the signatures of the parties in interest in any case, and sign benefits orders in cases for which no formal hearing procedure is required. The deputy commissioner shall not hold formal hearings.

(c) *Administrative law judge.*—The administrative law judge is that official of the Department of Labor empowered by the Secretary to conduct formal hearings whenever necessary, in respect to any claim for black lung benefits. Each such administrative law judge shall be qualified under 5 U.S.C. 3105 to conduct hearings in accordance with the provisions of 5 U.S.C. 554 *et seq.*

(d) *Benefits Review Board.*—The Benefits Review Board is that body appointed by the Secretary pursuant to section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act as amended in 1972, which is empowered to hear and determine finally for the Department of Labor appeals raising a substantial question of law or fact taken by any party in interest from decisions and order of any duly authorized Department of Labor official or administrative law judge with respect to any claim for black lung benefits (see section 422 of Part C of Title IV of the Act).

§ 725.403 Powers of adjudication officers.

(a) *Conduct of proceedings.*—The adjudication officer in any case shall have power to preserve and enforce order during any proceedings for determination or adjudication of entitlement to benefits or liability for benefits payments; to issue subpenas for, to administer oaths to and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking or depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him to discharge effectively the duties of his office (Act, section 422 and Longshoremen's Act, sections 19(d) and 27(a)).

(b) *Contumacy.*—Pursuant to section 27(b) of the Longshoremen's Act as in-

corporated by section 422 of the Act, if any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpenaed or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the adjudication officer shall certify the facts to the Federal district court having jurisdiction in the place in which he is sitting (or to the U.S. District Court for the District of Columbia if he is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

§ 725.404 Disqualification of adjudication officer.

(a) No adjudication officer shall conduct any proceeding in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for decision before him. Notice of any objection which a party may have to any adjudication officer who will conduct the proceeding, shall be made by such party as his earliest opportunity. The adjudication officer shall consider such objection and shall, in his discretion, either proceed with the case or withdraw. In the absence of an objection by a party, any adjudication officer who is aware that he is or may be considered prejudiced or partial with respect to the case before him shall, in his discretion, either proceed with the case or withdraw. If the adjudication officer withdraws, another such officer shall be designated by the Director of the Office of Workmen's Compensation Programs or the Chief Administrative Law Judge as the case may be. If the interested officer is a member of the Benefits Review, the procedure in case of disqualification of any Board member who has an irreconcilable interest shall be in accordance with the applicable regulations and rules promulgated by the Secretary and the Board.

(b) Neither a deputy commissioner, nor administrative law judge, nor any business associate of a deputy commissioner, or administrative law judge, shall appear as attorney in any proceeding under the Act, and no deputy commissioner, or administrative law judge, shall act in any such case in which he is interested, or when he is or was employed by any party in interest or is related to any party in interest by consanguinity or affinity within the third degree as determined by the common law (Act, section 422 and Longshoremen's Act, sections 19(d), 40(f)).

§ 725.405 Changes in procedures.

In the event that certain changes are required by virtue of administrative interpretation or court decision to be made concerning the procedures described in this subpart, such changes shall be put into effect by the Secretary as expeditiously as possible. Amendments to this subpart shall be issued where appropriate. No such change shall have any substantive impact on any other unaffected provision contained in this subchapter.

PARTIES TO PROCEEDINGS; REPRESENTATIVES

§ 725.411 Parties in interest.

(a) Except as provided in § 725.412, persons other than the Secretary of Labor and authorized personnel of the Department of Labor may not participate at any stage of the adjudicatory process unless they are determined to qualify under the provisions of this section as parties in interest. The following persons may qualify as parties in interest:

(1) The claimant;

(2) A person other than a claimant authorized to execute a claim on such claimant's behalf pursuant to § 725.111;

(3) A dependent who may be entitled to receive augmented benefits or for whom augmented benefits are payable pursuant to Subpart F of this Part 725;

(4) Any coal mine operator who has been notified pursuant to § 725.151 of his possible liability to the claimant for benefits payable for any month after December 31, 1973; and

(5) Any insurance carrier of such operator.

(b) The Secretary of Labor is a party in interest in any proceeding in which his obligation to pay benefits under section 424 of the Act or to take other action under provisions of the Act may depend on the resolution of an issue or issues to be determined or adjudicated in that proceeding.

(c) A widow, surviving child, parent, brother, or sister or representative of a decedent's estate, who makes a showing in writing that an individual's rights with respect to benefits may be prejudiced by a decision that may be rendered, may be made a party in interest.

(d) Any coal mine operator or prior operator or insurance carrier who has not been notified pursuant to § 725.151 and who makes a showing in writing that its rights may be prejudiced by any final decision of an adjudication officer may in the discretion of the deputy commissioner or administrative law judge be made a party in interest.

(e) Any other individual may be made a party in interest if that individual's rights with respect to benefits may be prejudiced by the decision, upon notice given to him by the deputy commissioner or administrative law judge to appear at the hearing or otherwise present evidence as to fact or law as he may desire in support of his interest.

§ 725.412 Party amicus curiae.

At the discretion of the Chief Administrative Law Judge or the administrative law Judge assigned to the case, a party not named in § 725.411 may be allowed to participate, fully or partially, in a formal hearing only as to an issue of law. If a party wishes to participate *amicus curiae* in a formal hearing he shall request such status in writing with supporting arguments at least 10 days prior to the hearing. If the request is granted, the Chief Administrative Law Judge or the administrative law judge hearing the case will inform the party of the extent to which he may participate. The request may, however, be denied summarily and without explanation.

§ 725.413 Representation of parties.

Except for the Secretary of Labor, whose interests shall be represented by the Solicitor of Labor or an authorized attorney on his staff, each of the parties in interest may appoint an individual to represent his interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the party in interest or his legal guardian and shall be sent to the Office or, for representation at a formal hearing, to the Chief Administrative Law Judge. In any case such representative must be qualified under § 725.414.

§ 725.414 Qualification of representative.

(a) *Attorney.*—Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession or before the Supreme Court of the United States or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a respresentative may be appointed as a representative.

(b) *Other person.*—Any other person with the approval of the adjudication officer may be appointed as a respresentative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 725.415 Authority of representative.

A representative, appointed and qualified as provided in §§ 725.413 and 725.414 may make or give, on behalf of the party he represents, any request or notice relative to any proceeding before an adjudication officer under Part C of Title IV of the Act, including formal hearing and review, except that such representative may not execute a claim for benefits, unless he is a person designated in § 725.111 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and make allegations as to facts and law in any proceeding affecting the party he represents and to obtain information with respect to the claim of such party to the same extent as such party. Notice to any party of any administrative action, determination, or decision, or request to any party for the production of evidence may be sent to the representative of such party, and such notice or request shall have the same force and effect as if it has been sent to the party represented.

§ 725.416 Legal assistance.

The Secretary may, upon request, provide a claimant with legal assistance in processing a claim for benefits payable under Part C of Title IV of the Act. Such assistance may be made available to a claimant at any time prior to or during which the claim is being processed and shall be furnished without charge to the claimant. Legal information shall be available to all claimants in the processing of the claim. However, legal representation of the claimant in adjudicatory proceedings in which the Secretary may be an adverse party in respect of the claimant is not authorized under this section.

§ 725.417 Legal services.

(a) *Approval of fees; lien against benefits.*—No fee charged for representation services in respect of any claim under this part shall be valid unless approved pursuant to this section. If a claimant is represented by an attorney at law, the Act requires approval of such attorney's fees as provided in section 28 of the Longshoremen's Act. In cases where the obligation to pay the attorney's fee is upon the claimant, it may be made a lien upon the benefits due under an award as provided in section 28(c) of the Longshoremen's Act and, as therein provided, the adjudication officer shall fix in the award approving the fee, such lien and manner of payment. Such lien shall remain in effect for not more than 30 days subsequent to the date upon which the order granting the award became final. Any representative who is not an attorney may be awarded a fee for services pursuant to this section except that no lien may be imposed in respect of such representative's fee.

(b) *Contingent and stipulated fees.*—No contract for a stipulated fee or for a fee on a contingent basis will be recognized, and no fee shall be approved, except upon an application to the appropriate adjudication officer.

(c) *Procedure for approval of fees.*—In each case for which approval of a fee is sought application for such approval shall be made to the Department of Labor adjudication officer who finally determined the case. Such application shall be made on a form provided for this purpose by the Office and shall be supported by a complete itemized statement describing the services rendered. Such itemization shall contain the following information:

(1) The dates the services began and ended;

(2) A description of services rendered in any proceeding under the Act, with the amount of time spent on each type of service;

(3) The amount of fee the representative desires to charge for services performed;

(4) The amount of fee requested, charged, or received for services rendered to the claimant before any State or Federal court or agency in a similar matter;

(5) The amount and nature of expenses incurred for which reimbursement has been made or is expected; and

(6) A statement showing that a copy of the itemized fee application has been sent to the person represented. Upon receipt of a request for approval of a fee such request shall be reviewed and evaluated (see § 725.418) by the appropriate adjudication officer and a fee award issued. Any party in interest including a claimant or an attorney or representative aggrieved or adversely affected by such award may request reconsideration thereof by the adjudication officer making such award. A revised or modified award may then be issued, if appropriate. Thereafter, if a revised or modified fee award is considered unsatisfactory by such party or representative, the hearings and appeals procedures described in this subpart available in respect of claims for benefits, may be utilized by such party or attorney or representative. Each request for reconsideration or review of a fee award shall be in writing and shall contain supporting statements or information pertinent to any increase or decrease requested.

§ 725.418 Fixing of amount of legal fees.

(a) *Evaluation of fee application.*—In evaluating a request for approval of a fee the following factors will be considered:

(1) The services performed (including types of services);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case to the nearest quarter hour;

(5) The level of administrative proceedings to which the claim was carried and the level at which the attorney entered the proceedings;

(6) The amount of any fees or reimbursement for expenses previously authorized, paid, or requested; and

(7) Any other information or data which may be relevant to the amount of fee requested.

(b) *Reimbursement for expenses.*—In awarding a fee the appropriate adjudication officer shall consider and shall add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. The amount of reimbursement for travel expenses incurred by an attorney shall be determined in accordance with the provisions of § 725.464 of this part. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which has previously been obtained by the Department, and no reimbursement shall be allowed for expenses incurred by him in establishing or pursuing his application for approval of his fee.

§ 725.419 Payment of claimant's attorney's fee by responsible operator or carrier.

If an operator or carrier declines to pay any benefits on or before the 30th day after receiving written notice of such operator's or carrier's potential liability on a claim pursuant to § 725.151 on the ground that there is no liability for benefits within the provisions of this Act, and the person seeking benefits shall thereafter have utilized the services of an attorney at law in the successful prosecution of his claim, there shall be awarded, in addition to the award of benefits, in an order, a reasonable attorney's fee against the operator or carrier in an amount approved by the person, administrative body or court before whom the service was performed, which shall be paid directly by the operator or carrier to the attorney for the claimant in a lump sum after the order becomes final (Longshoremen's Act; section 28(a)).

PROCEDURES, GENERALLY

§ 725.421 Procedures by and before deputy commissioner.

(a) Each claim for benefits under this part received by the Office of Workmen's Compensation Programs will be filed with a deputy commissioner after preliminary processing as provided in § 725.140. The deputy commissioner will be responsible thereafter for compiling the case record, notifying any operator who may be liable to pay benefits to the claimant after December 31, 1973, of the pendency of the claim, notifying a claimant of any deficiency in the medical and/or nonmedical record, scheduling and conducting conferences pursuant to this Subpart F, effecting the settlement or compromise of disputes whenever possible, drafting documents for the signature of the parties in interest, drafting conclusions of law and orders for cases in which no further proceedings are necessary beyond the conference, and making recommendations in respect to any case for which a formal hearing is to be conducted.

(b) At any time after a claim has been received in the Office of Workmen's Compensation Programs, the deputy commissioner having jurisdiction over the claim may, with the approval of the Office, transfer such case to any other office or agency for the purpose of making investigation, taking testimony, making physical examinations, or the taking of such other necessary action therein as may be directed. Such transfer is to be made in accordance with procedures established by the Office.

§ 725.422 Determination of disability.

(a) Determination as to whether a miner is under a total disability due to pneumoconiosis, as to the date total disability began, and as to the date total disability ceases, shall be finally made by the appropriate Department of Labor adjudication officer or court pursuant to Title IV of the Act and the regulations issued thereunder.

(b) Final determinations made by the Social Security Administration denying a miner's claim which was filed under Part B of Title IV of the Act prior to July 1, 1973, shall not be conclusive in proceedings filed under Part C of Title IV of the Act.

(c) Any final determination made by the Social Security Administration in respect to a miner's claim filed prior to July 1, 1973, in which it is established

that such claimant is eligible for benefits under Part B of Title IV of the Act shall be subject to review by the appropriate Department of Labor adjudication officer.

§ 725.423 General procedures for determination of contested issues.

(a) In the event that there are contested issues of fact in any case, those issues generally will be resolved by the following procedures:

(1) If in the opinion of the deputy commissioner the evidence does not support the claim for benefits, the claimant will be given an opportunity to submit additional medical and/or nonmedical evidence.

(2) The deputy commissioner will make every effort to resolve any dispute at a conference conducted pursuant to this Subpart C. If no resolution can be achieved at such conference, the case will be forwarded to the Chief Administrative Law Judge for assignment to an administrative law judge who will schedule and conduct a formal hearing pursuant to this Subpart E and issue a formal order granting or denying the claim, and, where appropriate, establishing the identity of any operator who will either be liable or not liable for payment of benefits to the claimant for any periods after December 31, 1973.

(b) In the event that there are no contested issues of fact or law the deputy commissioner will prepare statements identifying any operator who will be liable for payment of such benefits for any periods after December 31, 1973. These statements will be signed by the parties in interest and the deputy commissioner who will either approve and sign an award and order or take any other action he deems appropriate. If the proposed order is signed by a deputy commissioner, it will become a final order pursuant to this Subpart E.

(c) Except as provided in § 725.426(f), if there has been no final resolution of a case after 90 days from the date upon which any claim has been filed with the deputy commissioner pursuant to § 725.140 and there has been no prior request for a formal hearing or additional conferences, the deputy commissioner assigned the case shall either:

(1) Declare the case abandoned pursuant to § 725.425; or

(2) Transfer the case to the Chief Administrative Law Judge pursuant to paragraph (a) of this section for the purpose of making the formal hearing procedures described in this subpart available to any or all of the parties in interest.

§ 725.424 Presumptions.

In any proceeding for the enforcement of liability on a claim for benefits under the Act it shall be presumed, in the absence of substantial evidence to the contrary, that the claim comes within the provisions of the Act, and that sufficient notice of such claim has been given.

§ 725.425 Abandonment of a claim.

(a) If a claimant at any time during the proceedings to adjudicate his claim, chooses to terminate those proceedings he may do so in his discretion by notifying the appropriate adjudication officer or the Office of his intention in this regard.

(b) In addition, a claim may be deemed abandoned by the adjudication officer who is processing such claim under the following circumstances:

(1) In cases where the claimant fails to comply with a lawful order of any adjudication officer in respect to his claim, provided that such failure to comply is not later excused for good cause; or

(2) In cases where the claimant fails in a significant way to pursue his claim with reasonable diligence. A finding that a claimant has failed to pursue his claim with reasonable diligence may be made by the adjudication officer who is processing the claim at any time during formal or informal proceedings, where, for instance, the claimant fails to undergo a required medical examination or submit medical evidence, fails or refuses to submit evidence of relationship or dependency, or fails or refuses to participate in the adjudicatory process. Any claim in which proceedings are suspended or terminated pursuant to paragraphs (a) and (b) of this section, or paragraph (b) (1) and (2) of this section, shall be deemed an "abandoned claim."

(c) Notwithstanding any other provision of this part, before any claim may be considered an "abandoned claim" the appropriate adjudication officer shall notify the claimant of the pending termination of proceedings and afford such claimant 10 days within which to take affirmative action to cure the deficiency in his claim. If no response is received within the 10-day period, all proceedings and evidentiary development in respect to the claim shall cease. If the claimant expresses his intent to continue his pursuit of the claim, the adjudication officer shall suspend or continue whatever proceedings are in progress in such a manner as he deems appropriate.

(d) In the event that a claim is abandoned the claimant's original filing date (see § 725.125) shall remain the date on which the claim was filed should such claimant later decide to once again pursue his claim. However, upon the expiration of 1 year from the date on which a claim is deemed abandoned pursuant to this section, such claim may not once again be pursued.

§ 725.426 Final adjudication; no responsible operator.

(a) If after the Office has received all the evidence developed with respect to a claim and there is no identifiable responsible operator, the deputy commissioner shall proceed to a final adjudication of a claim pursuant to this Subpart E.

(b) If at this point there is no dispute over the claimant's eligibility and entitlement to benefits, the claim shall be filed with the deputy commissioner pursuant to § 725.140 and the deputy commissioner shall summarily issue his findings of fact, conclusions of law and order approving the claim, and commencing the payment of benefits pursuant to this subpart.

(c) If agreement cannot be reached in cases for which no responsible operator can be found, the case will be filed with the deputy commissioner pursuant to § 725.140. Simultaneously with such filing a recommended decision and order shall be sent to the claimant. Within 20 days from the receipt of such recommended decision and order the claimant shall either agree with the recommended decision and order and so notify the deputy commissioner or notify the deputy commissioner that he is unwilling to agree to one or more of the items contained in such decision and order. Failure to respond within the 20-day period described in this paragraph shall be construed as a refusal to accept the ruling of the deputy commissioner.

(d) If the recommended decision and order is agreed to the deputy commissioner shall proceed to a final adjudication of the case pursuant to § 725.442.

(e) If the claimant is unwilling to agree with the allegations and proposed disposition contained in the recommended decision and order, or if the claimant does not respond within the specified time period the deputy commissioner may schedule and conduct a conference pursuant to §§ 725.431–725.443 or take any other action consistent with the provisions of this part which he deems necessary to achieve a resolution of the case.

(f) Within 60 days from the date upon which a claim for which no potentially responsible operator has been determined has been filed with the deputy commissioner pursuant to § 725.140 in cases for which there has been no prior request for a formal hearing the deputy commissioner assigned the case shall either:

(1) Issue a decision and order in respect of the case pursuant to § 725.442; or

(2) Declare the case abandoned pursuant to § 725.425; or

(3) Transfer the case to the Chief Administrative Law Judge for the purpose of making the formal hearing procedures described in this part available to the parties in interest.

CONFERENCES

§ 725.431 Nature of conferences.

(a) In cases which cannot be disposed of summarily and on the record, conferences are to be scheduled to expedite the handling of contested issues and to avoid, whenever possible, the need for formal hearings. However, if it appears that a conference would serve none of the purposes enumerated in § 725.432, the deputy commissioner may forward the case to the Chief Administrative Law Judge without conducting a conference, for further action as provided in this subpart.

(b) The proceedings are to be informal and are presided over by a deputy commissioner. Testimony is not steno-

graphically reported. The parties in interest are not required to be represented by counsel, but may be so represented if they desire. The conference is not a formal hearing and witnesses may not be produced.

§ 725.432 Purpose of conferences.

Among the purposes of a conference are:

(a) To amicably dispose of controversies whenever possible;

(b) To narrow issues; and

(c) To simplify the subsequent methods of proof.

§ 725.433 Notification of parties.

When, after reviewing the record, the deputy commissioner assigned the case determines that a conference may fulfill one or more of the purposes listed in § 725.432 he shall notify all parties in interest that a conference has been called. Conferences may be called upon at least 10 days' notice to the parties in interest or a shorter period if agreed upon by the parties. In any event, every effort shall be made to give all parties sufficient notice to insure that the conference will be productive.

§ 725.434 Time and place of conference.

The deputy commissioner shall assign a definite time and place for the conference and shall include this information in his notice to the parties.

§ 725.435 Preparation for conferences.

Prior to scheduling a conference the deputy commissioner shall review his file to be certain that it contains all the necessary material to insure that the conference will be productive. The file should contain copies of all medical reports from all parties in interest and there should be evidence in the file that the parties have exchanged all medical reports and any other material pertinent to the case. If this information does not appear in the file the deputy commissioner may advise the parties of these requirements and postpone the setting of the conference.

§ 725.436 Cancellation of conferences.

Any party may request cancellation and rescheduling of a conference upon 5 days' written notice prior to the conference date sent to the Office or the deputy commissioner assigned the case. Such request shall state the reasons warranting cancellation. The deputy commissioner may, if reasonable cause is shown, grant the request.

§ 725.437 Attendance at conferences.

(a) The claimant and/or his representative and any operator whose liability for payment of benefits after December 31, 1973, may be determined by a final order in the case and/or the operator's insurance carrier and/or their representatives shall attend all conferences. Any party may, in writing stating the reasons therefor, request that such attendance requirement be waived. The deputy commissioner may, in his discretion, grant or deny such waiver. The failure of any party to appear at a conference or obtain a waiver of the attendance requirement pursuant to this paragraph or the failure of any party to observe the requirement contained in paragraph (b) of this section shall not constitute grounds for cancellation of the conference. Information adduced at such conference may be utilized at any point during the adjudication of the case.

(b) Any representative of an operator or of an operator's insurance carrier must have sufficient authority to effect settlement.

§ 725.438 Participation by the deputy commissioner.

A characteristic of a conference under the Act is the active participation in the proceedings by the deputy commissioner. It is his responsibility to see that the conference is productive. He shall assist the parties whenever possible by answering questions pertaining to the law and offer compromises for the parties to consider. He shall direct the discussion of the parties. He has the authority to conduct direct examinations of the claimants, operators whose liabilities may be determined, and their insurance carriers' representatives and he may conduct such examination whenever necessary.

§ 725.439 File record.

(a) During the course of the conference the deputy commissioner shall take notes upon which to base his written memorandum of conference. Among the information which must appear in the memorandum of conference is:

(1) Date, time, and place of conference;

(2) Names, addresses, telephone numbers, and status (*i.e.*, claimant, attorney, operator, carrier's representatives, etc.) of all persons attending the conference;

(3) Reason why conference was held;

(4) Issues discussed at conference;

(5) Additional material presented (*i.e.*, medical reports, employment reports, marriage certificates, birth certificates, etc.);

(6) Issues resolved at conference; and

(7) Deputy commissioner's recommendation.

§ 725.440 Memorandum of conference.

At the conclusion of the conference the deputy commissioner shall issue a comprehensive but brief memorandum summarizing the conference for the record. Copies of the memorandum shall be sent to each party in interest by certified mail no more than 20 days after the date on which the conference is terminated.

§ 725.441 Reply to memorandum of conference.

Each party shall, in writing, either accept or reject in part or in whole the deputy commissioner's recommendations, stating in appropriate cases the reasons for rejecting any recommendation. If no reply is received within 10 days from the date on which the recommendations were sent to the parties, the recommendations shall be deemed accepted. If the recommendations are not wholly agreed upon, the deputy commissioner or any party in interest may request a formal hearing. If it appears that final settlement might be reached without formal hearing, the deputy commissioner may schedule one or more additional conferences.

§ 725.442 Adjudication without a hearing.

(a) If the parties in interest indicate that they are willing to dispose of the issues in the case based on the recommendations made, the deputy commissioner shall obtain statements to this effect signed by the parties. The statements shall contain all the information required for inclusion in a formal order and shall show that the parties agree that a final order may be issued by the deputy commissioner without a formal hearing. The deputy commissioner shall then proceed to prepare and sign a decision and order based on the statements.

(b) If the parties are unable or unwilling to reach an agreement at the conference and if no request for a formal hearing is received by the deputy commissioner within 30 days from the close of the conference, the deputy commissioner in appropriate cases shall proceed to forward the case to the Chief Administrative Law Judge for final adjudication as described in this subpart.

§ 725.443 Accelerated hearing.

Notwithstanding any other provision of this Part 725 after 30 days from the date upon which a claim is filed with the deputy commissioner pursuant to § 725.140, a claimant, a notified operator, or the Secretary may request and shall have a right to a formal hearing to be conducted by an administrative law judge pursuant to this Subpart E. In the event that a formal hearing is requested pursuant to this paragraph, all responsibility and authority pertaining to the evidentiary development and settlement of the case vested in the deputy commissioner shall be vested in the Chief Administrative Law Judge or the administrative law judge assigned the case.

§ 725.444 The record of further proceedings.

For the purpose of any further proceedings under the Act, the formal record of proceedings shall consist of the hearing record made before the administrative law judge. When transferring the case for hearing, the deputy commissioner shall not transfer the administrative file under any circumstances.

§ 725.445 Obtaining documents from the administrative file for reintroduction at formal hearings.

When any party considers any document in the administrative file essential to any further proceedings under the Act, it is the responsibility of such party to obtain such document from the deputy commissioner and reintroduce it for the record before the administrative law judge. The type of document that may be obtained shall be limited to documents previously submitted to the deputy commissioner, including documents or forms with respect to notices, claims, controversions, contests, progress reports, medical services or supplies, etc. The work products of the deputy com-

missioner or his staff shall not be subject to retrieval. The procedure for obtaining documents shall be for the requesting party to inform the deputy commissioner in writing of the documents he wishes to obtain, specifying them with particularity. Upon receipt, the deputy commissioner shall cause copies of the requested documents to be made and then: (1) Place the copies in the file together with the letter of request, and (2) promptly forward the originals to the requesting party. The handling of multiple requests for the same document shall be within the discretion of the deputy commissioner and with the cooperation of the requesting parties.

HEARINGS

§ 725.451 Right to a hearing.

A person affected by proceedings under this part has a right to a formal hearing concerning any issue of fact or law unresolved in a conference if:

(1) He is a party in interest as defined in § 725.411; and

(2) No final disposition of the case has been achieved in prior proceedings within the period specified in § 725.443.

§ 725.452 Request for hearing.

Any party in interest may in writing or on the record at a conference request a formal hearing as to any contested issue of fact or law. In addition, a deputy commissioner may on his own initiative refer a case for hearing, when he determines a hearing necessary to protect the rights of any party in interest. If the deputy commissioner determines that a hearing is required or is necessary to the resolution of any issue, he shall refer the case to the Chief Administrative Law Judge who will assign it for a hearing. The deputy commissioner may not deny a request for a hearing if the requirements of § 725.451 are met.

§ 725.453 Type of hearing; parties.

In contested cases for which a formal hearing is deemed necessary, the hearing shall be conducted by an administrative law judge designated by the Chief Administrative Law Judge. The necessary parties to this hearing are the administrative law judge and all parties in interest or their designated representative, except that any party may waive his right to be heard as to any or all issues. All hearings shall be conducted in accordance with the provisions of 5 U.S.C. 554 *et seq.* If any party in interest chooses to plead his own case at a formal hearing he may do so only upon the approval of the administrative law judge. If the administrative law judge determines that such party may not be sufficiently able to protect his rights under the Act, he may forbid such party to plead his own case and instead require that such party obtain the services of a qualified representative.

§ 725.454 Notice of hearing.

In each case in which a hearing is ordered the deputy commissioner shall prepare a notice of hearing for the signature of the Chief Administrative Law Judge and by service thereof shall give all parties in interest at least 10 days' notice of the time and place at which the hearing, or any prehearing conference is to be conducted and the issues to be resolved. The notice of hearing shall be sent to each party in interest by certified mail. No issue may be raised or discussed at a hearing if the party who must contest the issue has not had at least 10 days notice that the issue was to be raised at the hearing, unless he waives such notice in writing or on the record in the proceeding.

§ 725.455 Hearing on new issues.

(a) At any time after a hearing has been ordered and before a final decision has been mailed, the administrative law judge may in his discretion, either on the application of a party or on his own motion, give notice that he will consider any specified new issue. In such a case the administrative law judge shall give the parties at least 10 days' notice of the hearing on the new issue, unless they stipulate that the issue may be heard at an earlier time, and shall proceed to hearing on the new issue in the same manner as he would on an issue initially considered.

(b) A hearing on any new issue shall be limited to a discussion of that new issue.

(c) In the event that a new issue is raised at the time any formal hearing is conducted, the party confronted with that new issue may, upon request to the administrative law judge, be granted a continuance of not less than 10 days with respect to that new issue.

§ 725.456 Time and place of hearing.

(a) The Chief Administrative Law Judge shall assign a definite time and place for the formal hearing and shall include this information in his notice to the parties.

(b) If the claimant's residence is not in any State, the Chief Administrative Law Judge may, in his discretion, determine an appropriate location for the hearing.

§ 725.457 Change of time and place for hearing; transfer of cases.

(a) The Chief Administrative Law Judge or the administrative law judge may change the time and place for the hearing, either on his own motion or for good cause shown by a party. The Chief Administrative Law Judge or administrative law judge may adjourn or postpone the hearing, or he may reopen the hearing for the receipt of additional evidence at any time prior to the mailing to the parties of the decision in the case. Unless otherwise agreed, at least 10 days' notice shall be given to the parties of any change in the time or place of hearing.

(b) At any time after a notice of hearing has been issued the Chief Administrative Law Judge may for good cause transfer such case from one administrative law judge to another.

CONDUCT OF HEARINGS

§ 725.460 Hearing procedures—generally.

All hearings shall be attended by the parties or their representatives and such other persons as the administrative law judge deems necessary and proper. The administrative law judge shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the administrative law judge believes that there is relevant and material evidence available which has not been presented at the hearing, he may adjourn the hearing or, at any time, prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence. The order in which evidence and allegations shall be presented and the procedures at the hearing generally, except as these regulations otherwise expressly provide, shall be in the discretion of the administrative law judge and of such nature as to afford the parties a reasonable opportunity for a fair hearing. The unexecused failure of any party or such party's duly authorized representative to attend a formal hearing shall constitute a waiver of such party's rights to present evidence in respect of the issues to be determined at the hearing.

§ 725.461 Evidence.

In making an investigation or inquiry or conducting a hearing the administrative law judge shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart. He may conduct such investigation or inquiry as to best ascertain the rights of the parties. Declarations of a deceased miner concerning his disability or cause of death in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the disability or cause of death.

§ 725.462 Witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation. The administrative law judge may examine the witnesses and shall allow the parties or their representatives to question the witness with respect to any matters relevant and material to any issue pending before him.

(b) No person shall be required to attend as a witness in any proceeding before an administrative law judge at a place more than 100 miles from his place of residence, unless his lawful mileage and fee for 1 day's attendance shall be paid to him in advance of the hearing date.

§ 725.463 Depositions; interrogatories.

The testimony of any witness may be taken by deposition or interrogatory according to the rules of practice of the Federal district court for the judicial

district in which the case is pending (or of the U.S. District Court for the District of Columbia if the case is pending in the District).

§ 725.464 Witness fees.

(a) Witnesses summoned in a formal hearing before an administrative law judge or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States (Act, sections 415 and 422 and Longshoremen's Act, section 25). Except as provided in paragraph (d) of this section, such fees shall be paid by the party summoning the witness.

(b) Expert witness fees in excess of the amounts to which an individual would be entitled under paragraph (a) of this section shall be paid by the party summoning such expert witness unless the Chief Administrative Law Judge or the administrative law judge determines that such expert witness is necessary and that a claimant is financially unable to secure such witness. If in the opinion of the Chief Administrative Law Judge, the requirements of this paragraph are met appropriate action will be taken to pay such expert witness fee on behalf of the claimant. Requests for reimbursement or direct payment of an expert witness fee shall be directed to the Chief Administrative Law Judge or the administrative law judge assigned the case no less than 5 days prior to the hearing date.

(c) No claimant shall be required to bear the financial responsibility for producing an expert witness for cross examination if such expert witness, regardless of his availability to attend the hearing, has previously submitted depositions, interrogatories, or attested medical reports. Such expert witness, if he is required to attend the hearing shall be summoned and shall have his expert witness fee paid by the party in interest other than the claimant, who desires to cross examine such expert witness.

(d) Pursuant to section 422 of the Act and section 28(d) of the Longshoremen's Act, in cases where an attorney's fee is awarded against such operator or carrier (see § 725.419) there may be further assessed against such operator or carrier as costs, fees and mileage for necessary witnesses attending the hearing at the instance of the claimant. Both the necessity for the witness and the reasonableness of the fees of expert witnesses must be approved by the appropriate adjudication officer or court as the case may be. The amounts awarded against an operator or carrier as attorney's fees, costs, fees and mileage for witnesses shall not in any respect affect or diminish benefits payable under the Act.

§ 725.465 Oral argument and written allegations.

The parties, upon their request, shall be allowed a reasonable time for the presentation of oral argument and for the filing of briefs or other written statements of allegations as to facts or law. Copies of any brief or other written statement shall be filed with the administrative law judge and served on all parties in interest by the party submitting the brief or statement.

§ 725.466 Waiver of right to appear and present evidence.

If all parties waive their right to appear before the administrative law judge or to present evidence or argument personally or by representative, it shall not be necessary for the administrative law judge to give notice of or conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Chief Administrative Law Judge or the administrative law judge. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a formal hearing, the administrative law judge may, nevertheless, give notice of a time and place and conduct a hearing, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts in issue in the case. Where such a waiver has been filed by all parties, and they do not appear before the administrative law judge personally or by representative, the administrative law judge shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and whatever other relevant and material evidence the party or parties may present in writing for consideration by the administrative law judge. Such documents shall be considered as all of the evidence in the case and the decision shall be based on them.

§ 725.467 Consolidated issues.

When one or more additional issues are raised before the administrative law judge pursuant to § 725.455, such issues may, in the discretion of the Chief Administrative Law Judge, be consolidated for hearing and decision with other issues pending before the administrative law judge upon the same request for a hearing, whether or not the same or substantially similar evidence is relevant and material to the matters in issue. A single decision may be made upon all such issues.

§ 725.468 Joint hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters in issue at each such hearing the Chief Administrative Law Judge may upon motion by any party in interest, or on his own motion or on the motion of an adjudication officer, order the administrative law judge assigned the case to fix the same time and place for each such hearing and conduct all such hearings jointly. Where joint hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others and a separate or joint decision shall be made, as appropriate.

§ 725.469 Record of hearing.

All formal hearings shall be open to the public and shall be stenographically reported. All evidence upon which the administrative law judge relies for his final decision shall be contained in the transcript of testimony either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record either in whole or in material part shall be incorporated into the record either by reference or as an appendix.

DISMISSALS

§ 725.471 Dismissal of the case or claim by application of party.

With the approval of the Chief Administrative Law Judge or administrative law judge at any time prior to the mailing of notice of the decision, a case or claim may be dismissed upon the application of any party. A party may request a dismissal by filing a written notice of such request with the Chief Administrative Law Judge or administrative law judge or orally stating such request at the hearing.

§ 725.472 Dismissal by abandonment of party.

Notwithstanding the provisions of § 725.425, with the approval of the Chief Administrative Law Judge or administrative law judge, a case or claim may also be dismissed upon its abandonment by the claimant. A party shall be deemed to have abandoned his case or claim if neither the party nor his representative appears at the time and place fixed for the hearing and either (a) prior to the time for hearing such party does not show good cause as to why neither he nor his representative can appear or (b) within 10 days after the mailing of a notice of hearing to him to show cause, such party does not show good cause for such failure to appear and failure to notify the Chief Administrative Law Judge or administrative law judge prior to the time fixed for hearing that he cannot appear.

§ 725.473 Dismissal for cause.

The Chief Administrative Law Judge or administrative law judge may, on his own motion or at the request of any party, dismiss a case or claim, either entirely or as to any stated issue, under any of the following circumstances:

(1) *Res judicata.*—A case or claim shall be dismissed for cause where there has been a previous final determination or decision with respect to the rights or obligations of the same party on the same facts pertinent to the same issue or issues.

(2) *No right to a hearing.*—A case, claim, or party shall be dismissed for cause where the party requesting a hearing is not a proper party under § 725.411 or does not have a right to a hearing under the provisions of this part. A case or claim may be dismissed as to any party who is not a proper party to the case or claim pursuant to § 725.411.

§ 725.474 Notice of dismissal and right to request review thereon.

Notice of the Chief Administrative Law Judge's or administrative law judge's dismissal action shall be given to the parties or mailed to them at their last known addresses within 20 days from the date on which the hearing was scheduled. Such notice shall advise the parties of their right to request review by the Benefits Review Board pursuant to § 725.490.

§ 725.475 Effect of dismissal.

The dismissal of a case or claim shall be final and binding unless suspended or set aside (see § 725.486).

COMPLETION OF FORMAL HEARING

§ 725.480 Termination of formal hearings.

Formal hearings are officially terminated when all the evidence has been received, witnesses heard, pleadings and briefs submitted to the administrative law judge, and the transcript of the proceedings has been printed and delivered to the administrative law judge.

§ 725.481 Issuance of final decision and order.

Within 20 days after the official termination of the hearing as defined by § 725.480, the administrative law judge shall issue a decision and order with respect to the claim making an award to the claimant or rejecting the claim.

§ 725.482 Form of final decision and order.

(a) Orders adjudicating claims for benefits or suspending payments of benefits shall be designated by the term "decision and order" followed by a descriptive phrase designating the particular type of such order, such as "award of benefits," "rejection of claim," "suspension of benefits," "modification of award. All decisions and orders shall contain the names of the parties in interest, a statement of the basis therefore, findings of fact, an award, rejection, or other appropriate paragraph containing the action of the administrative law judge. Final decisions and orders shall be signed by the administrative law judge at two places following the action paragraph.

(b) Copies of decisions and orders shall be served personally or by certified mail upon the parties in interest.

§ 725.483 Contents of decision and order.

(a) *Findings of Fact.*—(1) All original decisions and orders shall contain, in the paragraph headed, *"Findings of Fact,"* findings with respect to the names and addresses of the parties in interest, and dates and places of employment pertinent to the claim, the circumstances surrounding the coal miner's exposure to respirable coal dust, the nature and extent of the disability, notice of total disability or death, and such other facts as may be necessary to determine all of the issues raised before the administrative law judge upon the hearing of the case or otherwise, but in case of rejection of the claim the administrative law judge may in his discretion omit any findings unnecessary to support such action. In cases in which the claim is rejected, the grounds for such rejection shall be stated in a paragraph following the findings of fact.

(2) In orders other than the original order, the statement of the basis for the order shall contain reference to all prior orders with the dates thereof. In such orders the findings of fact shall relate only to the immediate issues before the administrative law judge without restatement of facts found in any prior order relating to the same disability or death, unless necessary for the completeness of the order.

(b) *Conclusions of Law.*—All decisions and orders shall contain after the findings of fact a paragraph entitled "Conclusions of Law." This paragraph shall, when appropriate, contain statements of all ultimate facts necessary to support the action of the administrative law judge. This paragraph shall contain among other things a statement as to the claimant's eligibility for benefits and, when appropriate, a statement asserting or denying the liability of an operator or his insurance carrier for the payment of benefits to the claimant for any periods after December 31, 1973.

(c) *Order.*—All decisions and orders shall contain after the conclusions of law the orders of the administrative law judge directing the parties to take any action consistent with the findings of fact and conclusions of law as required by the Act.

§ 725.484 Formal hearings; filing and mailing of orders; disposition of transcripts.

The administrative law judge shall, within 20 days after the official termination of the hearing, deliver by mail, or otherwise, to the office of the deputy commisisoner having original jurisdiction, the transcript of the hearing, and other documents or pleadings filed with him with respect to the claim, together with his signed order. Upon receipt thereof, the deputy commissioner, being the official custodian of all records with respect to such claims within his jurisdiction, shall formally date and file the transcript, pleadings, and benefits order (original) in his office. Such filing shall be accomplished as expeditiously as possible, and the deputy commissioner shall, on the same day as the filing was accomplished, send by certified mail a copy of the order to the parties and to representatives of the parties, if any. Appended to each such copy shall be a paragraph entitled "proof of service," containing the certification of the deputy commissioner that the copies were mailed on the date stated, to each of the parties and their representatives, as shown in said paragraph.

§ 725.485 Interlocutory matters to be disposed of without formal orders.

Decisions and orders or other formal orders shall not be made or filed with respect to interlocutory matters of a procedural nature arising during the pendency of a case where benefits have been claimed.

§ 725.486 Finality of decisions and orders.

Decisions and orders issued pursuant to § 725.442 or § 725.481 shall become effective when filed in the office of the deputy commissioner, and unless proceedings for suspension or setting aside of such orders are instituted within 30 days of such filing, shall become final at the expiration of the 30th day after such filing, as provided in section 21 of the Longshoremen's Act.

§ 725.487 Withdrawal of controversion of issues set for formal hearing—effect.

Whenever a party withdraws his controversion of the issues set for a formal hearing, the administrative law judge shall halt the proceedings upon receipt from said party of a signed statement to that effect and forthwith notify the deputy commissioner who shall then proceed to dispose of the case as provided for in § 725.442.

§ 725.488 Modification of awards.

Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the administrative law judge, the administrative law judge may, at any time prior to 1 year after the date of the last payment of benefits, or at any time prior to 1 year after the rejection of a claim, review a case in accordance with the procedure prescribed in respect of claims in this subpart and in accordance therewith issue a new final decision and order which may terminate, continue, or reinstate, increase, or decrease such benefits, or award benefits. Such new order shall not affect any benefits previously paid, except that an award increasing the benefits rate may be made effective from the date of the entitlement and if any part of the benefit due or to become due is unpaid, an award decreasing the benefit rate may be made effective from the date of entitlement, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid benefit pursuant to Subpart C of this part.

APPEALS FROM DECISIONS AND ORDERS

§ 725.490 Right to appeal; Benefits Review Board.

Any party in interest, adversely affected or aggrieved by a decision or order of an adjudication officer issued pursuant to § 725.481 may within 30 days from the filing of such decision or order appeal such decision or order to the Benefits Review Board.

§ 725.491 Procedure before the Board.

All appeals filed with the Board shall be processed and determined pursuant to rules and regulations duly promulgated by the Board as authorized by the Secretary in 20 CFR Part 802.

§ 725.492 Judicial review.

Pursuant to section 21(c) of the Longshoremen's and Harbor Workers' Compensation Act as incorporated by section 422 of Part C of Title IV of the Act, any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the U.S. Court of Appeals for the circuit in which the disability occurred by filing in such court within 60 days following the issuance of such Board order a written petition praying that the order be modified or set aside. The LHWCA provides that payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless the court finds that irreparable injury would otherwise ensue to an operator or carrier.

§ 725.493 Certification of record for judicial review.

Whenever the record of a hearing shall be required for review or otherwise by any court of competent jurisdiction, the Secretary or his designated representative shall transmit the record with a certification thereof over an appropriate signature as the official record of the case in his custody. The certification shall list each transcript of testimony and other paper included in the record.

§ 725.494 Costs in proceedings brought without reasonable grounds.

If the court having jurisdiction of proceedings in respect of any claim or final decision and order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings (Act, section 422 and Longshoremen's Act, section 26).

Subpart F—Payment of Benefits

General

§ 725.501 Applicability of this subpart.

For purposes of the Department of Labor's administration of Part C of Title IV of the Act, benefits shall be determined and paid pursuant to the provisions of this subpart. This subpart applies to all new claims of eligible individuals filed after December 31, 1973, as well as new claims filed with the Department of Labor pursuant to section 415 of Part B of Title IV of the Act by claimants entitled thereby to benefit payments under Part C of Title IV after December 31, 1973. However, in respect to new claims filed under section 415 of the Act, no payment of benefits under this Subpart F of this Part 725 shall commence before January 1, 1974. Benefits due any eligible individual from the Department of Labor which are payable under Part B of Title IV of the Act, shall be determined and paid pursuant to Subpart C of Part 720 of this subchapter.

§ 725.502 Manner of payment; payment periods.

(a) Benefits under this Act shall be paid periodically, promptly, and directly to the person entitled thereto. Coal mine operators shall be liable for such payments as provided in Subpart D of this Part 725.

(b) Benefits are payable for monthly periods. If the claimant meets all the requirements for entitlement to benefits in the same month in which his claim is filed, the filing will be effective for the whole month. If a claimant dies in the first month for which he meets all the requirements for entitlement to benefits, he will be considered to be entitled to benefits for that month.

(c) On the 14th day after the date when there has been a determination by a deputy commissioner or decision by an administrative law judge to the effect that the claimant is entitled to receive benefits, or the date when payment of benefits has been ordered pursuant to § 725.312(b), the first installment of benefits for which an operator or his carrier is determined liable shall become due and all benefits then due shall be paid. Thereafter compensation shall be paid in monthly installments, except where the adjudicating officer determines that payment in installments should be made in some other fashion.

§ 725.503 Date from which benefits shall be payable.

(a) Section 6(a) of the Longshoremen's Act as incorporated by section 422 of Part C of Title IV of the Act requires that in the case of total disability benefits shall be payable to eligible beneficiaries from the date of the onset of such total disability and in the case of death, benefits shall be payable to eligible beneficiaries from the date of such death. In no event shall benefit payments be required under this part for any period prior to January 1, 1974.

(b) Each decision and order issued by an adjudication officer with respect to a claim shall, pursuant to the requirements of paragraph (a) of this section, state the date from which benefits are payable to eligible beneficiaries.

(c) Benefits payable for any period prior to the date of the decision and order awarding such benefits shall be computed on the basis of the benefit rate applicable to such period.

(d) In light of the fact that it may not be possible in certain instances to determine the date upon which a miner became totally disabled due to pneumoconiosis, the adjudication officer charged with the responsibility for determining such miner's claim may, in the absence of evidence to the contrary and under appropriate circumstances, determine that such miner's total disability due to pneumoconiosis began on the date such miner's claim was filed.

(e) No provision of this section shall be construed to in any way expand or alter the requirements of § 725.124 of this Part 725 which sets forth the time limits within which a claim under section 422 of Part C of Title IV of the Act must be filed.

§ 725.504 Payees.

Benefits may be paid, as appropriate, to a beneficiary, to a qualified dependent, or to a representative authorized under this subpart to receive payments on behalf of such beneficiary or dependent.

§ 725.505 Payment on behalf of another; "legal guardian" defined.

Benefits are paid only to the beneficiary or his legal guardian or representative payee. As used in this section, "legal guardian" means an individual who has been appointed by a court of competent jurisdiction or otherwise appointed pursuant to law, to assume control of and responsibility for the care of the beneficiary, the management of his estate, or both.

§ 725.506 Guardian for minor or incompetent.

An adjudication officer may require that a guardian or representative be appointed to receive benefits payable to any person who is mentally incompetent or a minor and to exercise the powers granted to, or to perform the duties required of, such person under the Act.

§ 725.507 Assignment and exemption from claims of creditors.

No assignment, release, or commutation of benefits due or payable under this part, except as provided by the Act as implemented by this Part 725, shall be valid, and such benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived (Act, section 422, and Longshoremen's Act, section 16).

Benefit Rates

§ 725.510 Computation of benefits.

(a) *Basic rate.*—The benefit amount of each beneficiary entitled to a benefit for a month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 50 percent of the minimum monthly payment to which a totally disabled Federal employee in Grade GS–2 would be entitled for such month under the Federal Employees' Compensation Act, Chapter 81, Title 5, United States Code. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay (step 1) for Grade GS–2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in paragraph (a)(1) of this section by 12;

(3) Ascertaining the minimum monthly payment under the Federal Employees' Compensation Act by multiplying the amount determined in paragraph (a)(2)

of this section by 0.75 (that is, by 75 percent) (see 5 U.S.C. 8112); and

(4) Ascertaining the basic rate under the Act by multiplying the amount determined in paragraph (a)(3) of this section by 0.50 (that is, by 50 percent).

(b) *Basic benefit.*—When a miner or widow is entitled to benefits for a month for which he or she has no dependents who qualify under Part 715 of this Chapter VI and when a surviving child of a miner or widow, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next high multiple of 10 cents). This amount is referred to as the "basic benefit."

(c) *Augmented benefit.*—(1) When a miner or widow is entitled to benefits for a month for which he or she has one or more dependents who qualify under Part 715 of this Chapter VI, the amount of benefits to which such miner or widow is entitled is increased. This increase is referred to as an "augmentation."

(2) The benefits of a miner or widow are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in Part 715 of this Chapter VI, and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in Part 715 of this Chapter VI, except in the case of a child who qualifies as a dependent because he is a student. In the latter case such benefits continue to be augmented through the month before the first month during no part of which he qualifies as a student.

(3) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents.

(d) *Survivor benefit.*—(1) As used in this section, "survivor" means a surviving child of a miner or widow, or, a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under the provisions of Part 715 of this Chapter VI.

(e) *Computation and rounding.*—(1) Any computation prescribed by this section is made to the third decimal place.

(2) Monthly benefits are payable in multiples of 10 cents. Therefore, a monthly payment of amounts derived under paragraph (c)(4) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

§ 725.511 Certification to dependent of augmentation portion of benefit.

(a) If the benefit of a miner or of a widow is augmented because of one or more dependents (§ 725.510(b)) and it appears to the Office that the best interest of such dependent would be served thereby, the Office may certify payment of the amount of such augmentation (to the extent attributable to such dependent) to such dependent directly.

(b) Any request to the Office to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section, shall be in writing on such form and in accordance with such instructions as are prescribed by the Office.

(c) In determining whether it is in the best interest of such dependent to certify separate payment of the amount of the augmentation in benefits attributable to him, the Office shall apply the standards pertaining to representative payment in §§ 720.435–720.444, and the instructions issued pursuant thereto.

(d) When the Office determines that the amount of a miner's benefit attributable to the miner's wife or child should be certified for separate payment to a person other than such miner, or that the amount of a widow's benefit attributable to such widow's child should be certified for separate payment to a person other than the widow, and the miner or widow disagrees with such determination and alleges that separate certification is not in the best interest of such dependent, the Office shall reconsider that determination.

(e) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

§ 725.512 Commutation of payments—lump sum awards.

(a) Whenever the deputy commissioner determines that it is in the interest of justice, the liability for benefits or any part thereof as determined by a final adjudication, may, with the approval of the Director of the OWCP, be discharged by the payment of a lump sum equal to the present value of future benefit payments commuted, computed at 4 percent true discount compounded annually.

(b) Applications for commutation of future payments of benefits shall be made to the Office in the manner prescribed by the Office. If the deputy commissioner determines that an award of a lump sum payment of such benefit would be in the interest of justice, he shall refer such application, together with the reasons in support of such determination, to the Director of the Office for consideration.

(c) The Director of the OWCP shall, in his discretion, grant or deny the application for commutation of payments. In the case of a denial an appeal may be taken pursuant to the adjudicatory procedures prescribed in Subpart E of this Part 725 as though such appeal were an appeal from a denial of benefits.

(d) The computation of all commutations of such benefits will be made by the Office of Workmen's Compensation Programs and for such purpose the deputy commissioner shall refer the file to the appropriate officer. For this purpose the file shall contain the date of birth of the person on whose behalf commutation is sought, as well as the date upon which such commutation shall be effective.

(e) For purposes of determining the amount of any lump sum award, the probability of the death of the disabled miner and/or other persons entitled to benefits before the expiration of the period during which he is entitled to benefits, shall be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(f) In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall be notified of and given an opportunity to participate in the proceedings to determine whether a lump sum award shall be made. Such operator or carrier shall, in the event a lump sum award is made, tender full and prompt payment of such award to the claimant as though such award were a final payment of monthly benefits. Except as provided in paragraph (g) of this section, such lump sum award shall forever discharge such operator or carrier from his responsibility to make monthly benefit payments under the Act to the person who has requested such lump-sum settlement.

(g) In the event a lump sum award is approved pursuant to this section, such award shall not operate to bar an eligible miner's entitlement to medical benefits pursuant to sections 422 and 424 of Part C of Title IV of the Act.

§ 725.513 Reimbursement payments to the Department of Labor.

(a) In all cases in which the Department of Labor has made benefit payments or paid for medical services or treatment rendered under section 424 of Part C of Title IV of the Act, for which a coal mine operator is ultimately adjudicated liable, such operator or his insurance carrier shall, simultaneously with the first payment of benefits made to the eligible beneficiaries, reimburse the Department of Labor for the full amount of all benefit payments made by the Department in respect of the claim. Such reimbursement payments shall be made payable to the United States Department of Labor.

(b) The procedures described in sections 18 and 21(d) of the Longshoremen's Act and section 422 of the Act shall be applicable in respect of reimbursement payments due the Department.

Increases and Reductions of Benefits

§ 725.515 Modification of benefit amounts—general.

Under certain conditions, the amount of monthly benefits as computed in

§ 725.510 may be modified to determine the amount actually to be paid to a beneficiary. A modification of the amount of a monthly benefit may be required in the following instances:

(a) *Reduction.*—A reduction from a beneficiary's monthly benefit may be required because of:

(1) Any compensation or benefits received under or pursuant to any State workmen's compensation law because of death or partial or total disability due to pneumoconiosis; or

(2) Any compensation or benefits received under or pursuant to any Federal law including Part B of Title IV of the Act because of death or partial or total disability due to pneumoconiosis; or

(3) The fact that a claim for benefits from an additional beneficiary is filed, or that such a claim is effective for a payment during the month of filing, or a dependent qualifies under Part 715 of this chapter for an augmentation portion of a benefit of a miner or widow for a period in which another dependent has previously qualified for an augmentation.

(b) *Adjustment.*—An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary.

(c) *"Rounding" of benefit amounts.*—(See § 725.510(e).)

(d) *Failure to disclose pertinent evidence.*—Any individual entitled to a benefit who is aware of any circumstance which, under the provisions of this part could affect his entitlement to benefits, his eligiblity for payment, or the amount of his benefits, or result in the termination, suspension, or reduction of his benefits, shall promptly report such circumstance to the Office of Workmen's Compensation Programs. The Office may at any time require an individual receiving, or claiming that he is entitled to receive a benefit, either on behalf of himself or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred, which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. If such individual fails to submit any such report or statement, properly executed, to the Office as herein required, the Office may subject such benefit to reductions, suspension or termination as the case may be.

(e) *Reimbursement of trust fund.*—Pursuant to the provisions of section 422 of the Act and section 17(b) of the Longshoremen's Act as incorporated therein, where a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947 (29 U.S.C. 186 (c)) established pursuant to a collective bargaining agreement in effect between an employer and an employee entitled to benefits under this Act has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to benefits under this Act, the Secretary may authorize a lien on such benefits in honor of the trust fund for the amount of such payments.

§ 725.516 Reduction; receipt of State or Federal benefit.

(a) As used in this section the term "State or Federal benefit" means a payment to an individual made on account of total or partial disability or death due to pneumoconiosis only under State or Federal laws relating to workmen's compensation.

(b) Benefit payments to a beneficiary for any month are reduced (but not below zero) by an amount equal to any payments of State or Federal benefits received by such beneficiary for such month.

(c) Where a State or Federal benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitute for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Office determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State or Federal benefit is multiplied by 4⅓ and a biweekly benefit is multiplied by 2⅙ to ascertain the monthly equivalent for reduction purposes.

(d) [Reserved.]

§ 725.517 Reductions; retroactive effect of an additional claim for benefits.

Beginning with the month in which a person other than a miner files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid.

Overpayments, Underpayments

§ 725.521 Overpayment.

(a) *General.*—As used in this subpart, the term "overpayment" includes:

(1) Payment where no amount is payable under Part C of Title IV of the Act;

(2) Payment in excess of the amount due under Part C of Title IV of the Act;

(3) Payment resulting from the failure to reduce benefits under section 422 (g) of the Act;

(4) Payment resulting from the failure to terminate benefits of an individual no longer entitled thereto.

(b) *Adjustments for overpayment.*—If the beneficiary to whom an overpayment was made is at the time of a determination of such overpayment, entitled to benefits, or at any time thereafter becomes so entitled, no benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefits.*—Adjustment under paragraph (b) of this section may be effected by withholding a part of the monthly benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount of each month would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish material information; and

(3) Recoupment can be effected in an amount of not less than $10 a month and at a rate which would not extend the period of adjustment beyond 3 years after the initiation of the adjustment action.

(d) *Overpaid beneficiary dies before adjustment.*—If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

§ 725.522 Notice of right to waive consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, notice of the provisions of section 204(b) of the Social Security Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual and to any other individual against whom adjustment or recovery of the overpayment is to be effected.

§ 725.523 When waiver of adjustment or recovery may be applied.

There shall be no adjustment or recovery in any case where an incorrect payment under Part C of Title IV of the Act has been made with respect to an individual—

(a) Who is without fault, and

(b) Adjustment or recovery would either:

(1) Defeat the purpose of Title IV of the Act, or

(2) Be against equity and good conscience.

§ 725.524 Standards for waiver of adjustment or recovery.

The standards for determining the applicability of the criteria listed in § 725.523 shall be the same as those applied by the Social Security Administration pursuant to §§ 410.561–410.561(h) of this title.

§ 725.525 Collection and compromise of claims for overpayment.

(a) *General effect of the Federal Claims Collection Act of 1966.*—Claims by the Office of Workmen's Compensation Programs against an individual for recovery of overpayment under Part C of Title IV of the Act, not exceeding the sum of $2,000, exclusive of interest, may be compromised, or collection suspended or terminated where such individual or his estate does not have the present or prospective ability to pay the full amount

of the claim within a reasonable time (see paragraph (c) of this section), or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section), except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension, or termination of collection of a claim for overpayment.*—(1) *Overpaid individual alive.*—In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual or on the part of any other party having an interest in the claim.

(2) *Overpaid individual deceased.*—In any case where the overpaid individual is deceased:

(i) A claim for overpayment in excess of $2,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such deceased individual, and

(ii) A claim for overpayment regardless of the amount will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.*—In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under Part C of Title IV of the Act, the Office will consider such individual's age, health, present and potential income (including inheritance prospects), assets (*e.g.*, real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Office will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Office will consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.*—Where the probable costs of recovering an overpayment under Part C of Title IV of the Act would not justify enforced collection proceedings for the full amount of the claim or there is doubt concerning the Office's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount will be considered.

(e) *Amount of compromise.*—The amount to be accepted in compromise of a claim for overpayment under Part C of Title IV of the Act shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings giving due consideration to the exemptions available to the overpaid individual under State or Federal law and the time which collection will take.

(f) *Payment.*—Payment of the amount which the Office has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under Part C of Title IV of the Act must be made within the time and in the manner set by the Office. A claim for such recovery of the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Office. Failure of the overpaid individual or his estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

§ 725.526 Underpayments.

(a) *General.*—As used in this subpart, the term "underpayment" includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits is payable.

(b) *Underpaid individual is living.*—If an individual to whom an underpayment is due is living, the amount of such underpayment will be paid to such individual either in a single payment (if he is not entitled to a monthly benefit) or by increasing one or more monthly benefit payments to which such individual is or becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.*—If an individual to whom an underpayment is due dies before receiving payment or negotiating the check or checks representing such payment, such underpayment will be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household with the deceased individual at the time of such individual's death, or

(ii) In the case of a deceased miner, entitled for the month of death to widow's black lung benefits.

(2) In the case of a deceased miner or widow, his or her child entitled to benefits as the surviving child of such miner or widow for the month in which such miner or widow died (if more than one such child, in equal shares to each such child).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under paragraph (c)(1) of this section.

(5) The child or children of the deceased individual who do not qualify under paragraph (c)(2) of this section (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under paragraph (c)(3) of this section (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) In the event that a person who is otherwise qualified to receive an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his share of the underpayment will be divided among the remaining living person(s) in the same order or priority. In the event that there is (are) no other such person(s), the underpayment will be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative.*—The term "legal representative," for the purpose of qualifying to receive an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution, or organization acting on behalf of an unadministered estate, provided the person can give the Office good acquittance (as defined in paragraph (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Office good acquittance:

(1) A person who qualifies under a State's "small estate" statute; or

(2) A person resident in a foreign country who under the laws and customs of that country, has the right to receive assets of the estate; or

(3) A public administrator; or

(4) A person who has the authority, under applicable law, to collect the assets of the estate of the deceased beneficiary.

(f) *Definition of "good acquittance".*—A person is considered to give the Office "good acquittance" when payment to that person will release the Office from further liability for such payment.

§ 725.527 Relation to provisions for reductions or increases.

The amount of an overpayment or underpayment is the difference between the amount actually paid to the beneficiary and the amount of the payment to which the beneficiary was actually entitled. Such overpayment or underpayment, for example, would be equal to the difference between the amount of a benefit in fact paid to the beneficiary and the amount of such benefit as reduced under section 422(g) of the Act, as increased pursuant to section 412(a)(1), or as augmented under section 412(a)(3), of the Act. In effecting an adjustment with respect to an overpayment, no amount can be considered as having been withheld from a particular benefit which is in excess of the amount of such benefit as so reduced. Overpayment and underpayment simultaneously outstanding on account of the same beneficiary are first adjusted against one another before adjustment pursuant to the other provisions of this subpart.

§ 725.528 Applicability of overpayment and underpayment provisions to operator or carrier.

(a) The provisions contained in this subpart relating to overpayments and underpayments are applicable in those cases where the overpayment or underpayment was made by a responsible operator or carrier, except that in appropriate cases the Office shall have the authority to take such action as may be necessary in any particular case to protect the rights of all parties including the utilization of the adjudicatory procedures described in Subpart E of this part.

(b) No operator or carrier may proceed to make an adjustment in respect of an overpayment except upon application to and approval by the Office. In all such cases the Office shall exercise full supervisory authority over the adjustment of an overpayment.

§ 725.529 Applicability of Part B representative payee provisions.

Except as otherwise provided in this part, the representative payee provisions contained in Subpart C of 20 CFR Part 720 shall be applicable in respect of benefit payments made under Part C of Title IV of the Act.

MEDICAL BENEFITS

§ 725.541 Availability of medical benefits.

A responsible operator, his insurance carrier, or the Secretary, as the case may be, shall furnish such medical, surgical, and other treatment, nurse and hospital service, medicine, and apparatus, for such period as the nature of a miner's pneumoconiosis and related disability, or the process of recovery may require.

§ 725.542 Approved physicians.

The term physician shall mean all duly qualified physicians, to include surgeons and osteopaths within the scope of their practice as defined by State law. Chiropractors, naturopaths, podiatrists (chiropodists), psychologists, optometrists, faith healers, and other practitioners of the healing arts are not recognized as physicians as that term is used in this part.

§ 725.543 Supervision of medical treatment.

The Office shall actively supervise the medical care rendered to disabled miners, shall require periodic reports as to the medical care being rendered to disabled miners, and shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished. The Director of the Office may, on his own initiative or at the request of the miner or responsible operator, order a change of physicians or hospitals when in his judgment such change is desirable or necessary in the interest of the miner.

§ 725.544 Fees for medical benefits.

(a) Fees for medical services contemplated in this subpart shall be paid by a responsible operator if he is a self-insurer or by his insurance carrier. In the event there is no financially responsible operator, fees shall be paid by the Office.

(b) Fees charged in respect of medical benefits obtained by a miner pursuant to this subpart shall be subject to the provisions of § 725.135.

VOCATIONAL REHABILITATION

§ 725.551 Objective of vocational rehabilitation.

The objective of vocational rehabilitation is the return of miners who are totally disabled for work in or around a coal mine and who are unable to utilize those skills which were employed in the miner's coal mine employment to gainful employment commensurate with such miner's physical impairment. This objective may be achieved through a program of re-evaluation and redirection of the miner's abilities, or retraining in another occupation, and selective job placement assistance.

§ 725.552 Requests for and referral to vocational rehabilitation assistance.

Each miner who has been determined entitled to receive benefits for his total disability under Part C of Title IV of the Act shall be informed by the OWCP of the availability and advisability of vocational rehabilitation services. If such miner chooses to avail himself of vocational rehabilitation, his request shall be processed and referred by OWCP vocational rehabilitation advisors pursuant to the provisions of §§ 702.501–702.508 of this Chapter VI as is appropriate.

Signed at Washington, D.C., this 10th day of September 1973.

BERNARD E. DELURY,
Assistant Secretary for Employment Standards.

[FR Doc.73-19575 Filed 9-14-73;8:45 am]

DEPARTMENT OF LABOR

Employment Standards Administration

[20 CFR, Part 725]

BLACK LUNG BENEFITS PROGRAM REDUCTION

Receipt of State or Federal Benefit

On November 30, 1972, 20 CFR Chapter VI was amended by adding thereto a new Part 725 (37 FR 25440–25466), section 725.516(d) (37 FR 25462) in that document contained a procedure for reducing the amount of benefits to which an eligible claimant under Part 725 would be entitled by the amount of any State pneumoconiosis benefits received less certain State claim connected expenses incurred by such claimant.

In the FEDERAL REGISTER of this date Part 725 was revised. However, paragraph (d) of § 725.516 was not reissued but was reserved in order that further consideration might be given to the contents of the paragraph. It is proposed that paragraph (d) will contain either the provisions of Alternative I or of Alternative II.

Alternative I, describes a procedure by which a dual Federal and State claimant shall have his Federal black lung benefits reduced under section 422(g) of the Act by the amount of State black lung benefits awarded less the amount of such claimant's State claim connected expenses (e.g., legal, medical, etc.). Alternative II describes a procedure by which such claimant shall have his Federal black lung benefits reduced under section 422(g) of the Act by the full amount of any State black lung benefits awarded. Alternative I is predicated upon the incorporation by section 430 of Part C of Title IV of the Act, of the 1972 amendments to section 413(b) of Part B of Title IV of the Act and attempts to reduce the burden of double legal and medical fees which must normally be born by any claimant who, for any reason, finds it advantageous to file pneumoconiosis claims under Part C of Title IV of the Act and under a State workmen's compensation law. Alternative II is supported by the traditional workmen's compensation practice that a claimant's legal and medical costs incurred in the pursuit of his workmen's compensation claim are personal expenses which are exclusively the responsibility of such claimant.

Public comment is requested concerning these two alternatives. The time for comments concerning these two alternatives shall remain open until October 10, 1973, at which time the Secretary shall determine which of the two alternatives best serves the purpose of the Department's Part C Black Lung Benefits Program. The Department will publish in final form one alternative, with any revisions which are warranted, prior to January 1, 1974.

It is proposed to amend paragraph (d) of § 725.516 as follows:

§ 725.516 Reduction; receipt of State or Federal benefit.

* * * * *

ALTERNATIVE I

(d) Amounts paid or incurred or to be incurred by the individual for medical, legal, or related expenses in connection with his claim for State or Federal benefits (defined in paragraph (a) of this section) are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consonant with State or Federal law. Such medical, legal, or related expenses may be evidenced by the State or Federal benefit awards, compromise agreement, or court order in the State or Federal benefit proceedings, or by such other evidence as the Office may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other clear and convincing evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable.

Such expenses will not be excluded unless established by evidence as required by the Office.

ALTERNATIVE II

(d) Amounts paid or incurred or to be incurred by the individual for medical, legal, or related expenses in connection with his claim for State benefits (defined in paragraph (a) of this section) are included in computing the reduction in paragraph (b) of this section to the extent they are consonant with State law.

Signed at Washington, D.C. this 10th day of September 1973.

BERNARD E. DELURY,
Assistant Secretary for Employment Standards.

[FR Doc.73-19574 Filed 9-14-73;8:45 am]

federal register

MONDAY, SEPTEMBER 17, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 179

PART III

COST ACCOUNTING STANDARDS BOARD

■

DISCLOSURE STATEMENT FOR COLLEGES AND UNIVERSITIES

Basic Requirements

COST ACCOUNTING STANDARDS BOARD

[4 CFR Part 351]

DISCLOSURE STATEMENT FOR COLLEGES AND UNIVERSITIES

Basic Requirements

Public Law 91–379, which applies to most negotiated defense prime contracts and subcontracts in excess of $100,000, requires that contractors shall disclose in writing, their cost accounting practices. The Disclosure Statement Form (CASB–DS–1) has been designed to facilitate the meeting of this requirement by contractors. The purpose of this publication by the Cost Accounting Standards Board is to propose a modification to Part 351.14, Disclosure Statement, of its rules and regulations.

Representatives of colleges and universities have expressed to the Board a strong desire to have a separate Disclosure Statement to cover their practices. Such organizations, most of which operate under Budget Circular A–21, have unique terminology relative to their cost accounting practices and in completing the original Disclosure Statement Form they are required to use innumerable continuation sheets to adequately describe their cost accounting practices. The proposed Form CASB–DS–2 incorporates terminology more commonly used by colleges and universities.

Colleges and universities are now subject to Standards only in contracts awarded by defense agencies. A very small number of such organizations are now required to submit Disclosure Statements. The Board has worked with representatives of Government agencies and universities in designing a separate Disclosure Statement for colleges and universities, and that proposed Disclosure Statement is being published today.

The Cost Accounting Standards Board solicits comments on the proposed Disclosure Statement for colleges and universities, Form CASB–DS–2. Interested persons should submit their comments to the Cost Accounting Standards Board, 441 G Street NW., Washington, D.C. 20548. To be given consideration by the Board in its deliberations relative to this proposal, written submissions must arrive no later than November 16, 1973. All written submissions made pursuant to this notice will be made available to the public for inspection at the Board's offices during regular business hours.

The following modifications to Part 351 of the Board's regulations are proposed in view of the foregoing:

§ 351.145 Disclosure Statement—colleges and universities.

The data which are required to be disclosed by colleges and universities are set forth in detail in the Disclosure Statement Form, CASB–DS–2, which will be devised by the Cost Accounting Standards Board and will be arranged substantially as set forth below.

1. This Disclosure Statement has been designed to meet the requirements of Public Law 91–379, and persons completing it are to describe their contract cost accounting practices. For timing of requirement to file a Disclosure Statement, see 4 CFR 351.40. For complete regulations and instructions concerning submission of the Disclosure Statement, refer to the FEDERAL REGISTER, Title 4, Parts 331 and 351. A Statement must be submitted by all defense contractors who enter into negotiated national defense contracts with the United States in excess of $100,000 other than contracts where the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation. A separate Disclosure Statement must be submitted by each organizationally independent and self-sufficient educational institution or a segment of an educational system that substantially has such characteristics of independence and self-sufficiency, whose costs included in the total price of any contract exceed $100,000, except where such costs are based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public; or (2) prices set by law or regulation. If the cost accounting practices under contracts are identical for more than one organizational unit, then only one Statement need be submitted for those units, but each such organizational unit must be identified. A Disclosure Statement will also be required for each system (home) office or group office when costs are allocated to one or more system segments performing contracts covered by Public Law 91–379, but only Part VIII of the Statement need be completed.

2. The Statement must be signed by an authorized signatory of the reporting unit.

3. The Disclosure Statement should be answered by checking the appropriate box or inserting the applicable letter code which most nearly describes the reporting unit's cost accounting practices. Pen and ink may be used to enter the check or letter code. Part I of the Statement asks for general information concerning the reporting unit. Part VIII covers System (Home) and Group (Intermediate) Offices whose costs are allocated to one or more segments performing contracts covered by Public Law 91–379. Part VIII should be completed by each such office, and care should be taken to insure proper identification of such offices on the cover of the Disclosure Statement. In short, while a System (Home) or Group Office may have more than one reporting unit submitting Disclosure Statements, only one Statement need be submitted to cover the System (Home) or Group Office operations.

4. A number of questions in this Statement may need narrative answers requiring more space than is provided. In such instances, the reporting unit should use the continuation sheets provided. The number of the question involved should be indicated and the same coding required to answer the questions in the Statement should be used in presenting the answer in the continuation sheet. The reporting unit should indicate on the last continuation sheet used, the number of such sheets that were used.

5. Amendments shall be submitted to the same offices, including the Cost Accounting Standards Board, to which submission would have to be made were an original Disclosure Statement being filed. If on a year to year basis the responses to Items 1.1.0 through 1.4.0, 8.1.0, and 8.2.0 would remain the same, the contractor need not resubmit data concerning these particular items. Otherwise, revised data must be submitted annually at the beginning of the contractor's fiscal year. If fewer than five of the other items in the Disclosure Statement on file are changed, a letter notice precisely identifying the Disclosure Statement, the specific items being amended, and the nature of the changes will suffice. If five or more items are changed, the entire Disclosure Statement shall be resubmitted. Resubmitted Disclosure Statements must be accompanied by a notation specifying the items which have been changed and the nature of the change.

ARTHUR SCHOENHAUT,
Executive Secretary.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	COVER SHEET AND CERTIFICATION
	NAME OF REPORTING UNIT

Item No.	Item Description
0.1	College or University: (a) Name (b) Street Address (c) City, State and ZIP Code (d) Division or Campus of (if applicable)
0.2	Reporting Unit is: (Check one.) A. [ ] Independently Administered Public Institution B. [ ] Independently Administered Private Institution C. [ ] Administered as part of a Public System D. [ ] Administered as part of a Private System E. [ ] Other _____
0.3	Official to Contact Concerning this Statement: (a) Name and title (b) Phone number (including area code and extension)
0.4	Date of: (a) This statement (b) Most recent prior statement
0.5	Cognizant Federal Agency, in accordance with OMB Circular No. 88 for: (a) Auditing of Federal grants and contracts _____ (b) Negotiation of indirect cost rates and other special rates _____

CERTIFICATION

I certify that to the best of my knowledge and belief this Statement is the complete and accurate disclosure as of the above date by the above-named organization of its cost accounting practices, as required by the Disclosure Regulation of the Cost Accounting Standards Board under 50 U.S.C. App. 2168, Public Law 91-379 (4 CFR 351).

_____
(Name)

_____
(Title)

THE PENALTY FOR MAKING A FALSE STATEMENT IN THIS DISCLOSURE IS PRESCRIBED IN 18 U.S.C. 1001

FORM CASB- DS-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	INDEX

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FORM CASB- DS-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART I - GENERAL INFORMATION
	NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part I Data for this part should cover the most recently completed fiscal year of the reporting unit. Estimates are permitted for Items 1.1.0 through 1.4.0; if the reporting unit has operated for less than a full fiscal year the figures should be estimated for the first full fiscal year.
1.1.0	Annual Total Current Fund Revenues. (Check one.) A. [ ] Less than $1 million B. [ ] $1-$10 million C. [ ] $11-$25 million D. [ ] $26-$50 million E. [ ] $51-$100 million F. [ ] $101-$200 million G. [ ] $201-$500 million H. [ ] Over $500 million
1.2.0	Annual Total Federal Revenues. (Check one.) A. [ ] Less than $1 million B. [ ] $1-$10 million C. [ ] $11-$25 million D. [ ] $26-$50 million E. [ ] $51-$100 million F. [ ] $101-$200 million G. [ ] $201-$500 million H. [ ] Over $500 million
1.3.0	Annual Total Federal Revenues, Item 1.2.0, as Percentage of Total Revenues, Item 1.1.0 . (Check one.) A. [ ] Less than 10% B. [ ] 10%-50% C. [ ] 51%-80% D. [ ] 81%-95% E. [ ] Over 95%
1.4.0	Percentage Distribution of Annual Total Federal Revenues by Function. (Indicate approximate whole percentage. The total of entries for (a) through (e) below must equal 100.) (a) _____% Contracts and grants for research and development (b) _____% Contracts and grants for educational services (c) _____% Contracts and grants for public service (d) _____% Grants for student aid (e) _____% Other (Describe on continuation sheet.)

FORM CASB- DS-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART I - GENERAL INFORMATION
	NAME OF REPORTING UNIT

Item No.	Item Description
1.5.0	Description of Your Accounting System for Recording Direct Expenses Charged to Government Contracts and Grants. (Check the appropriate block(s) and if more than one is checked, explain on a continuation sheet.) A. [ ] Accrual or modified accrual basis B. [ ] Cash basis Y. [ ] Other (Describe on a continuation sheet.)
1.6.0	Integration of Cost Accounting with Financial Accounting. The cost accounting system is: (Check one. If B or C is checked, describe on a continuation sheet the costs which are accumulated on memorandum records.) A. [ ] Integrated with financial accounting records (Subsidiary cost accounts are all reconcilable to general ledger control accounts.) B. [ ] Not integrated with financial accounting (Cost data are accumulated on memorandum records.) C. [ ] Combination of A and B
1.7.0	Cost Principles. How are your costs under Federal contracts and grants determined? A. [ ] In accordance with OMB Circular No. A-21 B. [ ] A-21 and some other cost principles (Describe on a continuation sheet the principles used.) C. [ ] Other cost principles (Describe on a continuation sheet the principles used.)
1.8.0	Year, Month, Day on Which Your Most Recent Fiscal Year Ended. (Enter in blocks below. Use numeric terms, e.g., 730630 for June 30, 1973; 721231 for December 31, 1972.) ☐☐☐☐☐☐

FORM CASB- DS-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part II This part covers three elements of direct costs, i.e., Direct Materials and Supplies, Direct Salaries and Wages, and Other Direct Costs. It is not the intent here to spell out or define the three elements of direct costs. Rather, institutions should disclose practices based on their own definitions of what costs are, or will be, charged directly to Government contracts and grants or similar cost objectives as Direct Materials and Supplies, Direct Salaries and Wages, or Other Direct Costs. For example, some institutions may charge or classify purchased services of a direct nature, as "Direct Materials" for purposes of pricing proposals, requests for progress payments, claims for cost reimbursement, etc.; some other institutions may classify the same cost as "Direct Salaries and Wages" and still others as "Other Direct Costs." In these circumstances, it is expected that institutions will disclose practices consistent with their own classifications of Direct Materials and Supplies, Direct Salaries and Wages, and Other Direct Costs.
2.1.0	Description of Direct Materials. All materials and supplies directly identified with contracts, grants or other final cost objectives. (Describe on a continuation sheet the principal classes of materials and service costs which are charged as direct materials and supplies.)
2.2.0	Method of Charging Direct Materials and Supplies.
2.2.1	Direct Charge Not Through an Inventory Account at: (Check the appropriate block(s) and if more than one is checked, explain on a continuation sheet.) A. [ ] Standard costs (Describe the type of standards used, e.g., current standards, basic standards, etc., on a continuation sheet.) B. [ ] Actual costs Y. [ ] Other(s) (Describe on a continuation sheet.) Z. [ ] Not applicable
2.2.2	Charged from Central or Common, Institution-owned Inventory Account at: (Check the appropriate block(s) and if more than one is checked, explain on a continuation sheet.) A. [ ] Standard costs (Describe the types of standards used on a continuation sheet.) B. [ ] Average Costs C. [ ] First in, first out D. [ ] Last in, first out Y. [ ] Other(s) (Describe on a continuation sheet.) Z. [ ] Not applicable

FORM CASB- DS-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.3.0	Timing of Charging Direct Materials. (Check the appropriate block(s) in each column to indicate the point in time at which materials are charged to Government contracts and grants or similar cost objectives, and if more than one block is checked in a column, explain on a continuation sheet.)

	Direct Charge Items (1)	Common Inventory Items (2)
A. When orders are placed	[ ]	[ ]
B. When material is received, or when fabricated, if fabricated in house	[ ]	[ ]
C. When material is issued or released to Government contracts and grants or similar cost objectives	[ ]	[ ]
D. When material is consumed or incorporated in end product	[ ]	[ ]
E. When invoices are vouchered or paid	[ ]	[ ]
Y. Other(s) (Describe on a continuation sheet.)	[ ]	[ ]
Z. Not applicable	[ ]	[ ]

2.4.0	Variances from Standard Costs for Direct Materials. (Do not complete this item unless you use a standard cost method, i.e., you have checked Block A of Item 2.2.2. If standard costs are used, describe variance accounts and method of disposing of balances on a continuation sheet.)

FORM CASB- DS-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.5.0	Method of Charging Direct Personal Services. (Check the appropriate block(s) for each Direct Personal Services Category to show how it is charged to Government contracts and grants or similar cost objectives, and if more than one block is checked in a column, explain on a continuation sheet.)

	Direct Personal Services Category		
	Professional (Including Faculty) (1)	Services (Shops, etc.) (2)	Other Non-Professional (3)
A. Payroll Distribution Method (Individual/actual rates)	[ ]	[ ]	[ ]
B. Average costs/rates (Describe the type of rates and extent of use on a continuation sheet.)	[ ]	[ ]	[ ]
C. Standard costs/rates (Describe the type of standards used on a continuation sheet.)	[ ]	[ ]	[ ]
D. Stipulated Salary Support	[ ]	[ ]	[ ]
Y. Other(s) (Describe on a continuation sheet.)	[ ]	[ ]	[ ]
Z. Personal Services category is not applicable	[ ]	[ ]	[ ]

2.6.0	Variances from Standard Costs for Direct Salaries and Wages. (Do not complete this item unless you use a standard cost/rate method, i.e., you have checked Block C of Item 2.5.0 for any direct salaries and wages category. If Standard costs are used, describe variance accounts and method of disposing of balances on a continuation sheet.)
2.7.0	Credits to Contract or Grant Costs. When Government contracts, grants, or similar cost objectives are credited for the following circumstances, are the rates of direct salaries and wages, direct materials, other direct costs and applicable indirect costs always the same as those for the original charges? (Check one block for each circumstance, and for each "No" answer, explain on a continuation sheet how the credit differs from original charge.)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.7.0	(Continued)

Circumstance	A. Yes	B. No	Z. Not Applicable
(a) Transfers to other projects, grants or contracts	[ ]	[ ]	[ ]
(b) Unused or excess materials remaining upon completion of grant or contract	[ ]	[ ]	[ ]

2.8.0	Interorganizational Transfers. This item is directed only to those materials, supplies, and services which are, or will be, transferred to you from organizational units under common control with you. (Check the appropriate block(s) in each column to indicate the basis used by you as transferee to charge the cost or price of interorganizational transfers or materials, supplies, and services to Government contracts, grants or similar cost objectives. If more than one block is checked in a column, explain on a continuation sheet.)

Basis	Materials (1)	Supplies (2)	Services (3)
A. At full cost excluding transferor's general administrative and general expenses	[ ]	[ ]	[ ]
B. At full cost including transferor's general administrative and general expenses	[ ]	[ ]	[ ]
C. At full cost (A or B above) plus a markup percentage	[ ]	[ ]	[ ]
D. At established catalog or market price or prices based on adequate competition	[ ]	[ ]	[ ]
Y. Other(s) (Describe on a continuation sheet.)	[ ]	[ ]	[ ]
Z. Interorganizational transfers are not applicable	[ ]	[ ]	[ ]

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 91 379
COLLEGES AND UNIVERSITIES

PART III - DIRECT VS. INDIRECT

NAME OF REPORTING UNIT

Item No.	Item Description
3.1.0	Criteria for Determining How Costs are Charged to Government Contracts and Grants and Similar Cost Objectives such as Other Sponsored Research, Departmental Research, Instruction or Professional and Public Service Activities. (Describe on a continuation sheet your criteria for determining whether costs are charged directly or indirectly.)
3.2.0	Treatment of Costs of Specified Functions, Elements of Cost, or Transactions. (For each of the functions, elements of cost or transactions listed in Items 3.2.1, 3.2.2, and 3.2.3, enter one of the Codes A through F, or Y, to indicate how the item is treated. Enter Code Z in those blocks that are not applicable to you. Also, specify the name(s) of the indirect pool(s) for each function, element of cost, or transaction coded E or F. If Code E, Sometimes direct/Sometimes indirect, is used and if there is a deviation from the criteria described in response to Item 3.1.0, explain on a continuation sheet the circumstances involved which cause the deviation.)

Treatment Code

A. Direct material
B. Direct Salaries and Wages
C. Direct material and salaries and wages
D. Other direct costs
E. Sometimes direct/Sometimes indirect
F. Indirect only
Y. Other(s) (Describe on a continuation sheet.)
Z. Not applicable

3.2.1 Functions, Elements of Cost, or Transactions Relative to Direct Materials.

	Treatment Code	Name of Pool(s)
(a) Cash discounts on purchases	[ ]	
(b) Freight in	[ ]	
(c) Income from sale of scrap	[ ]	
(d) Income from sale of salvage	[ ]	
(e) Incoming material inspection	[ ]	
(f) Inventory adjustments	[ ]	
(g) Purchasing	[ ]	
(h) Trade discounts, refunds, rebates, and allowances on purchases	[ ]	

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COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 91 379
COLLEGES AND UNIVERSITIES

PART III - DIRECT VS. INDIRECT

NAME OF REPORTING UNIT

Item No.	Item Description
3.2.2	Functions, Elements of Cost, or Transactions Relative to Direct Salaries and Wages

	Treatment Code	Name of Pool(s)
(a) Health insurance	[ ]	
(b) Holiday differential (premium pay)	[ ]	
(c) Overtime premium pay	[ ]	
(d) Pension costs	[ ]	
(e) Shift premium pay	[ ]	
(f) Training	[ ]	
(g) Travel and subsistence	[ ]	
(h) Vacation pay	[ ]	
(i) Sabbatical Leave	[ ]	
(j) Tuition and fees paid	[ ]	
(k) Tuition remission	[ ]	

3.2.3 Functions, Elements of Cost, or Transactions -- Miscellaneous

(a) Computer operations	[ ]	
(b) Grant and Contract administration	[ ]	
(c) Professional services (consultant fees)	[ ]	
(d) Rearrangement costs	[ ]	
(e) Royalties	[ ]	
(f) Service activities (shops, duplicating, etc.)	[ ]	
(g) Special test equipment (as defined in ASPR 13-101.6 or other pertinent procurement regulations)	[ ]	

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART III - DIRECT VS. INDIRECT
	NAME OF REPORTING UNIT

Item No.	Item Description
3.2.3	Functions, Elements of Cost, or Transactions -- Miscellaneous (Continued) (h) Specialized service facilities operated by the institution (wind tunnels, reactors, etc.) [ ] _____ (i) Subcontract costs [ ] _____ (j) Secretarial services [ ] _____ (k) Clerical services [ ] _____
3.3.0	Other Costs Charged Direct to Contracts and Grants. (Describe on a continuation sheet all other significant functions, elements of cost or transactions charged to Government contracts or grants or similar cost objectives as direct material, direct salaries and wages or other direct costs. Do not include functions or costs covered in Items 2.1.0, 2.5.0, and 3.2.0 which are always charged direct. Describe also whether there are any deviations from the criteria set out in Item 3.1.0 with respect to any continuation sheet items.)

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COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 91 379
COLLEGES AND UNIVERSITIES

PART IV - INDIRECT COSTS

NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part IV The following apportionment and Allocation Base Codes are provided for use in connection with Items 4.1.0, 4.2.0 and 4.3.0. A. Salaries and wages B. Salaries and wages and fringe benefits C. Total expenditures D. Modified total expenditures (explain how modified) E. Square feet/cubic feet F. Usage G. Unit of product H. Total population I. Number of students (head count) J. Number of students (full-time equivalent) K. Student hours--classroom and work performed Y. Other(s) or more than one basis (Describe on a continuation sheet.) Z. Pool not applicable
4.1.0	Indirect Cost Pools and Apportionment and Allocation Bases. (Enter for each type of indirect cost pool one of the Allocation Base Codes A through J or Y, to indicate the basis for allocating such pool of expense between research, instruction and other institutional activities. If a different base is used for apportionment between research and instruction and other activities than is used for allocation between research and instruction, use Code Y and explain on a continuation sheet. Enter Code Z in those blocks for types of pools that are not applicable to the reporting unit.)

Type of Pool	Allocation Base Code
(a) Building use charge or depreciation	[ ]
(b) Equipment use charge or depreciation	[ ]
(c) Utilities	[ ]
(d) Plant operation and maintenance	[ ]
(e) General administrative and general expense	[ ]
(f) Departmental administration	[ ]
(g) Research administration	[ ]
(h) Library expense	[ ]
(i) Student services	[ ]
(j) Fringe benefits	[ ]
(k) Other pools (Enter Code Y on this line if other pools are used and identify on a continuation sheet each such pool and its Allocation Base Code. If no other pools are used, enter Code Z.)	[ ]

Item No.	Item Description
4.2.0	Indirect Cost Distribution Rates used for distributing indirect costs to contracts and grants.

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PART IV - INDIRECT COSTS

NAME OF REPORTING UNIT

Item No.	Item Description
4.2.0 Continued	Rate Type Code OMB Circular A-21 provides for the following types of rates to be used in distributing indirect costs to contracts and grants: A. Predetermined Fixed Rates B. Negotiated Fixed Rates with carry forward provisions C. Provisional rate with post determination D. Negotiated Lump Sum (describe how computed on continuation sheet) E. Abbreviated Procedure Y. Other (describe on continuation sheet) Z. Rate not applicable
4.2.1	Indirect Cost Rates List the indirect cost rate or rates used by your institution to distribute indirect costs to contracts and grants. Describe for each rate whether it applies to research, instructional, public service or other activity. Enter for each indirect cost rate the allocation base code A through J or Y listed on page 10 and the rate type code A through E or Y above which are applicable to that rate.

	Description of indirect Cost Rates	Allocation Base Code	Rate Type Code
4.2.2	Research rates	(1)	(2)
	(a)	[ ]	[ ]
	(b)	[ ]	[ ]
	(c)	[ ]	[ ]
4.2.3	Instructional rates		
	(a)	[ ]	[ ]
	(b)	[ ]	[ ]
4.2.4	Public Service rates		
	(a)	[ ]	[ ]
	(b)	[ ]	[ ]
4.2.5	Other rates (Enter Code Y on this line if other rates are used and identify on a continuation sheet each such rate as well as its Allocation Base Code and its Rate Type Code.)	[ ]	[ ]

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART IV - INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
4.3.0	Service Centers and Allocation Bases. Service centers are departments or other functional units which perform specific technical and/or administrative services for the benefit of other units within a reporting unit. Category Code Generally, costs incurred by such centers are, or can be, charged or allocated (i) partially to specific contracts and grants as direct costs and partially to indirect cost pools (such as Departmental Administration) for subsequent reallocation referred to herein as Category "A" or (ii) only to several other indirect cost pools (such as operations and maintenance, research administration, student services, etc.) for subsequent reallocation, referred to herein as Category "B". Rate Code Some service centers may use predetermined billing or costing rates to charge or allocate the costs (Rate Code A) while others may charge or allocate on an actual basis (Rate Code B). (Enter in Column (1) for each service center, Code A or B to indicate the category of pool. Enter in Column (2) one of the Allocation Base Codes A through J, or Y, listed on Page 10, to indicate the basis of charging or allocating service center costs. Enter in Column (3) Rate Code A or B to describe the costing method used. Enter Code Z in Column (1) only, if any service center is not applicable to the reporting unit.)

Service Center	Category Code (1)	Allocation Base Code (2)	Rate Code (3)
(a) Scientific computer operations	[ ]	[ ]	[ ]
(b) Business data processing	[ ]	[ ]	[ ]
(c) Photography services	[ ]	[ ]	[ ]
(d) Reproduction services	[ ]	[ ]	[ ]
(e) Art services	[ ]	[ ]	[ ]
(f) Technical typing services	[ ]	[ ]	[ ]
(g) Communication services	[ ]	[ ]	[ ]
(h) Glass blowing	[ ]	[ ]	[ ]
(i) Auto pool services	[ ]	[ ]	[ ]
(j) Institution aircraft services	[ ]	[ ]	[ ]
(k) Wind tunnels	[ ]	[ ]	[ ]
(l) Personnel	[ ]	[ ]	[ ]

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART IV — INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
4.3.0	Continued

Service Center	Category Code (1)	Allocation Base Code (2)	Rate Code (3)
(m) Material handling/procurement	[ ]	[ ]	[ ]
(n) Accounting services/payroll	[ ]	[ ]	[ ]
(o) Security	[ ]	[ ]	[ ]
(p) Fringe benefits	[ ]	[ ]	[ ]
(q) Quality control	[ ]	[ ]	[ ]
(r) Other service centers (Enter Code Y on this line if other service centers are used and identify on a continuation sheet each such service center, its Category Code, Allocation Base Code, and Rate Code. If no other service centers are used, enter Code Z in Column 1.)	[ ]	[ ]	[ ]

4.4.0	Treatment of Variances from Actual Cost (Underabsorption or Overabsorption). Where predetermined billing or costing rates are used to charge costs of service centers to Government contracts and grants, other final cost objectives, or indirect cost pools (Rate Code A in Column (3) of Item 4.3.0), variances from actual costs are: (Check the appropriate block(s) and if more than one is checked, explain on a continuation sheet.) A. [ ] Prorated to users on the basis of charges made, at least once annually B. [ ] All charged or credited to indirect cost pool(s) at least once annually C. [ ] Variances carried forward to a subsequent period with rates adjusted to correct under-or over-absorption of costs Y. [ ] Other(s) (Describe on a continuation sheet.) Z. [ ] Service center with variance is not applicable to reporting unit
4.5.0	Major Types of Indirect Costs. (For each pool coded other than Z in Items 4.1.0, and 4.3.0, list on a continuation sheet the major functions, activities, and elements of cost included.)
4.6.0	Allocation Base. (For each allocation base code used in Item 4.1.0, 4.2.0, and 4.3.0, describe on a continuation sheet the makeup of the base; for example, if direct salaries and wages are used, are overtime premium, fringe benefits, etc., included.)

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART IV - INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
4.7.0	Application of Indirect Cost Rates to Specified Transactions or Costs. This item is directed to ascertaining your practice in special situations where, in lieu of establishing a separate indirect cost pool, allocation is made from an established pool at less than the normal full rate for that pool. The term "less than full rate" below applies to this type of indirect cost allocation practice. The term does not apply to situations where, as in some cases of off-site activities, etc., a separate indirect cost pool and base are used and the rate of such activities is lower than the "in-house" rate. (For each of the transactions or costs listed below, enter one of the following codes to indicate your indirect cost allocation practice with respect to that transaction or cost. If Code A, Less than full rate, is entered, describe on a continuation sheet the major types of expense in Item 4.1.0 that are covered by such a rate. If Code B, Full rate, is entered, identify on a continuation sheet the rate(s) reported under Item 4.2.0 which are applicable. If Code C, Combination of A and B, is entered, describe on a continuation sheet the applicable expense and pool data.) Rate Code A. Less than full rate B. Full rate C. Combination of A and B D. No indirect cost is applied Z. Transaction or cost is not applicable to reporting unit Transaction or Cost to Which Indirect Costs May be Allocated — Rate Code (a) Subcontract costs [ ] (b) Purchased labor [ ] (c) Government-furnished materials [ ] (d) Interorganizational transfers in [ ] (e) Interorganizational transfers out [ ] (f) Self-constructed depreciable assets [ ] (g) Labor on installation of assets [ ] (h) Off-site work [ ] (i) Other transactions or costs (Enter Code A on this line if there are other transactions or costs to which less than full rate is applied. List such transactions or costs on a continuation sheet, and for each describe the major types of expenses covered by such a rate. If there are no other such transactions or costs, enter Code Z.) [ ]

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART IV - INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
4.8.0	Proposal Costs. Proposal costs as defined in Section J. 28 of OMB Circular No. A-21 or other pertinent procurement regulations, as revised are: (Check one.) A. [ ] "Burdened" with appropriate full indirect cost rate(s) B. [ ] Not so "burdened" (Explain on a continuation sheet) Z. [ ] Not applicable
4.8.1	Proposal costs as defined in 4.8.0 are treated as follows: (Check the appropriate block(s) and if more than one block is checked, explain on a continuation sheet.) A. [ ] Charged to the general administrative and general expense cost pool B. [ ] Charged to research administration cost pool C. [ ] Charged to departmental administration cost pool D. [ ] Charged directly to contracts and grants E. [ ] Charged directly to instruction Y. [ ] Other(s) (Describe on a continuation sheet.) Z. [ ] Not applicable

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART V--DEPRECIATION AND CAPITALIZATION PRACTICES NAME OF REPORTING UNIT

Item No.	Item Description

5.1.0 Depreciating Tangible Assets for Government Contract and Grant Costing. (For each of the asset categories listed on Page 17, enter a code from A through G in Column (1) describing the method of depreciation (Code F for assets that are expensed); a code from A through E in Column (2) describing the basis for determining useful life; a code from A through C in Column (3) describing how depreciation methods or use charges are applied to property units; and a Code A, B or C in Column (4) indicating whether or not residual value is deducted from the total cost of depreciable assets. Enter Code Y in each column of an asset category where another or more than one method applies. Enter Code Z in Column (1) only, if an asset category is not applicable.)

Column (1)--Depreciation Method Code

A. Straight line
B. Declining balance
C. Sum-of-the-years digits
D. Machine hours
E. Unit of production
F. Expensed at acquisition
G. Use charge
Y. Other or more than one method (Describe on a continuation sheet.)
Z. Asset category is not applicable

Column (2)--Useful Life Code

A. U.S. Treasury Department guidelines
B. Replacement experience
C. Term of lease
D. Engineering estimate
E. As prescribed for use charge by the Office of Management and Budget Circular No. A-21
Y. Other or more than one method (Describe on a continuation sheet.)

Column (3)--Property Units Code

A. Individual units are accounted for separately
B. Applied to groups of assets with similar service lives
C. Applied to groups of assets with varying service lives
Y. Other or more than one method (Describe on a continuation sheet.)

Column (4)--Residual Value Code

A. Residual value is deducted
B. Residual value is covered by the depreciation method (e.g., declining balance
C. Residual value is not deducted
Y. Other or more than one method (Describe on a continuation sheet.)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART V--DEPRECIATION AND CAPITALIZATION PRACTICES NAME OF REPORTING UNIT

Item No.	Item Description

5.1.0 Continued.

Asset Category	Depreciation Method Code (1)	Useful Life Code (2)	Property Units Code (3)	Residual Value Code (4)
(a) Land improvements	[ ]	[ ]	[ ]	[ ]
(b) Buildings	[ ]	[ ]	[ ]	[ ]
(c) Building improvements	[ ]	[ ]	[ ]	[ ]
(d) Leasehold improvements	[ ]	[ ]	[ ]	[ ]
(e) Machinery and equipment	[ ]	[ ]	[ ]	[ ]
(f) Furniture and fixtures	[ ]	[ ]	[ ]	[ ]
(g) Automobiles and trucks	[ ]	[ ]	[ ]	[ ]
(h) Data processing equipment	[ ]	[ ]	[ ]	[ ]
(i) Programming/reprogramming costs	[ ]	[ ]	[ ]	[ ]
(j) Patterns and dies	[ ]	[ ]	[ ]	[ ]
(k) Tools	[ ]	[ ]	[ ]	[ ]
(l) Aircraft	[ ]	[ ]	[ ]	[ ]
(m) Laboratory and test equipment	[ ]	[ ]	[ ]	[ ]
(n) (Enter Code Y on this line if other asset categories are used and enumerate on a continuation sheet each such asset category and the applicable codes. Otherwise enter Code Z.)	[ ]	[ ]	[ ]	[ ]

5.2.0 Fully Depreciated Assets. Where depreciation accounting methods are used to charge Government contracts and grants for the use of tangible fixed assets, are charges made after such assets have been fully depreciated? (Check one. If Yes, describe the basis for the charge on a continuation sheet. Check Code Z if depreciation accounting methods are not used.)

A. [ ] Yes B. [ ] No Z. [ ] Not applicable

5.3.0 Capitalization or Expensing of Specified Costs. (Check one block on each line to indicate your practices regarding capitalization or expensing of specified costs incurred in connection with capital assets. If the same specified cost is sometimes expensed and sometimes capitalized, check Blocks A and B and describe on a continuation sheet the circumstances when each method is used.)

Cost	A. Expensed	B. Capitalized	Z. Not Applicable
(a) Freight-in	[ ]	[ ]	[ ]
(b) Installation costs	[ ]	[ ]	[ ]
(c) Sales taxes	[ ]	[ ]	[ ]
(d) Excise taxes	[ ]	[ ]	[ ]
(e) Architect-engineer fees	[ ]	[ ]	[ ]
(f) Overhauls (extraordinary repairs)	[ ]	[ ]	[ ]
(g) Major modifications or betterments	[ ]	[ ]	[ ]

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91-379 COLLEGES AND UNIVERSITIES	PART V--DEPRECIATION AND CAPITALIZATION PRACTICES
	NAME OF REPORTING UNIT

Item No.	Item Description
5.4.0	Criteria for Capitalization. (Enter (a) the minimum dollar amount of expenditures which are capitalized for acquisition, addition, alteration and improvement of capital assets, and (b) the minimum number of expected life years of assets which are capitalized. Use leading zeros for dollar amount, e.g., 0150 for $150. If more than one dollar amount or number applies, show the information for the majority of your capitalized assets, and enumerate on a continuation sheet the dollar amounts and/or number of years for each category or subcategory of assets involved which differs from those for the majority of assets.) (a) Minimum dollar amount ☐☐☐☐ (b) Minimum life years [ ]
5.5.0	Group or Mass Purchase. Are group or mass purchases (initial complement) of similar items, which individually are less than the capitalization amount indicated above, capitalized? (Check one.) A. [ ] Yes B. [ ] No

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	NAME OF REPORTING UNIT

Item No.	Item Description	Professorial (1)	Other Professional (2)	Nonprofessional (3)
6.1.0	Method of Charging and Crediting Vacation, Holiday, Sick Pay and Sabbatical Leave. (Check the appropriate block(s) in each column of Items 6.1.1 through 6.1.5 to indicate the method used to charge, or credit, any unused or unpaid vacation, holiday, sick pay, or Sabbatical leave. If more than one method is checked in a column, explain on a continuation sheet.)			
6.1.1	Charges for Vacation Pay			
	A. When accrued (earned)	[ ]	[ ]	[ ]
	B. When taken	[ ]	[ ]	[ ]
	Y. Other(s) (Describe on a continuation sheet.)	[ ]	[ ]	[ ]
6.1.2	Charges for Holiday Pay			
	A. When accrued (earned)	[ ]	[ ]	[ ]
	B. When taken	[ ]	[ ]	[ ]
	Y. Other(s) (Describe on a continuation sheet.)	[ ]	[ ]	[ ]
6.1.3	Charges for Sick Pay			
	A. When accrued (earned)	[ ]	[ ]	[ ]
	B. When taken	[ ]	[ ]	[ ]
	Y. Other(s) (Describe on a continuation sheet.)	[ ]	[ ]	[ ]
6.1.4	Charges for Sabbatical Leave			
	A. When accrued (earned)	[ ]	[ ]	[ ]
	B. When taken	[ ]	[ ]	[ ]
	Y. Other(s) (Describe on a continuation sheet.)	[ ]	[ ]	[ ]
	Z. Not applicable	[ ]	[ ]	[ ]

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91-379 COLLEGES AND UNIVERSITIES	PART VI - OTHER COSTS AND CREDITS
	NAME OF REPORTING UNIT

Item No.	Item Description	Professorial (1)	Other Professional (2)	Nonprofessional (3)
6.1.5	Credits for Unused or Unpaid Vacation, Holiday, or Sick Leave			
	A. Credited to Government grants and contracts at least once annually	[ ]	[ ]	[ ]
	B. Credited to indirect cost pools at least once annually	[ ]	[ ]	[ ]
	C. Credited to Other (Miscellaneous) Income	[ ]	[ ]	[ ]
	D. Not credited	[ ]	[ ]	[ ]
	Y. Other(s) (Describe on a continuation sheet.)	[ ]	[ ]	[ ]
	Z. Not applicable	[ ]	[ ]	[ ]

6.2.0 Supplemental Unemployment (Extended Layoff) Benefit Plans. Costs of such plans are charged to Government contracts and grants: (Check the appropriate block(s) and if more than one is checked, explain on a continuation sheet.)

A. [ ] When actual payments are made directly to employees

B. [ ] When accrued (book accrual or funds set aside but no trust fund involved)

C. [ ] When contributions are made to a nonforfeitable trust fund

D. [ ] Not charged

Z. [ ] Not applicable

Y. [ ] Other(s) (Describe on a continuation sheet.)

6.3.0 Severance Pay. Costs of normal turnover severance pay, as defined in Section J.36 of OMB Circular No. A-21, or other pertinent procurement regulations, which are charged directly or indirectly to Government contracts and grants, are based on: (Check the appropriate block(s) and if more than one is checked, explain on a continuation sheet.)

A. [ ] Actual payments made

B. [ ] Accrued amounts on the basis of past experience

C. [ ] Not charged

Y. [ ] Other(s) (Describe on a continuation sheet.)

Z. [ ] Not applicable

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91-379 COLLEGES AND UNIVERSITIES	PART VI - OTHER COSTS AND CREDITS
	NAME OF REPORTING UNIT

Item No.	Item Description
6.4.0	Incidental Receipts. (Check the appropriate block(s) to indicate the method used to account for receipts from fees, fines, rents and personal services when related costs have been charged to Government contracts and grants. If more than one is checked, explain on a continuation sheet.) A. [ ] The entire amount of the receipt is credited to the same indirect cost pools to which related costs have been charged B. [ ] The entire amount of the receipt is credited directly to Other (Miscellaneous) Income Y. [ ] Other(s) (Describe on a continuation sheet.) Z. [ ] Not applicable
6.5.0	Proceeds from Employee Welfare Activities. Employee welfare activities include all of those activities set forth in Section J.11 of OMB Circular No. A-21 or other pertinent procurement regulations. (Check the appropriate block(s) to indicate the practice followed in accounting for the proceeds from such activities. If more than one is checked, explain on a continuation sheet.) A. [ ] Proceeds are turned over to an employee-welfare organization or fund; such proceeds are reduced by all applicable costs such as depreciation, heat, light and power B. [ ] Same as A., except the proceeds are not reduced by all applicable costs C. [ ] Proceeds are credited at least annually to the appropriate indirect cost pools to which costs have been charged D. [ ] Proceeds are credited to Other (Miscellaneous) Income Y. [ ] Other(s) (Describe on a continuation sheet.) Z. [ ] Not applicable

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART VII--DEFERRED COMPENSATION AND INSURANCE COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part VII
	This part covers pension costs and certain types of deferred incentive compensation and insurance costs. Some organizations may record all of these costs at the main campus level or for public institutions at the governmental unit level, while others may record them at subordinate organization levels. Still others may record a portion of these costs at the main campus level and the balance at subordinate organization levels. Reporting units, therefore, should obtain the necessary information from the organizational level at which such costs are recorded.
7.1.0	Pension Costs. The actuarial terms used in this item are defined in Opinion Number 8 of the Accounting Principles Board, American Institute of Certified Public Accountants.
7.1.1	Pension Plans Charged to Government Contracts and Grants. Does your organization have one or more pension plans whose costs are charged to Government contracts and grants? (Check one.) A. [ ] Yes (If Yes, list each such plan on a continuation sheet [e.g., TIAA-CREF, University-Operated Plan, State Retirement Plan] and indicate the approximate number and type of employees covered by each plan.) B. [ ] No (If No, skip to Item 7.2.0.)
7.1.2	Is the pertinent information requested in Items 7.1.3 through 7.1.10 available to the reporting unit? A. [ ] Yes (Complete Items 7.1.3 through 7.1.10 for the three plans covering the greatest number of employees whose pension costs are charged to Government contracts and grants.) B. [ ] No (If no, skip to Item 7.2.0.)
7.1.3	Extent of Funding. (Check one block for each plan. In the event the amount funded for each plan is different from the amount charged on the books of account, describe the difference on a continuation sheet. If the actuarial cost method in use does not separately develop prior service costs, block A should be checked. If normal pension costs are not fully funded, check block "Y" and explain funding practices on a continuation sheet.)

	Plan I	Plan II	Plan III
A. Normal costs only	[ ]	[ ]	[ ]
B. Normal costs plus interest on past or prior service costs	[ ]	[ ]	[ ]

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART VII--DEFERRED COMPENSATION AND INSURANCE COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description

	Plan I	Plan II	Plan III
C. Normal costs plus an amortized portion of past or prior service costs	[ ]	[ ]	[ ]
Y. Other (Describe on a continuation sheet.)	[ ]	[ ]	[ ]
Z. Not applicable	[ ]	[ ]	[ ]

7.1.4 Actuarial Cost Method. (Check one block for each plan to show the method used to compute normal and past or prior service costs.)

	Plan I	Plan II	Plan III
A. Accrued benefit cost	[ ]	[ ]	[ ]
B. Aggregate	[ ]	[ ]	[ ]
C. Attained age--initial liability frozen	[ ]	[ ]	[ ]
D. Attained age--initial liability not frozen	[ ]	[ ]	[ ]
E. Entry age--initial liability frozen	[ ]	[ ]	[ ]
F. Entry age--initial liability not frozen	[ ]	[ ]	[ ]
G. Individual level premium	[ ]	[ ]	[ ]
Y. Other (Describe on a continuation sheet.)	[ ]	[ ]	[ ]
Z. Not applicable	[ ]	[ ]	[ ]

Item No.	Item Description

7.1.5 **Frequency of Actuarial Revaluations.** (*Check one block for each plan.*)

	Plan I	Plan II	Plan III
A. Annually	☐	☐	☐
B. 2-3 years	☐	☐	☐
C. 4-5 years	☐	☐	☐
Y. Other (*Describe on a continuation sheet.*)	☐	☐	☐
Z. Not applicable	☐	☐	☐

7.1.6 **Criteria for Changing Actuarial Computations and Assumptions.** (*Describe on a continuation sheet your criteria for determining when actuarial assumptions and computations for your funded plan(s) are changed.*)

7.1.7 **Amortization of Past or Prior Service Costs.** (*Check one block for each plan to show the period over which past or prior service costs are amortized.*)

	Plan I	Plan II	Plan III
A. 10 years or less	☐	☐	☐
B. 11-20 years	☐	☐	☐
C. 21-40 years	☐	☐	☐
Y. More than one amortization schedule (*Describe on a continuation sheet.*)	☐	☐	☐
Z. Not applicable	☐	☐	☐

7.1.8 **Adjustment for Actuarial Gains and Losses.** (*Check one block for each plan to show the period for which costs are adjusted for actuarial gains and losses. If actuarial losses for a plan are treated differently from actuarial gains, describe the difference on a continuation sheet.*)

	Plan I	Plan II	Plan III
A. Adjustment of past years' costs	☐	☐	☐
B. Adjustment of current year's costs	☐	☐	☐
C. Adjustment of future years' costs	☐	☐	☐
Y. Other (*Describe on a continuation sheet.*)	☐	☐	☐
Z. Not applicable	☐	☐	☐

7.1.9 **Unrealized Gains and Losses.** Do the actuarial gains and losses reported in Item 7.1.7 above include unrealized gains and losses? (*Check one block for each plan. If Yes is checked, describe the method of recognition of such gains and losses on a continuation sheet.*)

	Plan I	Plan II	Plan III
A. Yes	☐	☐	☐
B. No	☐	☐	☐
Z. Not applicable	☐	☐	☐

Item No.	Item Description

7.1.X Amortization of actuarial Gains and Losses.* (Check one block for each plan to show the period over which actuarial gains and losses are amortized. If the amortization of actuarial losses for a plan is treated differently from the amortization of actuarial gains, describe the difference on a continuation sheet.)

	Plan I	Plan II	Plan III
A. 10 years or less	[ ]	[ ]	[ ]
B. 11-20 years	[ ]	[ ]	[ ]
C. More than 20 years	[ ]	[ ]	[ ]
Y. Other (Describe on a continuation sheet.)	[ ]	[ ]	[ ]
Z. Not applicable	[ ]	[ ]	[ ]

7.2.0 Deferred Incentive Compensation Charged to Government Contracts and Grants.

7.2.1 Deferred Incentive Compensation. Does your organization award deferred incentive compensation which is charged to Government contracts and grants? (Check one.)

A. [ ] Yes (If Yes is checked, list each plan by name or title on a continuation sheet and show the approximate number and type of employees covered. Complete Items 7.2.2 and 7.2.3 for the three plans covering the greatest number of employees whose deferred incentive compensation cost is charged to Government contracts and grants.)

B. [ ] No (If No is checked, skip to Item 7.3.0.)

7.2.2 Qualification of Plan. (Check one block for each plan.)

	Plan I	Plan II	Plan III
A. Qualifies under section 401(a) of the Internal Revenue Code of 1954, as amended	[ ]	[ ]	[ ]
B. Does not qualify under section 401(a) of the Internal Revenue Code of 1954, as amended	[ ]	[ ]	[ ]

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART VII--DEFERRED COMPENSATION AND INSURANCE COSTS NAME OF REPORTING UNIT

Item No.	Item Description
7.2.3	Method of Charging Costs to Government Contracts and Grants (Check one block for each plan.)

	Plan I	Plan II	Plan III
A. When accrued	[ ]	[ ]	[ ]
B. When contributions are made to a trust fund	[ ]	[ ]	[ ]
C. When paid directly to employees	[ ]	[ ]	[ ]
D. When other "nonqualified" payments are made	[ ]	[ ]	[ ]
Y. Other or more than one method (Describe on a continuation sheet.)	[ ]	[ ]	[ ]

7.3.0	Employee Group Insurance Charged to Government Contracts and Grants. (Includes coverage for life, hospital, surgical, medical, long-term disability, accident, etc.)
7.3.1	Method of Providing Insurance. (Check one.) A. [ ] All by purchase B. [ ] All self-insured (If checked, skip to Item 7.4.0.) C. [ ] Combination of A and B above (Describe on a continuation sheet.) Z. [ ] Not applicable (If checked, skip to Item 7.5.0.)
7.3.2	Type of Purchased Insurance Plans. (Check one.) A. [ ] Retrospective rating (also called experience rating plan or retention plan) B. [ ] Manually rated Y. [ ] Other or more than one type (Describe on a continuation sheet.)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART VII--DEFERRED COMPENSATION AND INSURANCE COSTS NAME OF REPORTING UNIT

Item No.	Item Description
7.3.3	Treatment of Earned Refunds and Dividends from Purchased Insurance Plans. Refunds are also called experience rating credits or retroactive rating credits. All earned refunds and dividends allocable to Government contracts and grants: (Check one.) A. [ ] Are credited directly or indirectly to contracts and grants in the policy year earned, in the same manner as the premiums are charged B. [ ] Are credited directly or indirectly to contracts and grants in the year received in the same manner as the premiums are charged, not necessarily in the year earned C. [ ] Which are estimated to be received in the future are accrued each year, as applicable, to currently reflect the net annual cost of the insurance D. [ ] Or portions thereof are not credited or refunded to the contractor each year and are retained by the carriers as reserves. (If D is checked, describe on a continuation sheet (i) the purposes of the reserves, other than "claims reserves" retained by carriers and (ii) whether such reserves are refundable on call or upon termination of the policies, clauses, or auxiliary agreements which provide for reserve retentions.) Y. [ ] Other or more than one method (Describe on a continuation sheet.)
7.3.4	Employee Contributions (Contributory Purchased Insurance Plans). (Check one.) A. [ ] Plans provide that employees contribute fixed amount, employer is responsible for balance B. [ ] Plans provide for fixed percentage participation by both employer and employee Y. [ ] Other or more than one method (Describe on a continuation sheet.) Z. [ ] Not applicable
7.3.5	Employee Sharing in Refunds and Dividends (Contributory Purchased Insurance Plans). (Check one.) A. [ ] Employees do not participate in refunds and dividends unless employer's contribution is less than the refunds and dividends B. [ ] Employees share in refunds and dividends in the same fixed amount or percentage ratio as their contributions to premium costs

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART VII—DEFERRED COMPENSATION AND INSURANCE COSTS NAME OF REPORTING UNIT

Item No.	Item Description
7.3.5	Continued C. [ ] Employees do not share in refunds and dividends Y. [ ] Other or more than one method (Describe on a continuation sheet.) Z. [ ] Not applicable
7.4.0	Self-Insurance Programs (Employee Group Insurance). Costs of the self-insurance programs are charged to Government contracts and grants: (Check one.) A. [ ] When accrued (book accrual only) B. [ ] When contributions are made to a non-forfeitable fund C. [ ] When contributions are made to a forfeitable fund D. [ ] When the benefits are paid to employees E. [ ] When amounts are paid to an employee welfare plan or union Y. [ ] Other or more than one method (Describe on a continuation sheet.) Z. [ ] Not applicable
7.5.0	Workmen's Compensation, Liability and Casualty Insurance (Purchased Insurance Only). All allocable earned refunds and dividends under retrospectively rated workmen's compensation and liability insurance policies, and dividends and deposit refunds under casualty insurance policies, are: (Check one.) A. [ ] Credited directly or indirectly to Government contracts and grants in the year earned B. [ ] Credited directly or indirectly to Government contracts and grants in the year received, not necessarily in the year earned C. [ ] Accrued each year, as applicable, to currently reflect the net annual cost of the insurance D. [ ] Not credited or refunded to the contractor but are retained by the carriers as reserves Y. [ ] Other or more than one method (Describe on a continuation sheet.) Z. [ ] Not applicable
7.6.0	Self-Insurance Programs (Workmen's Compensation, Liability and Casualty Insurance.)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART VII—DEFERRED COMPENSATION AND INSURANCE COSTS NAME OF REPORTING UNIT

Item No.	Item Description
7.6.1	Workmen's Compensation and Liability. Costs of such self-insurance programs are charged to Government contracts and grants: (Check one.) A. [ ] When claims are paid or losses are incurred (no provision for reserves) B. [ ] When provisions for reserves are recorded based on the present value of the liability C. [ ] When provisions for reserves are recorded based on the full or undiscounted value, as contrasted with present value, of the liability D. [ ] When funds are set aside or contributions are made to a fund Y. [ ] Other or more than one method (Describe on a continuation sheet.) Z. [ ] Not applicable
7.6.2	Casualty Insurance. Costs of such self-insurance programs are charged to Government contracts and grants: (Check one.) A. [ ] When losses are incurred (no provision for reserves) B. [ ] When provisions for reserves are recorded based on replacement costs C. [ ] When provisions for reserves are recorded based on reproduction costs new less observed depreciation (market value) excluding the value of land and other indestructibles D. [ ] Losses are charged to fund balance with no charge to contracts and grants (no provision for reserves) Y. [ ] Other or more than one method (Describe on a continuation sheet.) Z. [ ] Not applicable

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91-379 COLLEGES AND UNIVERSITIES	PART VIII - SYSTEM OR GROUP EXPENSES NAME OF REPORTING UNIT

Item No.	Item Description
	FOR SYSTEM (HOME) OFFICE, OR GROUP (INTERMEDIATE ADMINISTRATION) OFFICE, AS APPLICABLE. This part should be completed only by the central (home) office of an educational system where such an office is responsible for administering two or more reporting units (units filing Parts I through VII of the Disclosure Statement), and where it allocates its costs to such units. Data for this part should cover the most recently completed fiscal year. For a system (home) office, such data should cover the entire institution. For a group office, they should cover the subordinate organizations administered by that group office.
8.1.0	Annual Total Current Revenues. (Check one.) A. [ ] Less than $50 million B. [ ] $50-$100 million C. [ ] $101-$200 million D. [ ] $201-$500 million E. [ ] $501 million-$1 billion F. [ ] Over $1 billion
8.2.0	Aproximate Percentage of Government Revenues to Annual Total Current Revenues. (Check one.) A. [ ] Less than 5% B. [ ] 5%-10 C. [ ] 11%-25% D. [ ] 26%-50% E. [ ] 51%-80% F. [ ] Over 80%
8.3.0	Expenses or Pools of Expenses and Methods of Allocation. For classification purposes, three methods of allocation are defined: (i) Directly Chargeable--those expenses that are charged to specific segments for centrally performed or purchased services; (ii) Separately Allocated--those individual or groups of expenses which are allocated only to a limited group of institutional segments; and (iii) Overall Allocation--the remaining expenses which are allocated to all or most institutional segments on an overall basis. Institutional segments, as used here, refer to universities, colleges or campuses which are self-contained units having most of their own academic and business administration necessary for independent operation and receiving only minor services, support and direction from a system or group office. The term includes Government-owned, contractor operated (GOCO) facilities.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91-379 COLLEGES AND UNIVERSITIES	PART VIII - SYSTEM OR GROUP EXPENSES NAME OF REPORTING UNIT

Item No.	Item Description
	Allocation Base Codes A. Total expenditures B. Total salaries and wages C. Usage D. Unit of Product E. Population Y. Other or more than one base code (Describe on continuance sheet) Z. Not applicable (Enter the type of expenses or the name of the expense pool(s) and one of the Allocation Base Codes A through E, or Y, to indicate the basis of allocation. Use a continuation sheet if additional space is required.)

	Type of Expenses or Name of Pool of Expenses	Allocation Base Code
8.3.1	Directly Chargeable	
	(a)	[ ]
	(b)	[ ]
	(c)	[ ]
	(d)	[ ]
	(e)	[ ]
8.3.2	Separately Allocated	
	(a)	[ ]
	(b)	[ ]
	(c)	[ ]
	(d)	[ ]
	(e)	[ ]

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	PART VIII - SYSTEM OR GROUP EXPENSES NAME OF REPORTING UNIT

Item No.	Item Description
8.3.3	Overall Allocation (a) [ ] (b) [ ] (c) [ ] (d) [ ] (e) [ ]
8.4.0	Major Types of Expense. (For each pool reported in Items 8.3.1, 8.3.2 and 8.3.3 list on a continuation sheet the major functions, activities, and elements of cost included.)
8.5.0	Allocation Base. (For each Allocation Base used in Items 8.3.2 and 8.3.3, describe on a continuation sheet the makeup of the base; for example, if direct labor dollars is used, are overtime premium, fringe benefits, etc., included?)
8.6.0	Overall Allocation. Are expenses in this category, Item 8.3.3, allocated to all segments? (Check one. If No is checked, list on a continuation sheet the names of excluded segments and thereasons for their exclusion from the allocation.) A. Yes B. No Z. Not applicable
8.7.0	Transfer of Expenses. Are there normally transfers of expenses from segments to system or group office? (Check one. If Yes is checked, identify on a continuation sheet the classifications of expense, the names of the segments incurring the expense, and the system or group office pools in which the expenses are included. A. [ ] Yes B. [ ] No
8.8.0	Fixed Management Charges. Are fixed amounts of expenses charged to any segments in lieu of a prorata or allocation basis? (Check one. If Yes is checked, list on a continuation sheet the names of such segments and the basis for making fixed management charges.) A. [ ] Yes B. [ ] No
8.9.0	Government Owned/Contractor Operated (GOCO) Facilities. Are system or group office expenses allocated to GOCO facilities? (Check one. If Yes is checked, describe on a continuation sheet the types of expenses involved and the method of allocation.) A. [ ] Yes B. [ ] No Z. [ ] Not applicable

FORM CASB- DS-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91 379 COLLEGES AND UNIVERSITIES	CONTINUATION SHEET Page of Pages Name of Reporting Unit

Item No.	Item Description

FORM CASB- DS-2

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