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PART I

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

(Continued inside)

PART II:

December 10, 1973—Pages 33959–34091

REMINDERS

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

This list includes only rules that were published in the FEDERAL REGISTER after October 1, 1972.

page no. and date

DECEMBER 10

CUSTOMS SERVICE—Entries, withdrawals, and invoices; additions and deletions 30882; 11–8–73

F&D—Hydrabamine phenoxymethyl penicillin; recodification technical changes, and updating 31004; 11–9–73

COAST GUARD—Anchorage size reduction; Baltimore Harbor, Md., 30740; 11–7–73, 31835; 11–19–73

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Contents

(Continued on next page)

List of CFR Parts Affected

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

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

Rules and Regulations

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

[Amdt. 19]

PART 250—DONATION OF FOODS FOR USE IN UNITED STATES, ITS TERRITORIES AND POSSESSIONS, AND AREAS UNDER ITS JURISDICTION

Retention of Standards of Eligibility for Certifying Households as in Need of Food Assistance

The regulations for the operation of the Food Distribution Program (31 FR 14297), as amended, are further amended to provide that State agencies shall continue to use, after December 31, 1973, the same standards in determining the eligibility of applicant households as in need of food assistance which were approved for use by the Food and Nutrition Service as of that date. The Regulations currently provide that such standards shall include maximum income limitations consistant with those used by the State agency in administration of its Federally aided public assistance programs. P.L. 92-603 federalizes, effective January 1, 1974, all public assistance programs, other than the Program of Aid to Families with Dependent Children, which were Federally aided prior to that date.

The income and resource standards used by States in determining the amount of a grant to families with dependent children are generally more restrictive than the standards used in determining the amount of a grant to other needy persons.

This amendment precludes the necessity for State agencies to adopt more stringent eligibility criteria after December 31, 1973, when the only Federally aided public assistance program will be the Program of Aid to Families with Dependent Children. Compliance with proposed rulemaking and public participation procedures is impracticable and unnecessary.

In § 250.6, paragraph (e) subparagraph (5) is revised to read as follows:

§ 250.6 **Obligations of distributing agencies.**

* * * * *

(e) * * *

(5) *The specific criteria to be used in certifying households as in need of food assistance.* In determining the eligibility of applicant households, each State agency shall continue to use, after December 31, 1973, the income and resource standards used as of that date which were incorporated in a plan of operation approved by FNS, unless an amendment to such standards is required or approved by FNS.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 10.550, National Archives Reference Services).

This amendment shall become effective on December 31, 1973.

Dated: December 5, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-26145 Filed 12-7-73;8:45 am]

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

[Navel Orange Reg. 301; Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation increases the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period November 30-December 6, 1973. The quantity that may be shipped is increased due to improved market conditions for Navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel 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 Navel 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 Navel Orange Regulation 301 (38 FR 32921). The marketing picture now indicates that there is a greater demand for Navel oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Navel oranges to fill the current market demand thereby making a greater quantity of Navel 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 Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1)(i) of § 907.601 (Navel Orange Regulation 301 (38 FR 32921)) are hereby amended to read as follows:

§ 907.601 **Navel Orange Regulation 301.**

* * * * *

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

(i) District 1: 1,150,000 cartons.

* * * * *

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

Dated: December 5, 1973.

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

[FR Doc.73-26147 Filed 12-7-73;8:45 am]

Title 9—Animals and Animal Products

CHAPTER II—PACKERS AND STOCKYARDS ADMINISTRATION, DEPARTMENT OF AGRICULTURE

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

General Bonding Provisions, Market Agency and Dealer Bonds

On July 29, 1971, notice was published (36 FR 14012) of proposed amendments to §§ 201.5, 201.10, 201.13, 201.27, 201.29, 201.30, 201.33, and 201.34 (9 CFR 201.5,

201.10, 201.13, 201.27, 201.29, 201.30, 201.33, and 201.34) of the regulations under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

The proposed amendments to §§ 201.5, 201.10, and 201.13 are already in effect (36 FR 23139).

On December 21, 1972, notice was published (37 FR 28186) that further action with respect to § 201.30 was being postponed. Notice was also published of proposed amendments to §§ 201.27, 201.29, 201.33, and 201.34. Any person who wished to submit written data, views, or arguments concerning the proposed amendments was invited to do so. After consideration of all relevant matter submitted by interested persons, the decision has been made to issue the amendments as proposed with certain nonsubstantive changes.

These amendments refer to the requirements for surety bonds to be filed by livestock market agencies and dealers, or trust fund agreements filed in lieu of such surety bonds. The purposes of these amendments are: to assure the safety of funds subject to such trust fund agreements filed in lieu of surety bonds and to clarify that the cash surrender value rather than the face amounts of securities subject to such agreements, shall be viewed in determining whether such funds are sufficient to meet the requirements; to suggest forms for such surety bonds and such trust fund agreements, which will comply with the regulations; to clarify the bonding requirements relating to separate buying and selling activities; to expedite the disposition of claims on such surety bonds and trust fund agreements, by providing a time limit for the filing of such claims, by providing a time delay before the filing of suit on such claims, and by providing a time limit for the filing of such suits; to prevent the depletion of the proceeds of such surety bonds and trust funds by payment for legal representation of surety or principal; and to clarify the present provisions with respect to termination of such surety bonds and impose the same requirements with respect to termination of the bond coverage of clearees, as are now in effect with respect to termination of surety bonds.

Accordingly, of the regulations under the Packers and Stockyards Act, § 201.27 is hereby amended by revising the caption and paragraph (b) thereof, and issuing a new paragraph (c) thereof, and §§ 201.29(b), 201.33, and 201.34 are hereby revised (9 CFR §§ 201.27, 201.29, 201.33, and 201.34), to read as follows:

GENERAL BONDING PROVISIONS

§ 201.27 Underwriter; equivalent in lieu of bonds; standard forms.

* * * * *

(b) A bond equivalent may be filed in lieu of a bond. A bond equivalent shall be in the form of a trust fund agreement based on funds actually deposited and readily convertible to currency in the amount required by § 201.30. Such funds shall be invested or deposited, in the name of a trustee as set forth in § 201.32, in: (1) Fully negotiable obligations of the United States, or (2) deposits or accounts fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, but no more of such funds shall be invested or deposited in any one such institution, than is so insured. The provisions of §§ 201.27 through 201.38 shall be applicable to such trust fund agreements.

(c) The following forms of a bond and trust fund agreement are suggested for use in connection with the filing of bonds or bond equivalents as required by these regulations:

Bond No. _____

BOND REQUIRED OF LIVESTOCK MARKET AGENCIES AND DEALERS UNDER THE PACKERS AND STOCKYARDS ACT, 1921, AS AMENDED

Know all men by these presents, that we_____ of _____ as Principal, and_____ as Surety, are held and firmly bound unto_____

(Trustee need not be named unless required by State, principal, or surety)

(or his successors in official position, if any) as Trustee for all persons who may be damaged through the breach of this bond, as Obligee, in the aggregate sum of_____Dollars ($_____), lawful money of the United States of America, for the payment whereof to the Obligee we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally by these presents.

Signed, sealed and dated this_____day of_____, 19____.

Now, Therefore, the Condition of this Bond is such that:

Applicable if Principal SELLS on commission: (1) If the said Principal shall pay when due to the person or persons entitled thereto the gross amount, less lawful charges, for which all livestock is sold for the accounts of others by said Principal,

Applicable if Principal BUYS on commission or as a dealer: (2) If the said Principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by said Principal for his own account or for the accounts of others, and if the said Principal shall safely keep and properly disburse all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others,

Applicable if others clear through Principal: (3) If the said Principal, acting as a clearing agency responsible for the financial obligations of other registrants engaged in buying livestock, viz.: (insert here the names of such other registrants as they appear in the application for registration),

of if such other registrants, shall (1) pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by such other registrants for their own account or for the accounts of others and (2) safely keep and properly disburse all funds coming into the hands of such Principal or such other registrants for the purpose of paying for livestock purchased for the accounts of others,

then this bond shall be null and void, otherwise to remain in full force and virtue, subject to the following terms, conditions, and limitations:

(a) This bond shall apply only to transactions occurring on or at any time after the date hereof, and before the effective date of termination hereof as hereinafter provided.

(b) Payment by the Surety to a claimant or to the Trustee in settlement of one or more claims shall discharge the Surety as to those claims and shall reduce the penal sum of this bond to the extent of such payment or payments.

(c) Any person damaged by failure of the Principal to comply with any condition clause of this bond, may maintain suit in his own name to recover on this bond even though such person is not a party named in this bond. The Trustee may maintain suit in his own name, the recovery to be made for the use of the persons damaged. Principal and Surety hereby waive every defense, if any there be, based on the fact that any person damaged or in whose name a suit shall be brought, is not a party or privy to this bond.

(d) Any claim for recovery on this bond must be filed in writing with either the Surety, or the Trustee if one is named, or the Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250, and whichever of these parties receives such a claim shall notify the other such party or parties at the earliest practicable date. All claims must be filed within 120 days of the date of the transaction on which mlaim is made. Suit thereon shall not be commenced in less than 180 days or more than 547 days (*which is approximately 18 months*) from the date of the transaction on which the claim is based.

(e) The Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, is authorized to designate a trustee to represent all claimants under this bond if (1) any claim is filed or any action is required to recover damages for breach of any condition of this bond, and if (2) a trustee is not designated herein or the trustee designated herein fails or is unable to act or serve.

(f) The Surety shall not be liable to pay any claim for recovery on this bond if it is not filed in writing within 120 days from the date of the transaction on which the claim is based, or if suit thereon is commenced less than 180 or more than 547 days (which is approximately 18 months) from the date of the transaction on which the claim is based.

(g) The proceeds of this bond shall not be used to pay fees, salaries, or expenses for

legal representation of the Surety or the Principal.

(h) The term "person" as used in this bond shall be construed to mean and include both singular and plural, corporations, partnerships, associations, individuals, and the heirs, executors, administrators, successors, or assigns thereof.

(i) The acts, omissions or failures of authorized agents or representatives of said Principal or persons whom said Principal shall knowingly permit to represent themselves as acting for said Principal shall be taken and construed to be the acts, omissions, or failures of said Principal and to be within the protection of this bond to the same extent and in the same manner as if they were the personal acts of said Principal.

(j) Termination of the clearance of a registrant under condition clause 3 of this bond may be accomplished by issuance of a rider or endorsement by the Surety herein deducting the name of the clearee. Termination of the clearance shall become effective thirty (30) days after the date of receipt of the rider or endorsement by the Administrator, Packers and Stockyards Administration, Washington, D.C.

(k) This bond may be terminated by either party hereto delivering written notice of termination to the other party and the Administrator of the Packers and Stockyards Administration at Washington, D.C., at least thirty (30) days prior to the effective date of such termination. In the event that the Surety named herein writes a new bond to replace this bond for the same principal named herein, the 30-day termination provision will be waived, and this bond will become terminated as of the effective date of the replacement bond. Immediately upon filing of a claim for recovery on this bond, unless the Surety believes that such claim is frivolous, the Surety shall cause termination of this bond in accordance with this paragraph.

(l) A fully executed duplicate of this bond and of any endorsement, amendment, rider, or other attachment hereto, shall be filed with the Area Supervisor, Packers and Stockyards Administration, for the area in which the Principal resides or has his or its principal place of business.

(m) Conditions _____ and _____ were deleted prior to execution and are not part hereof.

In witness whereof the parties hereto have executed this bond under their seals on the day and date appearing herein.

_____ [SEAL]
(Principal)

By _____
_____ [SEAL]
(Surety)

By _____
_____ [SEAL]
(Trustee—if named)

TRUST FUND AGREEMENT IN LIEU OF BOND REQUIRED OF LIVESTOCK MARKET AGENCIES AND DEALERS UNDER THE PACKERS AND STOCKYARDS ACT, 1921, AS AMENDED

Whereas, the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented, and the regulations of the Secretary of Agriculture issued pursuant thereto, require a good and sufficient surety bond or its equivalent of all market agencies and dealers as defined in the Packers and Stockyards Act to cover their obligations as such; and

Whereas, _____, hereinafter known as the Principal, is engaged in business as a market agency or dealer as defined in the Packers and Stockyards Act.

Now, therefore, the sum of _____ dollars ($), invested as follows:
_____
_____
_____
is hereby deposited by _____
(name of Principal)
with _____
(name of Trustee)
as Trustee, for the following purposes and subject to the following conditions:

Applicable if Principal SELLS on commission:

(1) If the said Principal shall pay when due to the person or persons entitled thereto the gross amount, less lawful charges, for which all livestock is sold for the accounts of others by said Principal.

Applicable if Principal BUYS on commission or as a dealer:

(2) If the said Principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by said Principal for his own account or for the accounts of others, and if the said Principal shall safely keep and properly disburse all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others.

Applicable if others clear through Principal:

(3) If the said Principal, acting as a clearing agency responsible for the financial obligations of other registrants engaged in buying livestock, viz.: (insert here the names of such other registrants as they appear in the application for registration), or if such other registrants, shall (1) pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by such other registrants for their own account or for the accounts of others and (2) safely keep and properly disburse all funds coming into the hands of such Principal or such other registrants for the purpose of paying for livestock purchased for the accounts of others.

then this fund shall not be liable; but if there shall be any defaults, failures, or neglects under any one or more of said conditions, then this fund shall be liable, subject to the following terms, conditions and limitations:

(a) This trust fund agreement shall apply only to transactions occurring on or at any time after the date hereof, and before the effective date of termination hereof as hereinafter provided.

(b) Payment by the Trustee to a claimant in settlement of one or more claims shall discharge the Trustee as to those claims and shall reduce the amount of this fund to the extent of such payment or payments.

(c) Any person damaged by failure of the Principal to comply with any condition clause of this agreement, may maintain suit in his own name to recover on this agreement even though such person is not a party named in this agreement. Principal and Trustee hereby waive every defense, if any there be, based on the fact that any person damaged or in whose name a suit shall be brought, is not a party or privy to this agreement.

(d) Any claim for recovery on this agreement may be filed with either the Trustee or the Administrator, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250, and whichever of these parties receives such a claim shall notify the other such party at the earliest practicable date. All claims must be filed within 120 days of the date of the transaction on which claim is made. Suit thereon shall not be commenced in less than 180 or more than 547 days (*which is approximately 18 months*) from the date of the transaction on which the claim is based.

(e) The Administrator, Packers and Stockyards Administration, United States Department of Agriculture, is authorized to designate a person to act as Trustee under this agreement if the Trustee designated herein fails or is unable to act or serve. In the event of such designation by the Administrator, all assets of the trust fund to which this agreement refers, shall be paid over to the person so designated by the Administrator.

(f) The Trustee shall not be liable to pay any claim for recovery on this agreement if it is not filed in writing within 120 days from the date of the transaction on which the claim is based, or if suit thereon is commenced less than 180 or more than 547 days (which is approximately 18 months) from the date of the transaction on which the claim is based.

(g) The trust fund shall not be used to pay fees, salaries, or expenses, for legal representation of the Principal.

(h) The term "person" as used in this agreement shall be construed to mean and include both singular and plural, corporations, partnerships, associations, individuals, and the heirs, executors, administrators, successors, or assigns thereof.

(i) The acts, omissions, or failures of authorized agents or representatives of said Principal or persons whom said Principal shall knowingly permit to represent themselves as acting for said Principal shall be taken and construed to be the acts, omissions, or failures of said Principal and to be within the protection of this agreement to the same extent and in the same manner as if they were the personal acts of said Principal.

(j) Termination of the clearance of a registrant under condition clause 3 of this trust fund agreement may be accomplished by issuance of a rider deducting the name of the clearee. Termination of the clearance shall become effective thirty days after the date of receipt of the rider by the Administrator, Packers and Stockyards Administration, Washington, D.C.

(k) This agreement may be terminated by either party hereto delivering written notice of termination to the other party and the Administrator of the Packers and Stockyards Administration at Washington, D.C., at least 30 days prior to the effective date of such termination. In no case shall the funds deposited with the Trustee herein be returned to the Principal until a Trust Fund Agreement Special Report Form P&SA-5, has been submitted by the Principal to the Administrator of the Packers and Stockyards Administration certifying that all obligations arising under the conditions of this agreement prior to the effective date of its termination have been discharged and authorization for the release of the funds has been received from the Administrator. Immediately upon filing of a claim for recovery on this agreement, unless the Trustee believes that such claim is frivolous, the Trustee shall cause termination of this agreement in accordance with this paragraph.

(l) The interest or dividends accruing on the above described bonds or other securities are to be delivered by the Trustee to _____ _____ hereby accepts the trust hereunder and agrees that it will hold all the bonds or other securities herein described, under the above agreement.

(m) A fully executed duplicate of this agreement, and of any endorsement, amendment, rider, or other attachment hereto, shall be filed with the Area Supervisor, Packers and Stockyards Administration, for the area in which the Principal resides or has his or its principal place of business.

(n) The securities pledged by the principal under this agreement may be disbursed to known valid claimants by the Trustee after he has been presented with a sworn proof of claim form and other papers to support such claims. In the event that claims filed against this agreement exceed the penal sum of the securities pledged hereunder, the securities shall be prorated to the known valid claimants by the Trustee. The Trustee named herein shall determine the total amount of claims prior to disbursing any portion of the securities pledged under this trust fund agreement.

(o) Conditions _____ and _____ were deleted prior to execution and are not part hereof.

Signed at _____ this _____ day of _____, 19____.

I accept the obligations as Trustee:

_____ [Seal]
(Signature of Trustee)

_____ [Seal]
(Signature of Principal)

§ 201.29 Market agencies and dealers required to file and maintain bonds.

* * * * *

(b) Every market agency buying on a commission basis and every dealer buying for his own account or for the accounts of others shall file and maintain a bond to secure the performance of his buying obligations, such bond to contain condition clause No. 2 as set forth in § 201.31(b) of these regulations. If a registrant operates as both a market agency buying on a commission basis and as a dealer, only one bond to cover both buying operations need be filed. Any person operating as a market agency selling on a commission basis and as a market agency buying on a commission basis or as a dealer, shall file and maintain separate bonds to cover his selling and buying operations. The bond maintained for his selling operations shall contain condition clause No. 1 set forth in § 201.31 (a) of these regulations and the bond for his buying operations shall contain condition clause No. 2 of § 201.31(b) of the regulations in this part.

* * * * *

§ 201.33 Persons damaged may maintain suit; filing and notification of claims; time limitations; legal expenses.

Each bond and each trust fund agreement filed pursuant to the regulations in this part shall contain provisions that:

(a) Any person damaged by failure of the principal to comply with any condition clause of the bond or trust fund agreement may maintain suit to recover on the bond or trust fund agreement even though such person is not a party named in the bond or trust fund agreement;

(b) Any claim for recovery on the bond or trust fund agreement must be filed in writing with either the surety, if any, or the trustee, if any, or the Administrator, and whichever of these parties receives such a claim shall notify the other such party or parties at the earliest practicable date;

(c) The Administrator is authorized to designate a trustee pursuant to § 201.32;

(d) The surety on the bond, or the trust fund, as the case may be, shall not be liable to pay any claim if it is not filed in writing within 120 days from the date of the transaction on which the claim is based, or if suit thereon is commenced less than 180 or more than 547 days (which is approximately 18 months) from the date of the transaction on which the claim is based;

(e) The proceeds of the bond, or the trust fund, as the case may be, shall not be used to pay fees, salaries, or expenses, for legal representation of the surety or the principal.

§ 201.34 Termination of market agency and dealer bonds.

(a) Each bond shall contain a provision requiring that, prior to terminating such bond, at least 30 days' notice in writing shall be given to the Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250, by the party terminating the bond. Such provision may state that in the event the surety named therein writes a replacement bond for the same principal, the 30-day notice requirement may be waived and the bond will be terminated as of the effective date of the replacement bond.

(b) Each bond filed by a market agency who clears other registrants who are named in the bond shall contain a provision requiring that, prior to terminating the bond coverage of any clearee named therein, at least 30 days' notice in writing shall be given to the Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250, by the surety. Such written notice shall be in the form of a rider or endorsement to be attached to the bond of the clearing agency.

The language of the amendments differs in certain respects from that contained in the notices of proposed rulemaking published in the FEDERAL REGISTER. The changes are not of a substantive nature. It is found, therefore, that further notice and public procedure thereon are unnecessary.

These amendments shall become effective on March 1, 1974: *Provided, however,* That all market agencies and dealers who have surety bonds in effect on March 1, 1974, shall have until the next anniversary date of such bonds to modify such bonds in accordance with these amendments, and market agencies and dealers who have bond equivalents in the form of trust fund agreements in effect on March 1, 1974, shall have until September 1, 1974, to modify such equivalents in accordance with these amendments.

Done at Washington, D.C., December 4, 1973.

(Sec. 407 of the Packers and Stockyards Act, 42 Stat. 159, as amended, 7 U.S.C. 228; and 57 Stat. 422, 7 U.S.C. 204; 37 FR 28463 et seq.)

MARVIN L. MCLAIN,
Administrator, Packers and Stockyards Administration.

[FR Doc.73-26150 Filed 12-7-73;8:45 am]

Title 10—Atomic Energy

CHAPTER I—ATOMIC ENERGY COMMISSION

TRANSFER OF RADIOACTIVE MATERIAL

Requirements

The Atomic Energy Commission published in the FEDERAL REGISTER on February 13, 1973 (38 FR 4351) proposed amendments to its regulations in 10 CFR Parts 30, 40, and 70 to specify requirements for the transfer by licensees of byproduct material, source material, and special nuclear material.

Interested persons were invited to submit written comments or suggestions for consideration in connection with the proposed amendments within 45 days after publication of the notice of proposed rule making in the FEDERAL REGISTER.

After consideration of the comments received and other factors involved, the Commission has adopted the proposed amendments to 10 CFR Parts 30, 40, and 70, with certain modifications, and has also amended 10 CFR Parts 31 and 150 to incorporate appropriate cross-references therein to the new and amended sections of Part 30, 40, and 70. The changes in the effective rule from the proposed rule, based primarily on the public comments received, are summarized as follows:

(1) Some Agreement States require registration of devices containing generally licensed radioactive material after receipt of the material. Since such registration provisions do not require verification prior to transfer of the material, §§ 30.41(c), 40.51(c), and 70.42(c) have been modified to require verification only of transferees' general licenses which require the licensee to register with the Commission or an Agreement State prior to receipt of the radioactive material.

(2) A conforming change has been made in § 31.2(a) of 10 CFR Part 31 to include § 30.41 in the list of cross-referenced sections to which the general licenses in 10 CFR Part 31 are subject.

(3) New §§ 70.42(a) (3) and (4) are added to 10 CFR Part 70 to clarify that transfers of special nuclear material may be made to contractors of the Commission and carriers who are exempt from the requirements for a license pursuant to §§ 70.11 and 70.12 of that part and equivalent Agreement State regulations. Paragraph 70.42(a) (3) and (4) are renumbered §§ 70.42(a) (5) and (6), respectively.

(4) A conforming change has been made in § 150.20(b) of 10 CFR Part 150 to include §§ 30.41, 40.51, and 70.42 in the list of cross-referenced sections to which the general license in § 150.20 is subject.

Several suppliers of radioactive material commented that a reasonable time should be permitted for them to set up a transferee verification system and obtain appropriate information from their customers. Accordingly, the effective date of these amendments will be March 11, 1974.

Several commercial suppliers of radioactive material and a trade association indicated resistance on the part of customers to past efforts by the suppliers to obtain licensing information from their customers. These commentators suggested that transferees be required to furnish information for verification of their licensed status in addition to transferors being required to verify the licensed status of transferees. The customer resistance referred to occurred at a time when there was no specific requirement for suppliers to obtain copies of customers' licenses or similar documentation and when not all suppliers were asking for such documentation. However, under the requirements now being added to §§ 30.41 (c) and (d), 40.51 (c) and (d), and 70.42 (c) and (d) for all transferors to verify the licensed status of transferees, if a potential transferee should fail to provide the appropriate verification information to the supplier, the supplier would be precluded from making the transfer. Since this requirement would be imposed on all suppliers and all transfers, this should be ample motivation for transferees to furnish the appropriate information. On the other hand, since suppliers need not transfer radioactive material to any customer who does not furnish appropriate licensing information, it is not necessary to specify in the regulations a requirement for transferees to furnish such information.

Three commentators suggested that the verification of a transferee's authorization to receive radioactive material should refer only to quantity authorized and should not include information on the type and form of radioactive material. Information on type and form of radioactive material is necessary because some licensees are authorized to receive and possess some, but not all, types and forms of materials (e.g., specific radioisotopes, sealed sources or specified radiopharmaceuticals). Accordingly, the amendments which follow retain the requirement for information as to type and form, as well as quantity, of radioactive material which the transferee is authorized to receive.

Two commentators questioned how a supplier would know that a customer's license was current. In practice, very few amendments of AEC licenses revoke or reduce the quantity, type or form of material previously authorized to be possessed. A supplier may assume that a transferee's license which authorizes receipt of the material to be transferred is valid unless he has actual notice that it has been revoked or amended in such manner as to no longer authorize the receipt of the material to be transferred.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments of Title 10, Chapter I, Code of Federal Regulations, Parts 30, 31, 40, 70, and 150 are published as a document subject to codification.

PART 30—RULES OF GENERAL APPLICABILITY TO LICENSING OF BYPRODUCT MATERIAL

1. Paragraph (c) of § 30.34 of 10 CFR Part 30 is amended by adding a period in the second sentence after the words "and import byproduct material" and by deleting the balance of the sentence. The paragraph, as revised, will read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(c) Each person licensed by the Commission pursuant to the regulations in this part and Parts 31–36 shall confine his possession and use of the byproduct material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the regulations in this part and Parts 31–36 of this chapter shall carry with it the right to receive, acquire, own, possess, and import byproduct material. Preparation for shipment and transport of byproduct material shall be in accordance with the provisions of Part 71 of this chapter.

* * * * *

2. A new § 30.41 is added to 10 CFR Part 30 to read as follows:

§ 30.41 Transfer of byproduct material.

(a) No licensee shall transfer byproduct material except as authorized pursuant to this section.

(b) Except as otherwise provided in his license and subject to the provisions of paragraphs (c) and (d) of this section, any licensee may transfer byproduct material:

(1) To the Commission;

(2) To the agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Atomic Energy Commission under section 274 of the Act;

(3) To any person exempt from the licensing requirements of the Act and regulations in this part, to the extent permitted under such exemption;

(4) To any person in an Agreement State, subject to the jurisdiction of that State, who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemption;

(5) To any person authorized to receive such byproduct material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State; or

(6) As otherwise authorized by the Commission in writing.

(c) Before transferring byproduct material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the byproduct material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(2) The transferor may have in his possession a written certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of byproduct material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(3) For emergency shipments the transferor may accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of byproduct material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date: *Provided*, That the oral certification is confirmed in writing within 10 days;

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(5) When none of the methods of verification described in paragraphs (d) (1) to (4) of this section are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the byproduct material.

PART 31—GENERAL LICENSES FOR BYPRODUCT MATERIAL

§ 31.2 [Amended]

3. In paragraph (a) of § 31.2 "30.41," is added between "(e)," and "30.51".

4. Paragraph (c) of § 40.41 is amended by adding a period in the second sentence after the words "and import source material" and by deleting the balance of the sentence. The paragraph, as revised, will read as follows:

§ 40.41 Terms and conditions of licenses.

* * * * *

(c) Each person licensed by the Commission pursuant to the regulations in this part shall confine his possession and use of source material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the regulations in this part shall carry with it the right to receive, possess, use and import source material. Preparation for shipment and transport of source material shall be in accordance with the provisions of Part 71 of this chapter.

PART 40—LICENSING OF SOURCE MATERIAL

5. Section 40.51 is amended to read as follows:

§ 40.51 Transfer of source material.

(a) No licensee shall transfer source material except as authorized pursuant to this section.

(b) Except as otherwise provided in his license and subject to the provisions of paragraphs (c) and (d) of this section, any licensee may transfer source material:

(1) To the Commission;

(2) To the agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Atomic Energy Commission under section 274 of the Act;

(3) To any person exempt from the licensing requirements of the Act and regulations in this part, to the extent permitted under such exemption;

(4) To any person in an Agreement State subject to the jurisdiction of that State who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemption;

(5) To any person authorized to receive such source material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State; or

(6) As otherwise authorized by the Commission in writing.

(c) Before transferring source material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the source material, the licensee transferring the material shall verify that the transferee's license authorizes receipt of the type, form, and quantity of source material to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(2) The transferor may have in his possession a written certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of source material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(3) For emergency shipments the transferor may accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of source material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date: *Provided*, That the oral certification is confirmed in writing within 10 days;

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations; or

(5) When none of the methods of verification described in paragraphs (d) (1) to (4) of this section are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the source material.

PART 70—SPECIAL NUCLEAR MATERIAL

6. Paragraph (a) of § 70.41 is amended by changing the words "possess, use and transfer" in the second sentence to "possess and use". The paragraph, as revised, will read as follows:

§ 70.41 Authorized use of special nuclear material.

(a) Each licensee shall confine his possession and use of special nuclear material to the locations and purposes authorized in his license. Except as otherwise provided in the license, each license issued pursuant to the regulations in this part shall carry with it the right to receive title to, own, acquire, receive, possess and use special nuclear material. Preparation for shipment and transport of special nuclear material shall be in accordance with the provisions of Part 71 of this chapter.

* * * * *

7. Section 70.42 is amended to read as follows:

§ 70.42 Transfer of special nuclear material.

(a) No licensee shall transfer special nuclear material except as authorized pursuant to this section.

(b) Except as otherwise provided in his license and subject to the provisions of paragraphs (c) and (d) of this section, any licensee may transfer special nuclear material:

(1) To the Commission;

(2) To the agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Atomic Energy Commission under section 274 of the Act, if the quantity transferred is not sufficient to form a critical mass;

(3) To any person exempt from the licensing requirements of the Act and regulations in this part, to the extent permitted under such exemption;

(4) To any person in an Agreement State, subject to the jurisdiction of that State, who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemption;

(5) To any person authorized to receive such special nuclear material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State; or

(6) As otherwise authorized by the Commission in writing.

(c) Before transferring special nuclear material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the special nuclear material, the licensee transferring the material shall verify that the transferee's license authorizes receipt of the type, form, and quantity of special nuclear material to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(2) The transferor may have in his possession a written certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(3) For emergency shipments the transferor may accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date: *Provided*, That the oral certification is confirmed in writing within 10 days;

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations; or

(5) When none of the methods of verification described in paragraphs (d) (1) to (4) of this section are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the special nuclear material.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES UNDER SECTION 274

8. The first sentence of paragraph (b) of § 150.20 Part 150 is amended to read as follows:

§ 150.20 Recognition of Agreement State licenses.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person who engages in activities in a non-Agreement State under a general license provided in

this section, the general license provided in this section is subject to the provisions of §§ 30.14(d), 30.34, 30.41, and 30.51 to 30.63 inclusive of Part 30 of this chapter; §§ 40.41, 40.51, 40.61 to 40.63 inclusive, 40.71, and 40.81 of Part 40 of this chapter; and §§ 70.32, 70.42, 70.51 to 70.56 inclusive, 70.61, 70.62, and 70.71 of Part 70 of this chapter; and to the provisions of Parts 19, 20, and 71 and Subpart B of Part 34 of this chapter. * * *

* * * * *

Effective date. The foregoing amendments become effective on March 11, 1974.

(Sec. 161, Pub. Law 83-703, 68 Stat. 948 (42 U.S.C. 2201).)

Dated at Germantown, Md., this 3d day of December 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-26035 Filed 12-7-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 73-CE-21-AD; Amdt. 39-1751]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Model B19 Airplanes

An Airworthiness Directive (AD) was adopted on November 6, 1973, and made effective immediately as to all known owners of Beech Model B19 (Serial Numbers MB-481 through MB-616) airplanes. The AD was issued because as of a result of flight testing by the manufacturer it was determined that this model airplane, in its present configuration, when operated at the certificated gross weight of 2250 pounds (normal category) and 2030 pounds (utility and acrobatic categories) did not meet the minimum regulatory certification standards. Interim testing and evaluation established that the airplane when limited to 2000 pounds certificated gross weight meets the certification standards. With this reduction in gross weight the effective pay load of the aircraft is approximately 600 pounds. In addition, during the interim period it has been necessary to reduce maximum occupancy from four places to three places in order to comply with other related Federal Aviation Regulations. To assure regulatory compliance, the directive prohibits operation of these model airplanes at a gross weight in excess of 2000 pounds and in excess of three occupants. The AD also requires the replacement of the existing normal category placard entry with one which reads "Maximum Design Weight 2000 Pounds" and provides for appropriate amendments of the weight and balance records to reflect the new limitations.

Since it was found that immediate action was required, notice and public procedure hereon was impracticable and contrary to the public interest and good cause existed for making the AD effective immediately to the owners of Beech Model B19 (Serial Numbers MB-481 through MB-616) airplane by individual air mail letters dated November 7, 1973. These conditions may still exist and the AD is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons. The letter AD also indicated that the manufacturer was developing a modification kit which, if installed, would permit an increase in the aircraft's gross weight. The manufacturer has now determined that if a 54 inch pitch propeller is installed in these model aircraft, they may be operated at a maximum certificated gross weight of 2150 pounds and would be in compliance with the applicable regulations. The instructions for this modification are contained in Beechcraft Service Instruction 0616-010 and BeechKit 23-9014-1 S. This modification, which is being made a part of this AD as an alternate means of compliance, will permit operations with four occupants when appropriate fuel limitations are utilized.

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 AD.

BEECH. Applies to Model B19 (Serial Numbers MB-481 through MB-616) airplanes.

Compliance: Required as indicated, unless already accomplished.

To assure the takeoff and climb capability of these aircraft meet the certification requirements, accomplish the following:

(A) Effective immediately, operation of the airplane at a gross weight of 2000 pounds and in excess of three occupants is prohibited.

(B) Within the next 10 hours' time in service or ten calendar days, whichever comes first, after the effective date of this AD:

(1) In place of the existing normal category placard entry which reads "Maximum Design Weight 2250 Pounds" substitute in wear resistant form a placard entry which reads "Maximum Design Weight 2000 Pounds" and

(2) By appropriate entries and calculations amend the airplane weight and balance records to reflect a maximum design weight of 2000 pounds C.G. locations between 110.9 and 118.3 inches and a maximum of three occupants.

(C) All performance and operating data contained in the Owners Manual for these model airplanes are no longer applicable.

(D) As an alternate means of compliance with this AD, for operation with four occupants and a maximum certificated gross weight of 2150 pounds, install Beech Kit 23-9014-1 S in accordance with Beechcraft Service Instruction 0616-010 or any equivalent modification approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region. This information will be reflected in a forthcoming Type Certification Data Sheet revision.

This amendment becomes effective December 14, 1973, to all persons except those to whom it was made effective by air mail letter dated November 7, 1973.

(Secs. 313(a), 601, 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 Kansas City, Missouri, on November 30, 1973.

JOHN R. WALLS,
Acting Director, Central Region.

[FR Doc.73-26075 Filed 12-7-73;8:45 am]

[Airworthiness Docket No. 73-WE-20-AD; Amdt. 39-1752]

PART 39—AIRWORTHINESS DIRECTIVES

Hiller UH-12D Helicopters

The UH-12D (Army H-23D) Helicopter was manufactured only in the military version and as a result the original approved civilian service life limit list was never made available to the public and was not revised in light of service experience. The H-23D Helicopters are now being sold surplus for conversion to the civil UH-12D. A new service life list has been approved for the UH-12D which incorporates changes to allow for new part numbers and to reduce life limits on some parts based on the similar UH-12E service history. Also, some life limits were increased due to a change in FAA policy which allows life limits greater than 2500 hours. An airworthiness directive is being issued to require compliance with the new service life limits of the revised finite life components list for Hiller UH-12D Helicopters.

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

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

HILLER AVIATION. Applies to Hiller UH-12D helicopters certificated in all categories.

Compliance required prior to further flight for all UH-12D helicopters which have been converted from the military version (H-23D) before the effective date of this AD, and at the time of conversion for those helicopters which are converted to the UH-12D after the effective date of this AD.

To insure safe service life for the finite life components of the Hiller Model UH-12D Helicopters, accomplish the following:

Replace the finite life components listed in Hiller Aviation's UH-12D Inspection Guide, Airworthiness Limitations Section, dated November 5, 1973, at the times specified therein with new or serviceable parts.

Note: A copy of the finite life components list can be obtained from Hiller Aviation, 2075 West Scranton Avenue, Porterville, California, 93257, or from the FAA, Aircraft Engineering Division, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009.

This amendment becomes effective January 10, 1974.

(Sec. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423);

sec. 6(c), of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Los Angeles, California on November 30, 1973.

ROBERT O. BLANCHARD,
Acting Director,
FAA Western Region.

[FR Doc.73-26076 Filed 12-7-73;8:45 am]

[Airspace Docket No. 73-WE-12]

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

Designation of Transition Area

Correction

In FR Doc. 73-24437, appearing on page 31674 in the issue for Friday, November 16, 1973, in the third line of the entry for Livermore, California (last paragraph) the latitude reading "37°44'09''" should read "37°44'00''".

[Docket No. 73-CE]

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

Alteration of Transition Area

Correction

In FR Doc.73-24940 in the issue of November 26, 1973, the effective date should be changed to read January 3, 1974.

In FR Doc. 73-24941 in the issue of November 26, 1973, the effective date should be changed to read January 3, 1974.

[Docket No. 12885; Amdt. No. 93-28]

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

Subpart I—Locations at Which Special VFR Weather Minimums Do Not Apply

KANSAS CITY, MO., MUNICIPAL AIRPORT CONTROL ZONE

The purpose of this amendment to Part 93 of the Federal Aviation Regulations is to amend § 93.113 to permit Special VFR operations in the Kansas City, Missouri, Municipal Airport Control Zone.

This amendment is based upon a notice of proposed rulemaking (Notice 73-18) issued on June 6, 1973, and published in the FEDERAL REGISTER on June 14, 1973 (38 FR 15631). Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant matter presented.

Comments were received from industry representatives, general aviation users, pilot organizations, business concerns, and a governmental agency. All but one commentator concurred with the Notice. One commentator, although concurring with the Notice, suggested that FAA take simultaneous action to establish a Special VFR prohibition at Kansas City International Airport in view of the fact that air carrier operations have moved from Municipal to International Airport and that "* * * these same aircraft are entitled to the same optimum levels of safety and efficiency at International that they previously enjoyed at Municipal." The prohibition of Special VFR within the Kansas City International Airport Control Zone is not within the scope of Notice No. 73-18. However, that comment has merit and is under consideration in a separate study.

Another commentator conditioned its concurrence with the Notice, "* * * *providing* there are no air carrier operations at Kansas City Municipal Airport." The FAA believes that the reduction in air carrier traffic that has occurred at the Kansas City Municipal Airport is sufficient to justify removing the Special VFR prohibition at that airport.

The one nonconcurring commentator expressed opposition to the Notice "* * * due to the high volume of traffic and the availability of other airports nearby." Nonetheless, there has been a significant reduction in the volume of traffic at Kansas City Municipal Airport since air carrier operations were moved to International Airport. These operations are no longer a factor in the air traffic mix within the Control Zone for Kansas City Municipal Airport. Because of this significant reduction in air carrier and other traffic volume, the FAA, as stated above, believes that continuation of the current prohibition against the use of Special VFR in § 93.113 would be an unnecessary burden on the users of Kansas City Municipal Airport. Accordingly, Kansas City Municipal Airport is deleted from the listing of Control Zones in § 93.113, thereby permitting the Special VFR Weather Minimums of § 91.107 to be applied to appropriate operations in that control zone.

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

In consideration of the foregoing, § 93.113 of Part 93 of the Federal Aviation Regulations is amended, effective January 3, 1974, by deleting the words "15. Kansas City, Mo. (Kansas City Municipal Airport)" and inserting the words "[15. Reserved]" in place thereof.

Issued in Washington, D.C., on November 29, 1973.

ALEXANDER P. BUTTERFIELD,
Administrator.

[FR Doc.73-26074 Filed 12-7-73;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Reg. OR-81; Amdt. No. 39]

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION: NONHEARING MATTERS

Exemptions to Air Carriers From Filing Schedules on Less Than Ten Days Notice

Section 405(b) of the Act requires air carriers to give ten days' notice to the Postmaster General of any schedule changes affecting the carriage of mail. In addition, § 231.5(b) of the Board's Economic Regulations requires air carriers to file schedule changes with the Board not later than ten days prior to the effective date of such changes. The current shortage of aviation fuel has required unanticipated emergency flight cutbacks and schedule changes resulting in carriers being unable to make the ten-day advance notice of schedule changes. To meet this situation, the Board has recently granted exemptions, upon application, to permit the filing of schedules on less than ten-days notice.[1]

By order of the President, beginning December 1, 1973, domestic airlines will be allocated five percent less jet fuel than 1972 levels and international airlines will be reduced to 1972 levels. Commencing January 7, 1974, all carriers will be allocated fifteen percent less fuel than their 1972 level. Accordingly, further, and probably frequent, applications for exemptions of this nature can be anticipated. In order that such requests can be acted on promptly, the Board is hereby delegating to the Director, Bureau of Operating Rights, the authority to grant or deny such exemptions.

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

Accordingly, the Board hereby amends Part 385 (14 CFR Part 385), effective November 30, 1973, as follows:

Amend § 385.13 by adding a new paragraph (hh) to read as follows:

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

The Board hereby delegates to the Director, Bureau of Operating Rights, the authority to:

* * * * *

(hh) Approve or deny applications of air carriers for exemptions from the provisions of section 405(b) of the Act and § 231.5(b) of Part 231 of the Economic Regulations to the extent necessary to permit the filing of schedules pursuant to section 405(b) on less than ten (10) days' notice to the Postmaster General and to the Board: *Provided, however,* that approval of such an application shall be granted only if it is found that such action is required by the inability of the carrier to procure fuel.

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

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-26140 Filed 12-7-73;8:45 am]

[1] *See, e.g.,* Order 73-11-37.

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5441, 34-10523, 35-18100, IC 8104, AS 149]

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

Amendment Providing for Improved Disclosure of Income Tax Expense

Correction

In FR Doc. 73-25608 appearing at page 33282 in the issue of Monday December 3, 1973, the section number in the first column on page 33283 reading "§ 210.316", should read "§ 210.3-16".

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7285]

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

Use of the Full Absorption Method of Inventory Costing

Correction

In FR Doc. 73-19930 appearing at page 26184 in the issue of Wednesday, September 19, 1973, the reference to "[the date of adoption of these regulations as a Treasury decision]" appearing in two places in the third column of page 26188, should read "September 19, 1973."

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 73-10R]

PART 110—ANCHORAGE REGULATIONS

Special Anchorage Area, Chester River, Md.

On page 1937 of the FEDERAL REGISTER of January 19, 1973, an amendment to Title 33 of the Code of Federal Regulations was proposed to establish a special anchorage area on the Chester River southeast of Chestertown, Md., off Rolphs, Md. Interested persons were given until February 23, 1973 to submit comments concerning the proposed regulations. No comments were received.

In consideration of the foregoing, the proposed amendments are adopted without change, and are set forth below.

Effective date. This amendment is effective on January 11, 1974.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

DECEMBER 3, 1973.

Part 110 of Title 33 of Code of Federal Regulations is amended by adding a new § 110.72a to read as follows:

§ 110.72a Chester River, southeast of Chestertown, Md.

The waters of the Chester River enclosed by a line beginning at a point on the Rolph Marina pier at latitude 39° 10'25" N., longitude 76°02'17" W.; thence 327° to a point 400 feet southwest of the entrance to Hambleton Creek at latitude 39°10'55" N., longitude 76°02' 40" W.; thence northeasterly to the eastern side of the entrance to Hambleton Creek; thence southerly following the shoreline to the Rolph Point Marina pier; thence southwesterly along the Rolph Point Marina pier to the point of beginning.

(Sec. 1, 30 Stat. 98, as amended, sec. 6(g)(1)(B), 80 Stat. 937; 33 U.S.C. 180, 49 U.S.C. 1655(g)(1)(B), 49 CFR 1.46(c)(2))

[FR Doc.73-26127 Filed 12-7-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Miscellaneous Amendments

On May 31, 1972 (37 FR 10842), pursuant to Section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved, with specified exceptions, State plans for implementation of the national ambient air quality standards. Since that date, the Administrator and many of the States have acted to correct the plan deficiencies identified in the May 31, 1972 (38 FR 10842) publication and to clarify and revise the information presented there.

On June 14, 1972 (37 FR 11826), July 27, 1972 (37 FR 15094) and September 22, 1972 (37 FR 19829), the Administrator proposed regulations to correct deficiencies in the regulatory provisions of the implementation plans for 40 States. The Administrator subsequently took action to finalize these provisions including, on May 14, 1973 (38 FR 12698), regulations requiring increments of progress for those sources requiring compliance schedules pursuant to future effective rules in California. This publication amends the May 14, 1973 (38 FR 12698) by adding rule 68 of the Los Angeles County Air Pollution Control District to the list of local regulations for which affected sources in the State of California must submit compliance schedules. The compliance date for the more restrictive portion of this regulation extends beyond January 31, 1974, but does not provide increments of progress as required by 40 CFR 51.15(c). Rule 68 limits oxides of nitrogen emissions from any non-mobile fuel burning article, machine, equipment or other contrivance, having a maximum heat input of more than 1775 million BTU per hour.

The Agency finds that good cause exists for not publishing this amendment as a notice of proposed rulemaking and for making it effective immediately upon publication because Rule 68 was inadvertently omitted from the May 14, 1973 promulgation.

AUTHORITY: (42 U.S.C. 1857c-5 and 9.)

Dated: December 4, 1973.

RUSSELL E. TRAIN,
Administrator.

Subpart F—California

1. In § 52.240, paragraph (d)(1)(i)(*f*) is revised to read as follows:

§ 52.240 Compliance schedules.

* * * * *

(d) * * *
(1) * * *
(i) * * *

(*f*) Rules 66(c) and 68 of the Los Angeles County APCD.

[FR Doc.73-26118 Filed 12-7-73;8:45 am]

SUBCHAPTER E—PESTICIDE PROGRAMS

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

3,5-Dichloro-N-(1,1-Dimethyl-2-Propynyl) Benzamide

A petition (PP 3F1404) was filed by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of tolerances for combined residues of the herbicide 3,5 - dichloro - *N* - (1,1 - dimethyl - 2 - propynyl) benzamide and its metabolites (calculated as the herbicide) in or on the raw agricultural commodities blackberries, boysenberries, and raspberries at 0.05 part per million (negligible residue).

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

1. The herbicide is useful for the purpose for which the tolerances are being established.

2. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.

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

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038), § 180.317 is amended by adding the new paragraph "0.05 part per million * * *" after the paragraph "0.2 part per million * * *", as follows:

§ 180.317 3,5-Dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide; tolerances for residues.

* * * * *

0.05 part per million (negligible residue) in or on blackberries, boysenberries, and raspberries.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time on or before January 9, 1974, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, SW., Waterside Mall, Washington, D.C. 20460, written objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective December 10, 1973.

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

Dated: December 4, 1973.

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

[FR Doc.73-26121 Filed 12-7-73;8:45 am]

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

Interim Tolerances; Deletion

In the FEDERAL REGISTER of August 30, 1972 (37 FR 17554), interim tolerances were established for residues of the insecticide 2-chloro-1-(2,4-dichlorophenyl) vinyl diethyl phosphate in the raw agricultural commodities milk fat reflecting negligible residues in milk at 0.1 part per million and eggs, meat, fat, and meat byproducts of cattle and poultry at 0.05 part per million. The interim tolerances were established pending final review and evaluation of the data on the subject pesticide.

Subsequently, the review and evaluation of the above pesticide have been completed and permanent tolerances have been established for it in milk fat, eggs, and fat of poultry (37 FR 23837; November 9, 1972), and in fat of cattle (37 FR 21995; October 18, 1972). Because residues of the insecticide concentrate in fat, separate tolerances for residues in meat and meat byproducts of cattle and poultry are not necessary.

Therefore, the listing of interim tolerances for the subject pesticide is no longer necessary and § 180.319 Interim tolerances is amended by deleting the item "2-Chloro-1-(2,4-dichlorophenyl)-vinyl diethyl phosphate" from the list of items in the table.

Since the order established by this document prevents duplication of tolerances and is noncontroversial, notice, public procedure, and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective on December 10, 1973.

Dated: December 4, 1973.

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

[FR Doc.73-26119 Filed 12-7-73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

PART 97—AMATEUR RADIO SERVICE

Order Regarding Radio Operator Examination Points

1. The purpose of this Order is to change the commercial and amateur radio operator examination points listed in § 0.485 and Appendix 1 to Part 97 of the Commission's Rules so as to provide more equitable and resourceful examination locations.

2. Authority for the amendment is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, section 552 of the Administrative Procedure Act and § 0.231(e) of the Commission's rules. Because the amendment is procedural in nature, the prior notice and effective date provisions of section 553 of the Administrative Procedure Act do not apply.

3. *It is ordered,* That effective January 2, 1974, Parts 0 and 97 of the rules and regulations are amended as set forth below.

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

Adopted: November 30, 1973.

Released: December 5, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JOHN M. TORBET,
Executive Director.

Parts 0 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

1. In § 0.485(c), the lists of examination points are rearranged in alphabetical order according to city rather than state and, for the quarterly points, the cities of Williamsport, Pennsylvania, and Corpus Christi, Texas, are deleted; for the semiannual points, the cities of Bangor, Maine; Columbia, South Carolina; Corpus Christi, Texas; Hilo, Hawaii; Lihue, Hawaii; Reno, Nevada; Wailuku, Hawaii; and Williamsport, Pennsylvania, are added; and, for the annual points, the cities of Hilo, Lihue, and Wailuku, Hawaii, and Bangor, Maine, are deleted. As amended, paragraph (c) reads as follows:

§ 0.485 **Amateur and commercial operator examination points.**

* * * * *

(c) * * *

QUARTERLY POINTS

Albany, New York	Milwaukee, Wisconsin
Birmingham, Alabama	Nashville, Tennessee
Charleston, W. Virginia	Oklahoma City, Oklahoma
Cincinnati, Ohio	Omaha, Nebraska
Cleveland, Ohio	Phoenix, Arizona
Columbus, Ohio	Pittsburgh, Pennsylvania
Davenport, Iowa	St. Louis, Missouri
Des Moines, Iowa	Salt Lake City, Utah
Fort Wayne, Indiana	San Antonio, Texas
Fresno, California	Sioux Falls, South Dakota
Grand Rapids, Michigan	Syracuse, New York
Indianapolis, Indiana	Tulsa, Oklahoma
Knoxville, Tennessee	Winston-Salem, N. Carolina
Little Rock, Arkansas	
Louisville, Kentucky	
Memphis, Tennessee	

SEMIANNUAL

Albuquerque, New Mexico	Las Vegas, Nevada
Bangor, Maine	Lihue, Hawaii
Boise, Idaho	Lubbock, Texas
Columbia, S. Carolina	Portland, Maine
Corpus Christi, Texas	Reno, Nevada
El Paso, Texas	Salem, Virginia
Fairbanks, Alaska	Spokane, Washington
Hartford, Connecticut	Tucson, Arizona
Helena, Montana	Wailuku, Hawaii
Hilo, Hawaii	Wichita, Kansas
Jackson, Mississippi	Williamsport, Pennsylvania
Jacksonville, Florida	Wilmington, N. Carolina
Juneau, Alaska	
Ketchikan, Alaska	

ANNUAL

Bakersfield, California	Marquette, Michigan
Billings, Montana	Rapid City, South Dakota
Jamestown, North Dakota	
Klamath Falls, Oregon	

* * * * *

2. In Appendix 1 of Part 97, the quarterly examination points are amended by deleting the cities of Corpus Christi, Texas, and Williamsport, Pennsylvania; the semiannual points, by adding in alphabetical order the cities of Bangor, Maine; Columbia, South Carolina; Corpus Christi, Texas; Hilo and Lihue, Hawaii; Reno, Nevada; Wailuku, Hawaii; and Williamsport, Pennsylvania; and the annual points, by deleting the cities of Bangor, Maine; Hilo, Lihue, and Wailuku, Hawaii.

[FR Doc.73-26132 Filed 12-7-73;8:45 am]

PART 87—AVIATION SERVICES

Order Regarding "Common System" Microwave Landing System

In the matter of amendment of Part 87 of the rules to conform § 87.501 subsections (h)(5) and (h)(8) to § 2.106 with respect to the use of a "common system" Microwave Landing System in the bands 5.0–5.25 GHz and 15.4–15.7 GHz.

1. Section 2.106 of the rules allocates the frequencies in the bands 5.0–5.25 GHz and 15.4–15.7 GHz to aeronautical radionavigation use. Footnote US 118 to § 2.106 alerts the public to the fact that, in these bands, a "common system"

Microwave Landing System is planned which is expected to have worldwide application, and that operational implementation of said system is anticipated to begin about 1976. Footnote US 118 further advises the public that, nationally, such an agreed common system shall have priority over any other system in these bands.

2. Section 87.501 of the rules sets forth the frequencies available for radionavigation land stations. Paragraph (h) (5) and (h) of § 87.501 allocates, respectively, the band 5.0–5.25 GHz and 15.4–15.7 GHz for the use of ground-based facilities which are directly associated with airborne electronic aids to air navigation. Although § 87.501 does not specifically allude to the plans for the "common system" Microwave Landing System, referred to above, Footnote US 118 to Section 2.106 does specify the plans for such a system for use in these bands.

3. There is a need, however, for the convenience of the public for the inclusion of notification of such plans in paragraph (h) (5) and (8) of § 87.501 of the rules. The attached Appendix amends Part 87 to fulfill this need by annotating paragraph (h) (5) and (8) of § 87.501 to add a new footnote to that section, which will specifically advise the public of the plans for a "common system" Microwave Landing System.

4. The amendment adopted herein is editorial in nature, and hence the prior notice, procedure, and effective date provisions of 5 U.S.C. sec. 553 do not apply. Authority for the promulgation of the amendment is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules.

5. Accordingly, Part 87 of the Commission's rules is amended as set forth in the attached Appendix, effective December 12, 1973.

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

Adopted: December 3, 1973.

Released: December 5, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JOHN M. TORBET,
Executive Director.

APPENDIX

Part 87 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 87.501(h) is amended as follows so as to add Footnote 3 and to have said footnote reflected by annotation in paragraph (h) (5) and (8) of § 87.501:

§ 87.501 Frequencies available.

* * * * *

(h) * * *

(5) 5000–5250 MHz:[3] The band 5000–5250 MHz is for the use of ground-based facilities which are directly associated with airborne electronic aids to air navigation.

* * * * *

(8) 15,400–15,700 MHz:[3] The band 15,400–15,700 MHz is for the use of ground-based facilities which are directly associated with airborne electronic aids to air navigation.

* * * * *

[FR Doc.73-26131 Filed 12-7-73;8:45 am]

[3] In the bands 5.0–5.25 GHz and 15.4–15.7 GHz, a "common system" Microwave Landing System is planned which is expected to have worldwide application. It is anticipated that operational implementation will begin about 1976. Nationally, such an agreed common system shall have priority over any other system in these bands.

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 16; Amdt. No. 99-8]

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

List of Persons Required To File Financial Statements

The purpose of this amendment to Part 99 is to revise Appendix C—List of Employees Required to Submit Statements of Employment and Financial Interest, under § 99.735–31. The revision will update the list to provide for organizational changes within the National Highway Traffic Safety Administration, and a reevaluation of the responsibilities of various positions. For the first time, certain employees in positions classified below the GS–13 level will be required to file statements.

Part 99 was issued to implement Executive Order 11222 and Part 735 of the Civil Service Commission Regulations and each amendment thereto must be approved by the Commission before issuance. This amendment was approved by the Civil Service Commission on November 9, 1973.

Since this amendment relates to Departmental management, procedures, and practices, notice and public procedure thereon are not required, and it may be made effective in less than 30 days after publication in the Federal Register.

In consideration of the foregoing, Part 99 of Title 49 of the Code of Federal Regulations is amended by revising Appendix C thereto to read as follows:

APPENDIX C—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST

The following is a list of positions identified as requiring the submission of a statement of employment and financial interest under § 99.735–31(a)(2) and (3):

* * * * *

V. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OFFICE OF THE ADMINISTRATOR

Director, Office of Civil Rights
Equal Opportunity Specialist, GS–13 and above, engaged in Contract Administration
Chief Counsel
Attorney-Advisor, all grade levels

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR MOTOR VEHICLE PROGRAMS

Associate Administrator
Director, Compliance Test Facility
Director, Engineering Systems Staff
Director, Office of Standards Enforcement
Chief, Validation Division
Chief, Verification Division
All other Office of Standards Enforcement professional personnel, regardless of grade level, having the titles of Safety Standards Engineer, Safety Compliance Engineer, Safety Compliance Specialist, and Safety Compliance Analyst
Director, Office of Operating Systems
Chief, Controls and Displays Division
Chief, Handling and Stability Division
Chief, Tire Division
Chief, Lighting and Visibility Division

All other Office of Operating Systems professional personnel, GS–13 and above, having the titles of Cost and Lead-Time Engineer, General Engineer, Special Assistant, Safety Standards Engineer, Highway Safety Management Specialist, and Engineering Psychologist

Director, Office of Crashworthiness
Chief, Driver/Passenger Protection Division
Chief, Structures Division

All other Office of Crashworthiness professional personnel, GS–13 and above, having the titles of Safety Standards Engineer, Instrumentation Engineer, Cost and Lead-Time Engineer, and Cost and Lead-Time Analyst

Director, Office of Standards for Motor Vehicles-in-Use
Chief, Components Division
Chief, Techniques Division

All other Office of Standards for Motor Vehicles-in-Use professional personnel, GS–13 and above, having the titles of Safety Standards Engineer and Highway Safety Management Specialist

Director, Office of Defects Investigation

All other Office of Defects Investigation professional personnel, regardless of grade level, having the titles of Safety Defects Engineer, Safety Defects Specialist, Safety Defects Analyst, Investigator, Mechanical Engineer, and Safety Standards Engineer

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR TRAFFIC SAFETY PROGRAMS

Associate Administrator
Director, Office of Standards Development and Implementation
Chief, Driver Eductaion and Licensing Division
Chief, Vehicle Registration and Requirements Division
Chief, Traffic Regulations and Adjudication Division
Chief, Rescue and Emergency Medical Services Division
Director, Office of State and Community Comprehensive Programs
Director, Office of Alcohol Countermeasures
Chief, National Programs Division
Chief, State and Community Programs Division

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT

Associate Administrator
Director, Office of Experimental Safety Vehicle Programs
Director, Safety Systems Laboratory
Director, Office of Accident Investigtaion and Data Analysis
Chief, Accident Investigation Division
Director, Office of Driver Performance Research
Director, Office of Vehicle Structures Research

Director, Office of Operating Systems Research

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR PLANNING AND PROGRAMMING

Associate Administrator
Director, Office of Program Planning
Director, Office of Program Evaluation
Director, Office of Systems Analysis

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

Associate Administrator
Director, Office of Contracts and Procurement
Contract Specialist, GS–13, 14
Director, Office of Financial Management

REGIONAL OFFICES

Regional Administrators
Any other NHTSA employee, GS–13 and above, designated to serve as a Contract Technical Manager, and supervisors of such employees.

This amendment is made under the authority of Executive Order 11222 (30 FR 6469) and section 9 of the Department of Transportation Act (49 U.S.C. 1657).

Effective date: This amendment is effective December 10, 1973.

Issued in Washington, D.C., on December 4, 1973.

CLAUDE S. BRINEGAR,
Secretary of Transportation.

[FR Doc.73-26114 Filed 12-7-73;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 150—PHASE IV PRICE REGULATIONS

Nonferrous Metals

There are over forty nonferrous metals important to the U.S. economy, of which aluminum, copper, lead and zinc are the most significant. All nonferrous metals except gold, silver and copper scrap are controlled under the existing Phase IV price regulations.

Aluminum, copper, lead and zinc are now in strong demand throughout the world. Supplies of those metals are not adequate to meet this demand and the world price has risen accordingly. A similar situation exists with respect to most of the other nonferrous metals.

U.S. prices for aluminum, copper, lead and zinc currently are significantly below world prices and a developing trend among domestic producers has been to export production to take advantage of the existing price differential. A difference between U.S. and world prices has long existed but that difference has substantially widened recently. The situation is most severe with respect to zinc but it is also a growing problem with respect to the other three major nonferrous metals and for many of the lesser nonferrous metals as well. Because the high prices are in large measure a product of rising world-wide demand coupled with a limited supply, the strict cost justification rules of the Phase IV price control program have not permitted domestic prices to keep pace with world prices or to rise to levels high enough to encourage domestic supply expansion or to remove incentives to export.

The market prices for the four major nonferrous metals generally move in cyclical patterns, and the recent rise for U.S. aluminum, copper, and lead prices has followed a long downward trend. Prices for these three metals are now returning to 1970 levels. U.S. zinc prices, on the other hand, have risen consistently from 1970 to present. U.S. prices for these four metals are still substantially lower than world market prices. As world prices continue to rise, domestic distortions will accelerate unless domestic prices are allowed to rise in roughly parallel fashion. Distortions have already appeared in the nonferrous metals industry in the form of a multi-tiered pricing system, resulting in an increasing portion of U.S. production being devoted to export. The problem is most severe with respect to zinc, copper and aluminum. Other metals may soon follow a similar pattern unless there is price relief.

The general policy of Phase IV is to permit price increases to the extent necessary to reflect increased costs. Nonferrous metals producers experienced substantial cost increases between May 1970, and the base cost period presently specified in the Phase IV regulations. Unlike firms in other sectors of the economy, these firms were unable to adjust their prices upward to reflect these cost increases between May 1970, and the fourth quarter of 1972 because of competitive pressures at the time from lower world prices and weak demand.

The Cost of Living Council is therefore amending the Phase IV price regulations to change the controls over the prices charged by firms engaged in the mining, refining and smelting of nonferrous metals. The regulations are amended in order to reduce such distortions as already exist, to increase the domestic supply of those metals, to reduce the incentives to export nonferrous metals and to provide a stimulus for growth in domestic productive capacity.

The Council retains the authority to reestablish price controls for the metals exempted by this regulation if price behavior is inconsistent with the policies of the Economic Stabilization Program. The Council also has the right, under § 150.162, to require firms to file special or separate reports setting forth information relating to the Economic Stabilization Program in addition to any other reports which may be required under the Phase IV controls program.

1. Section 150.54 is amended to add a new paragraph (v) which exempts from Phase IV price controls the prices charged for certain nonferrous metals, metal ores, and metal products. All nonferrous metals are affected by this exemption except gold, silver, and copper scrap, which have been exempted by other paragraphs of § 150.54, and aluminum and copper. The amendment exempts the nonferrous metal content of ores, tailings and secondary (scrap) metals; the primary metal (e..g ingot slab or block); nonferrous basic shapes; and the metal content of residues, by-products and waste products derived from the milling, smelting and refining of ores and nonferrous metals; oxides produced by the French process; and zinc dust. The exemption does not apply to any nonferrous metal basic shape, residue, waste product, or by-product the raw material content by value of which is less than 50% nonferrous metal exempted by § 150.54 as amended. The amendment does not apply to nonferrous alloys such as brass or bronze or ferroalloys such as ferrochromium, ferromanganese, ferromolybdenum and ferrotungsten. Generally, the metals exempted by this amendment come from foreign sources and the lesser nonferrous metals have varied, and in many cases, highly specialized uses such as in electronic, optical and aircraft equipment, nuclear and chemical industries and other technical areas requiring metals with certain specific characteristics. In many instances there is no adequate substitute for a particular nonferrous metal.

The Council has acted to exempt the lesser nonferrous metals and their ores because of their relatively minor economic impact. Zinc and lead are economically more important, but are exempted because of domestic industry's heavy reliance on imported raw materials for the production of these metals and because of the distortions which have occurred, especially in the zinc industry.

2. Section 150.102(a) is amended to add a cross reference to the new special rule added to Subpart J.

3. Subpart J is amended to add a new § 150.208 which sets forth special base price rules for aluminum and copper. The new rules apply to the metal content of ores and tailings, and to nonferrous basic shapes, residue, waste or by-products derived directly from the milling, smelting and refining of aluminum or copper. The affected activities are generally described in the 1972 Standard Industrial Classification Manual in Industry Nos. 1021, 1051, 3331, 3334, and 3341.

Under the provisions of § 150.208, a firm may use as its base price for aluminum items subject to the section a price calculated according to the Phase II Price Commission regulations, 6 CFR Part 300, Subpart F, in effect on January 10, 1973. The new rule sets the May 25, 1970 price or the July–August 1971 freeze base period price, whichever is greater, as a lowest price (minimum base price) from which firms may justify allowable price increases. The rule permits a firm using the May 25, 1970 price as its base price for unalloyed ingot to use the price for "Major U.S. Producer Aluminum" unalloyed ingot as listed in the issue of *Metals Week* magazine for the week which included May 25, 1970. This rule will permit firms using it to set prices at a level closer to the world market level.

For aluminum items not listed in the issue of *Metals Week* for the week which included May 25, 1970 a firm electing to

set base prices according to § 150.208 may use the price differentials of May 25, 1970 existing between the unlisted items and the price for "Major U.S. Producer Aluminum" unalloyed ingot as listed in *Metals Week*. A firm setting prices in this manner shall use the absolute differential existing on May 25, 1970 between its list price for unalloyed ingot and the affected aluminum item existing on May 25, 1970. Using the May 25, 1970 *Metals Week* "Major U.S. Producer Price" as a basis, the firm shall add or subtract that absolute differential, as appropriate, to arrive at the base price for the affected item.

Section 150.208 also includes a provision for establishing base prices for copper items. The section provides that a firm may elect to use 68 cents per pound as its base price for copper cathode. The 68 cents represents the weighted average price that major copper producers could have cost justified under Phases II and III of the Economic Stabilization Program. The Council has determined that this uniform base price for copper will promote consistent primary copper prices and will provide for prices which are at a level to encourage expansion of the domestic supply. The base price for any copper item other than cathode will be established using the 68 cents base price for copper cathode and adding or subtracting as appropriate, the firm's absolute list price differential existing on May 25, 1970 between copper cathode and the other copper item.

Subpart J is further amended to add a new § 150.209 which will govern intra-firm sales of products subject to § 150.208 or nonferrous metals the sale of which is exempted by § 150.54. The new rule applies to integrated producers of the metals and permits them to use prices in intra-firm transactions for the purpose of determining whether net allowable costs have been incurred to justify a price in excess of the base price.

Current regulations require firms which transfer products between separate entities within the firm to use transfer prices which are fully cost justified back to the origin of the cost for internal accounting purposes. However, many integrated companies producing nonferrous metals sell products both within the firm and in arms-length transactions outside the firm. The arms-length sales in these situations may be at market prices which are reflected in the firm's adjusted freeze prices while the cost justified internal transfer prices may be well below the adjusted freeze price. Where such a differential exists, marketing dislocations and disruptions tend to develop.

The Council, having reviewed data submitted by firms in the aluminum and copper industries together with other available economic data, has concluded that substantial adverse economic consequences will result from the continuation of the current rule requiring full cost justification of intra-firm transfer prices for products produced by these industries.

Under § 150.209, a firm may use as cost justification either the base price of the item transferred or the cost justified price for the item in domestic sales to unrelated firms or the domestic market price of the item if the item is a nonferrous metal item exempt under § 150.54.

Because the purpose of these amendments is to provide immediate guidance and information with respect to the decisions of the Council, the Council finds that publication in accordance with normal rulemaking procedure is impracticable and that good cause exists for making these amendments effective in less than 30 days. Interested persons may submit written comments regarding these regulations. Communications should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

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

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

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

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

1. Section 150.54 is amended by adding a new paragraph (v) to read as follows:

§ 150.54 Certain price adjustments.

* * * * *

(v) *Nonferrous metals except aluminum and copper.* Prices charged for the nonferrous metal content of ores, tailings, and secondary (scrap) metals, and for nonferrous metal waste products, by-products, residues and basic shapes, derived directly from the milling, smelting and refining of ores and nonferrous metals, except as hereinafter specified in this paragraph, are exempt. This paragraph does not apply to:

(1) That portion of any ore or tailing which is aluminum (bauxite or alumina) or copper;

(2) Gold, silver, copper scrap and copper based alloy scrap;

(3) Ferroalloys and nonferrous alloys; and

(4) Any nonferrous metal waste product, by-product, residue or basic shape whose raw material content by value is less than 50 percent of the nonferrous metals exempted by this section.

The products exempted are generally those described in Group Nos. 103, 106 and 109 and Industry Nos. 3332, 3333, 3339 and 3341 of the Standard Industrial Classification Manual, 1972 Edition.

2. Section 150.102(a) is amended to read as follows:

§ 150.102 Sales and leases of products and services.

(a) *General rule.* The base price with respect to the sale or lease of an item is the average price at which the item was lawfully priced in transactions with the class of purchaser concerned during the base price period. The base price shall be determined in accordance with this subpart notwithstanding the fact that the base price so determined may be lower than the price prevailing on May 25, 1970, except as provided in § 150.208.

* * * * *

3. Subpart J is amended by adding the following new sections to read as follows:

§ 150.208 Aluminum and copper base prices.

(a) *Applicability.* This section appiles to that portion of any ore or tailing which is aluminum (bauxite or alumina) or copper. This section applies to any nonferrous metal waste product, by-product, residue or basic shape derived directly from the milling, smelting and refining of aluminum (bauxite or alumina) or copper. The affected ores, metals and products are generally described in Industry Nos. 1021, 1051, 3331, 3334 and 3341 of the Standard Industrial Classification Manual, 1972, Edition.

(b) *Base price for aluminum.* In calculating base prices under Subpart F of this part, a firm may elect to use as its base price for those aluminum items subject to this section a price calculated in accordance with the rules of Subpart F of Part 300 of this Title in effect on January 10, 1973. A firm electing to compute its base price for items subject to this section according to Subpart F of Part 300 of this Title may use as its May 25, 1970 price for unalloyed aluminum ingot the price for "Major U.S. Producer Aluminum" unalloyed ingot as listed in the issue of *Metals Week* for the week including May 25, 1970. A firm which elects to determine a base price for unalloyed aluminum ingot under the preceding sentence shall establish base prices for any other aluminum item subject to this section by using the absolute list price differential existing on May 25, 1970 between its unalloyed ingot and the affected aluminum item. The firm shall add or subtract, as appropriate, that absolute list price differential to the base price for unalloyed ingot to set the base price for the affected aluminum item.

(c) *Base price for copper.* In calculating base prices under Subpart F of this part, a firm may elect to use 68 cents per pound as its base price for copper cathode. A firm which elects to determine a base price for copper cathode under the preceding sentence shall establish a base price for any other remaining copper item subject to this section by using the absolute list price differential existing on May 25, 1970 between the affected copper item and copper cathode. The firm shall add or subtract, as appropriate, that absolute list price differential to the base price for copper cathode to set the base price for the affected copper item.

§ 150.209 Intra-firm transfers of nonferrous metals.

(a) *Applicability.* This section applies to intra-firm transfers of products sub-

ject to the provisions of § 150.208 or nonferrous metal items the sale of which is exempt under § 150.54 by a firm which is an integrated producer of nonferrous metals and has customarily made intra-firm transfers of such products at market prices. The intra-firm transfers to which this section applies must be of products manufactured by the firm concerned.

(b) *Rule.* For the purpose of determining whether net allowable costs have been incurred which justify a price in excess of the base price pursuant to § 150.73(d), a firm may use as cost justification a price for a transfer subject to this section which is the base price for the item transferred, the cost-justified price for the item transferred in domestic sales to unrelated firms, or, in the case of nonferrous metal items the sale of which is exempt under § 150.54, the domestic market price.

(c) *Definition.* For purposes of this section, a firm includes a parent and the consolidated and unconsolidated entities which it directly or indirectly controls.

[FR Doc.73-26251 Filed 12-6-73;5:08 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

Customs Service

[19 CFR Part 6]

INTERNATIONAL AIRPORTS OF ENTRY

Revocation of International Airport Status of San Diego International Airport (Lindbergh Field), San Diego, California; Extension of Time for Submission of Data, Views, or Arguments

DECEMBER 4, 1973.

Notice of proposed amendment to the Customs Regulations providing for the revocation of international airport status of San Diego International Airport (Lindbergh Field), San Diego, California, was published in the FEDERAL REGISTER on Wednesday, October 3, 1973 (38 FR 27404). Thirty days from the date of publication of the notice were given for submission of data, views, or arguments pertinent to the proposed amendment.

Requests have been received for extension of the time for submission of comments. The period of submission of data, views, or arguments relating to the revocation of international airport status of San Diego International Airport (Lindbergh Field), San Diego, California, is extended until March 11, 1974.

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

[FR Doc.73-26157 Filed 12-7-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 30]

TOBACCO STOCKS AND STANDARDS

Proposal Regarding Classification of Leaf Tobacco

Notice is hereby given that the United States Department of Agriculture is considering an amendment to the Classification of Leaf Tobacco Covering Classes, Types, and Groups of Grades, pursuant to the authority contained in the Stocks and Standards Act, as amended (45 Stat. 1079; 47 Stat. 662; 49 Stat. 893; 7 U.S.C. 501 et seq.).

STATEMENT OF CONSIDERATION LEADING TO THE PROPOSED AMENDMENT

As early as 1920 the Department of Agriculture began to build a general framework upon which tobacco standards would be based. In 1925 Type Classification of American-grown Tobacco was published as Miscellaneous Circular No. 55, under authority of the United States Warehouse Act of August 11, 1916.

On January 19, 1929, Congress approved the Tobacco Stocks and Standards Act (Public, No. 661, 70th Congress, as amended Public, No. 284, 72nd Congress and Public, No. 356, 74th Congress). This Act authorized the Secretary of Agriculture to collect and publish quarterly statistics of the quantity of leaf tobacco in all forms in the United States possessed by those other than the original growers. It further directed the Secretary of Agriculture to establish standards for the classification of tobacco and to require reporting firms to furnish statistics of stocks of leaf tobacco in such detail as to types, groups of grades, and other factors as he deemed necessary and practical.

In March 1929 the Secretary officially promulgated, under authority of this act, a classification of leaf tobacco to enable him to carry out the provisions of the act. This classification covered only the six principal classes and the numbered types under each. Miscellaneous domestic and foreign-grown tobaccos were included but not classified according to type and group. Few terms were defined.

In November 1929 the Department issued, under authority of the Tobacco Stocks and Standards Act, Service and Regulatory Announcement 118 (SRA, BAE-118) covering the leaf classification of nine classes of tobacco. Each of the six principal classes was divided into numbered types; each type was subdivided into groups of grades identified by both names and letters. Classes 7, 8, and 9 were classified, respectively, as miscellaneous domestic, foreign-grown cigar leaf, and foreign-grown types other than cigar leaf. Each of these three classes consisted of a single type with no group division. This publication included definitions of additional terms and a reprint of the act.

The Classification of Leaf Tobacco (SRA BAE-118) was amended in July 1947 (12 FR 4879). This amendment established type 31-V to accommodate a low nicotine variety of burley tobacco. It was further amended in July 1954 (19 FR 4052), to accommodate a low nicotine strain of flue-cured under Class 7; miscellaneous types of domestic tobacco.

SRA, BAE-118 designates tobacco of Classes 7, 8, and 9 as types 70, 80, and 90, respectively. Under Class 7, all miscellaneous types of domestic tobacco are designated type 70. The proposed amendments herein would eliminate type 70 and subdivide Class 7 by officially establishing two type designations. Type 72 would be established for Louisiana Perique and type 73 for all other domestic-grown tobacco not otherwise classed or typed.

In a similar manner, SRA, BAE-118 designated all foreign-grown cigar leaf tobacco as type 80. However, for tobacco stocks reporting purposes, this amendment would assign such tobacco official type designations based on geographical origin of the leaf with no reference to physical characteristics. Therefore, the present type 80 would be deleted and class 8 would be subdivided by establishing nine type designations, 81 through 89.

Finally, SRA, BAE-118 designates all foreign-grown types other than cigar leaf as type 90. For stocks reporting purposes, this tobacco also would be assigned official type designations. These type designations would be based on (a) utilization, (b) curing methods, or both, with no reference to physical characteristics. Therefore, this amendment would delete type 90 and class 9 would be subdivided by establishing three type designations, 91 through 93.

This proposal would delete types 24 and 45. Type 24 was declared extinct in 1960 (25 FR 9517), and type 45 has been out of production since the 1940's or longer. As stated above, it would also eliminate types 70, 80, and 90 and officially establish types 72, 73, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 92, and 93. Although these 14 types would be officially established by this proposal all have been in unofficial use from three to 22 years. Therefore, this proposal would impose no new or expanded requirements upon the reporting firms. Certain definitions of terms, types, group names and symbols would be changed to conform with those used in current official grade standards. These changes would reflect present-day market preparation and employ current local terminology.

All persons who desire to submit written data, views, or arguments in connection with this proposed amendment should file the same, in duplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, no later than January 15, 1974. All written submissions made pursuant to the notice will be made available for public inspection at the Office of the Hearing Clerk during official hours of business (7 CFR 1.27(b) as amended, at 29 FR 7311).

The proposal is as follows:

1. Part 30 is revised by deleting §§ 30.1–30.60 and the following is substituted therefor:

PART 30—TOBACCO STOCKS AND STANDARDS

CLASSIFICATION OF LEAF TOBACCO COVERING CLASSES, TYPES, AND GROUPS OF GRADES

Sec.

Sec.
30.4 Stemmed.
30.5 Class.
30.6 Type.
30.7 Group.
30.8 Scrap.
30.9 Nondescript.
30.10 Cure.
30.11 Flue-cure.
30.12 Fire-cure.
30.13 Air-cure.
30.14 Cigar filler.
30.15 Cigar binder.
30.16 Cigar wrapper.
30.17 Damage.
30.18 Injury.
30.19 Nested.
30.20 Crude.
30.21 Foreign matter.
30.31 Classification of leaf tobacco.
30.36 Class 1; flue-cured types and groups.
30.37 Class 2; fire-cured types and groups.
30.38 Class 3; air-cured types and groups.
30.39 Class 4; cigar-filler types and groups.
30.40 Class 5; cigar-binder types and groups.
30.41 Class 6; cigar-wrapper types and groups.
30.42 Class 7; miscellaneous domestic types.
30.43 Class 8; foreign-grown cigar-leaf types.
30.44 Class 9; foreign-grown types other than cigar-leaf.

REPORTS

30.60 Reports.

ADMINISTRATION

30.61 Administration.

AUTHORITY: Sec. 2, 45 Stat. 1079, as amended; 7 U.S.C. 502.

CLASSIFICATION OF LEAF TOBACCO COVERING CLASSES, TYPES AND GROUPS OF GRADES

§ 30.1 Definitions of terms used in classification of leaf tobacco.

For the purpose of §§ 30.1–30.44 the terms appearing in §§ 30.2–30.21 shall be construed as explained therein.

§ 30.2 Leaf tobacco.

Tobacco in the forms in which it appears between the time it is cured and stripped from the stalk, or primed and cured, and the time it enters into the different manufacturing processes. The acts of stemming, sweating or fermenting, and conditioning are not regarded as manufacturing processes. Leaf tobacco does not include any manufactured or semimanufactured tobacco, stems which have been removed from leaves, cuttings, clippings, trimmings, shorts, or dust.

§ 30.3 Unstemmed.

A form of leaf tobacco consisting of a collection of leaves from which the stems or midribs have not been removed, including leaf-scrap.

§ 30.4 Stemmed.

A form of leaf tobacco consisting of a collection of leaves from which the stems or midribs have been removed, including strip scrap.

§ 30.5 Class.

One of the major divisions of leaf tobacco based on the distinct characteristics of the tobacco caused by differences in varieties, soil and climatic conditions, and the methods of cultivation, harvesting, and curing.

§ 30.6 Type.

A subdivision of a class of leaf tobacco, having certain common characteristics which permit of its being divided into a number of related grades. Any tobacco that has the same characteristics and corresponding qualities, colors, and lengths, shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco.

§ 30.7 Group.

A group of grades, or a division of a type covering several closely related grades, based on the general quality of the tobacco, including the percentage of injury, and other factors. The factors that determine the group divisions also largely determine the usage or suitability of tobacco for certain purposes.

§ 30.8 Scrap.

A byproduct from handling leaf tobacco in both the unstemmed and stemmed forms, consisting of loose and tangled portions of tobacco leaves, floor sweepings, and all other tobacco materials (except stems) which accumulate in auction and storage warehouses, packing and conditioning plants, and stemmeries. Scrap which accumulates from handling unstemmed leaf tobacco is known as leaf-scrap, and scrap which accumulates from handling stemmed leaf tobacco is known as strip-scrap. The scrap group, covering both leaf-scrap and strip-scrap is designated by the letter "S".

§ 30.9 Nondescript.

Any tobacco of a certain type which cannot be placed in other groups of the type, or any nested tobacco, or any muddy or extremely dirty tobacco, or any tobacco containing an unusual quantity of foreign matter, or any crude tobacco, or any tobacco which is damaged to the extent of 20 percent or more, or any tobacco infested with live tobacco beetles or other injurious insects, or any wet tobacco, or any tobacco that contains fat stems or wet butts. The nondescript group is designated by the letter "N".

§ 30.10 Cure.

To dry the sap from newly harvested tobacco by either natural or artificial process. Proper curing is done under such conditions as will permit of the chemical and physiological changes necessary to develop the desired quality of color in tobacco.

§ 30.11 Flue-cure.

To cure tobacco under artificial atmospheric conditions by a process of regulating the heat and ventilation without allowing smoke or fumes from the fuel to come in contact with the tobacco.

§ 30.12 Fire-cure.

To cure tobacco under artificial atmospheric conditions by the use of open fires, the smoke and fumes of which are allowed to come in contact with the tobacco.

§ 30.13 Air-cure.

To cure tobacco under natural atmospheric conditions without the use of fire, except for the purpose of preventing pole burn (house burn) in damp weather.

§ 30.14 Cigar filler.

The tobacco that forms the core or inner part of a cigar. Cigar-filler tobacco is tobacco of the kind and quality commonly used for cigar fillers. Cigar-filler types are those which produce chiefly tobacco suitable for cigar-filler purposes.

§ 30.15 Cigar binder.

A portion of a tobacco leaf rolled around the filler of a cigar to bind or hold it together and form the first covering. Cigar-binder tobacco is tobacco of the kind and quality commonly used for cigar binders. Cigar-binder types are those which produce chiefly tobacco suitable for cigar-binder purposes.

§ 30.16 Cigar wrapper.

A portion of a tobacco leaf forming the outer covering of a cigar. Cigar-wrapper tobacco is tobacco of the kind and quality commonly used for cigar wrappers. Cigar-wrapper types are those which produce chiefly tobacco suitable for cigar-wrapper purposes.

§ 30.17 Damage.

The effect of mold, must, rot, black rot, or other fungous or bacterial diseases which attack tobacco in its cured state. Any tobacco having the odor of mold, must, or rot shall be included in damaged tobacco. (Note distinction between "damage" and "injury.")

§ 30.18 Injury.

Hurt or impairment from any cause except the fungous or bacterial diseases which attack tobacco in its cured state. Injured tobacco shall include any dead, burnt, or ragged tobacco; or tobacco that has been torn or broken, frozen or frosted, sunburned or scalded, scorched or fire-killed, bulk-burnt or stem-burnt, pole burnt or house burnt, bleached or bruised; or tobacco containing discolored or deformed leaves; or tobacco hurt by insects; or tobacco affected by wild-fire, black fire, rust, frogeye, mosaic, frenching, sanddrown, or other field diseases.

§ 30.19 Nested.

Any lot of tobacco which has been so handled or packed as to conceal damaged, injured, tangled, or inferior tobacco, or foreign matter.

§ 30.20 Crude.

A subdegree of maturity, crude leaves usually have the general appearance of being raw and unfinished as a result of extreme immaturity. Crude tobacco ordinarily has a characteristic green color.

§ 30.21 Foreign matter.

Any substance or material extraneous to tobacco leaves, such as dirt, sand, stalks, suckers, straws, and strings.

§ 30.31 Classification of leaf tobacco.

For the purpose of this classification leaf tobacco shall be divided into the following classes:

Class 1. Flue-cured types.
Class 2. Fire-cured types.
Class 3.[1] Air-cured types.
Class 4. Cigar-filler types.
Class 5. Cigar-binder types.
Class 6. Cigar-wrapper types.
Class 7. Miscellaneous domestic types.
Class 8. Foreign-grown cigar-leaf types.
Class 9. Foreign-grown types, other than cigar types.

For the purpose of this classification the classes shall be divided into the types and groups set forth in §§ 30.36–30.44.

§ 30.36 Class 1; flue-cured types and groups.

All flue-cured tobacco is graded under the same set of Official Standard Grades for Flue-cured Tobacco (U.S. Types 11, 12, 13, and 14). Flue-cured types are defined according to established general geographical areas of production. However, the determination as to type designations are based upon and indicate the geographic location where inspection and certification are performed—and do not necessarily identify the production area in which the tobacco was grown.

(a) *Type 11a.* That type of flue-cured tobacco commonly known as Western Flue-cured or Old Belt Flue-cured, produced principally in the Piedmont sections of Virginia and North Carolina.

(b) *Type 11b.* That type of flue-cured tobacco commonly known as Middle Belt Flue-cured, produced principally in a section lying between the Piedmont and coastal plains regions of Virginia and North Carolina.

(c) *Type 12.* That type of flue-cured tobacco commonly known as Eastern Flue-cured or Eastern Carolina Flue-cured, produced principally in the coastal plains section of North Carolina, north of the South River.

(d) *Type 13.* That type of flue-cured tobacco commonly known as Southeastern Flue-cured or South Carolina Flue-cured, produced principally in the coastal plains section of South Carolina and the southeastren counties of North Carolina, south of the South River.

(e) *Type 14.* That type of flue-cured tobacco commonly known as Southern Flue-cured, produced principally in the southern section of Georgia, in northern Florida, and to some extent, in Alabama.

Groups applicable to types 11, 12, 13, and 14:
A—Wrappers.
B—Leaf.
H—Smoking Leaf.
C—Cutters.
X—Lugs.
P—Primings.
N—Nondescript, as defined.
S—Scrap, as defined.

[1] Class 3 covers Air-cured tobacco other than cigar leaf. This class may be subdivided as follows: Class 3a, Light Air-cured tobacco, including types 31 and 32, and Class 3b, Dark Air-cured tobacco, including types 35, 36, and 37.

§ 30.37 Class 2; fired-cured types and groups.

(a) *Type 21.* That kind of fire-cured tobacco commonly known as Virginia Fire-cured, or Dark-fired, produced principally in the Piedmont and mountain sections of Virginia.

(b) *Type 22.* That type of fire-cured tobacco, known as Eastern District Fire-cured, produced principally in a section east of the Tennessee River in southern Kentucky and northern Tennessee.

(c) *Type 23.* That type of fire-cured tobacco, known as Western District Fire-cured or Dark-fired, produced principally in a section west of the Tennessee River in Kentucky and extending into Tennessee.

Groups applicable to types 21, 22, and 23:
A—Wrappers.
B—Heavy Leaf.
C—Thin Leaf.
X—Lugs.
N—Nondescript, as defined.
S—Scrap, as defined.

§ 30.38 Class 3; air-cured types and groups.

(a) *Type 31.* That type of air-cured tobacco, commonly known as Burley, produced principally in Kentucky, Tennessee, Virginia, North Carolina, Ohio, Indiana, West Virginia, and Missouri.

Groups applicable to type 31:
X—Flyings.
C—Lugs or Cutters.
B—Leaf.
T—Tips.
M—Mixed.
N—Nondescript, as defined.
S—Scrap, as defined.

(b) *Type 31–V.* Notwithstanding the definitions of "Type" and "Type 31", any tobacco having the general visual characteristics of quality, color, and length of Class 3, Type 31, air-cured tobacco, but which is a low-nicotine strain or variety, produced and to be marketed under such restrictions or controls as shall be specified by the Director of the Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, and which in its cured state is found by an authorized representative of the Department to have a nicotine content of not more than eight-tenths of one percent (8/10 of 1%), oven dry weight, shall not be classified as Type 31 but shall be classified and designated upon certification by the Department as Type 31–V. No groups are established for Type 31–V.

(c) *Restrictions and controls relating to the production and marketing of Type 31–V tobacco as a prerequisite to the classification and certification of such tobacco.*—(1) *Declaration of seed or seedlings.* Tobacco shall be produced from seed or seedlings declared to be a suitable low-nicotine strain or variety for the production of Type 31–V, by an agency or agencies designated by the Director of the Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture.

(2) *Production under contract.* Type 31–V tobacco shall be grown under contract with a dealer in tobacco or a manufacturer of tobacco products. In addition to any other provisions not inconsistent herewith, the contract shall provide that:

(i) The dealer or manufacturer shall furnish to the grower seed or seedlings declared therefor as provided in subparagraph (1) of this paragraph;

(ii) The grower shall deliver to the dealer or manufacturer all tobacco produced from such seed or seedlings;

(iii) The grower shall produce not in excess of the number of acres of low-nicotine tobacco specified in the contract;

(iv) The grower shall establish clear lines of demarcation between the low-nicotine tobacco and any other type of tobacco grown on the farm; and

(v) The low-nicotine tobacco shall be housed and handled separately and shall not be commingled with any other type of tobacco: *Provided,* That this provision shall not prohibit the housing of low-nicotine and other types of tobacco in the same curing barn so long as the low-nicotine tobacco is clearly identified and is not commingled with any other type of tobacco.

(3) *Filing of copy of contract.* A copy of each contract referred to in subparagraph (2) of this paragraph shall be filed by the dealer or manufacturer with the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, by May 1 of each year.

(4) *Restrictions on sale and marketing.* The low-nicotine tobacco shall not be offered for sale, sold, marketed, or otherwise disposed of unless such tobacco is clearly represented and identified as being low-nicotine tobacco: *Provided,* That this restriction shall not apply to products manufactured from such tobacco.

(5) *Nicotine content.* The nicotine content of the tobacco in its cured state, based on an official sample drawn and selected as being representative of the whole production from the acreage of low-nicotine tobacco planted under said contract by the same grower during the same calendar year, shall not be more than eight-tenths of one percent (8/10 of 1%) oven dry weight.

(6) *Furnishing of information.* Each dealer or manufacturer and each grower shall, from time to time, furnish to the Director of the Tobacco Division, such information as shall be requested relating to his production, stocks, and disposition of low-nicotine tobacco.

(7) *Prohibitions relating to seed and plants.* No seed shall be saved or harvested from the tobacco produced under a contract referred to in subparagraph (2) of this paragraph. No grower to whom seed or seedlings is furnished pursuant to subparagraph (2)(i) of this paragraph shall deliver or transfer any such seed or any plant produced therefrom to any other person.

(8) *Designation of seed or seedlings declaring agencies.* The Kentucky Agricultural Experiment Station, Lexington, Kentucky, is designated as an agency for

the declaration of seed or seedlings pursuant to subparagraph (1) of this paragraph.

(9) *Definitions.* For the purposes of the restrictions and controls hereinbefore set forth a "dealer" or a "manufacturer" shall be a dealer in tobacco or a manufacturer of tobacco products.

(d) *Type 32.* That type of air-cured tobacco commonly known as Southern Maryland tobacco or Maryland Air-cured, and produced principally in southern Maryland. (Upper Country Maryland is classed as "miscellaneous domestic.")

Groups applicable to type 32:
X—Seconds.
C—Bright-crop or Thin-crop.
B—Dull-crop or Heavy-crop.
T—Tips.
N—Nondescript, as defined.
S—Scrap, as defined.

(e) *Type 35.* That type of air-cured tobacco commonly known as One Sucker Air-cured, Kentucky-Tennessee-Indiana One Sucker, or Dark Air-cured One Sucker, including the upper Cumberland District One Sucker, and produced principally in northern Tennessee, south central Kentucky, and southern Indiana.

(f) *Type 36.* That type of air-cured tobacco commonly known as Green River, Green River Air-cured, or Dark Air-cured of the Henderson and Owensboro Districts, and produced principally in the Green River section of Kentucky.

(g) *Type 37.* That type of air-cured or sun-cured tobacco commonly known as Virginia Sun-cured, Virginia Sun and Air-cured, or Dark Air-cured of Virginia, and produced principally in the central section of Virginia north of the James River.

Groups applicable to types 35, 36, and 37.
A—Wrappers.
B—Heavy Leaf.
C—Thin Leaf.
T—Tips.
X—Lugs.
N—Nondescript, as defined.
S—Scrap, as defined.

§ 30.39 Class 4; cigar-filler types and groups.

(a) *Type 41.* That type of cigar-leaf tobacco commonly known as Pennsylvania Seedleaf or Pennsylvania Broadleaf, produced principally in Lancaster County, Pennsylvania, and adjoining counties and including other areas of Pennsylvania and Maryland in which the seedleaf variety is grown.

Groups applicable to type 41:
C—Stripper.
X—Straight Stripped.
Y—Farm Filler.
N—Nondescript, as defined.

(b) *Type 42.* That type of cigar-leaf tobacco commonly known as Gebhardt, Ohio Seedleaf, or Ohio Broadleaf, produced principally in the Miami Valley Section of Ohio and extending into Indiana.

(c) *Type 43.* That type of cigar-leaf tobacco commonly known as Zimmer, Spanish, or Zimmer Spanish, produced principally in the Miami Valley Section of Ohio and extending into Indiana.

(d) *Type 44.* That type of cigar-leaf tobacco commonly known as Dutch, Shoestring Dutch, or Little Dutch, produced principally in the Miami Valley Section of Ohio.

Groups applicable to types 42, 43, and 44:
X—Straight Stripped.
N—Nondescript, as defined.

(e) *Type 46.* That type of cigar-leaf tobacco commonly known as Puerto Rican Filler, produced principally in the inland and semicoastal areas of Puerto Rico.

Groups applicable to type 46:
C—Strippers.
X—Grinders.
N—Nondescript, as defined.
S—Scrap, as defined.

§ 30.40 Class 5; cigar-binder types and groups.

(a) *Type 51.* That type of cigar-leaf tobacco commonly known as Connecticut Valley Broadleaf or Connecticut Broadleaf, produced principally in the Connecticut River Valley.

(b) *Type 52.* That type of cigar-leaf tobacco commonly known as Connecticut Valley Havana Seed or Havana Seed of Connecticut and Massachusetts, produced principally in the Connecticut River Valley.

Groups applicable to types 51 and 52:
B—Binder.
X—Nonbinder.
N—Nondescript, as defined.
S—Scrap, as defined.

(c) *Type 53.* That type of cigar-leaf tobacco commonly known as York State or Havana Seed of New York, and Pennsylvania, produced principally in the Big Flats and Onondaga sections of New York State, and extending into Pennsylvania.

(d) *Type 54.* That type of cigar-leaf tobacco commonly known as Southern Wisconsin Cigar-leaf or Southern Wisconsin Binder-type, produced principally south and east of the Wisconsin River.

(e) *Type 55.* That type of cigar-leaf tobacco commonly known as Northern Wisconsin Cigar-leaf or Northern Wisconsin Binder-type, produced principally north and west of the Wisconsin River and extending into Minnesota.

Groups applicable to types 53, 54, and 55:
B—Binder.
C—Stripper.
X—Straight Stripped.
Y—Farm Filler.
N—Nondescript, as defined.
S—Scrap, as defined.

§ 30.41 Class 6; cigar-wrapper types and groups.

(a) *Type 61.* That type of shade-grown tobacco known as Connecticut Valley Shade-grown, produced principally in the Connecticut Valley section of Connecticut and Massachusetts.

(b) *Type 62.* That type of shade-grown tobacco known as Georgia and Florida Shade-grown, produced principally in southwestern Georgia and in the central part of northern Florida.

Groups applicable to types 61 and 62:
A—Wrappers.
S—Stained.
X—Brokes.
N—Nondescript, as defined.

§ 30.42 Class 7; miscellaneous domestic types.

No group divisions are established for any of the types in Class 7. Notwithstanding the definitions of "Class," "Type," "Type 11," "Type 12," "Type 13," and "Type 14," any tobacco having the general visual characteristics of quality, color and length of the types and groups contained in Class 1, flue-cured tobacco, but which is a strain or variety found in its cured state by an authorized representative of the Department to have a nicotine content of not more than eight-tenths of one per cent (8/10 of 1%), oven dry weight, shall be designated upon certification by the Department as Class 7: *Provided*, That for the purpose of establishing and maintaining the identity of such tobacco, it shall not be sold or offered for sale through customary marketing channels for Class 1, flue-cured tobacco; and it shall be identified in accordance with instructions issued by the Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, covering certification of seed or seedlings, contracts for production, designation and demarcation of fields in which grown, maintenance of separate identity of such tobacco from other tobacco, furnishing of samples and furnishing of such information as may be requested relating to production, stocks, and disposition of such tobacco. For tobacco stocks reporting purposes, all miscellaneous domestic tobacco shall be designated as follows:

(a) Type 72: That type of tobacco commonly known as Louisiana Perique, or Perique, produced principally in St. James Parish located in southeastern Louisiana.

(b) Type 73: All domestic-grown tobacco not otherwise classified, including tobacco cured in the same manner as Class 1, flue-cured tobacco, but having a nicotine content of not more than eight-tenths of one percent (8/10 of 1%), oven dry weight. Also included in the miscellaneous types are such types as Ohio Flue-cured and Fire-cured (known as Eastern Ohio), Upper Country Maryland, California, Turkish, and Virginia One-sucker, and the production of the insular possessions of the United States not otherwise classified.

§ 30.43 Class 8; foreign-grown cigar-leaf types.

No group divisions are established for any of the types in Class 8. Type designations for Class 8 tobacco are based on the country from which the tobacco is imported, with no reference to physical characteristics. For tobacco stocks reporting purposes, foreign-grown cigar leaf shall be designated as follows:

(a) *Type 81*
Cuba
(b) *Type 82*
Indonesia

(c) *Type 83*
Philippine Islands
(d) *Type 84*
Brazil
(e) *Type 85*
Colombia
(f) *Type 86*
Dominican Republic
(g) *Type 87*
Paraguay
(h) *Type 88*
Mexico
(i) *Type 89*
All other foreign-grown cigar leaf.

§ 30.44 Class 9; foreign-grown types other than cigar leaf.

No group divisions are established for any of the types in Class 9. Type designations for class 9 are based on (a) utilization, (b) curing method, or both, with no reference to physical characteristics. For tobacco stocks reporting purposes, all foreign-grown tobacco other than cigar leaf shall be designated as follows:

(a) *Type 91.* Foreign grown tobacco commonly known as oriental or aromatic, used principally in blends of cigarette and pipe tobacco.

(b) *Type 92.* Foreign-grown flue-cured tobacco.

(c) *Type 93.* Foreign-grown burley tobacco.

(45 Stat. 1079; 7 U.S.C. 502)

REPORTS

§ 30.60 Reports.

Within fifteen (15) days after January 1, April 1, July 1, and October 1 of each year, all manufacturers, dealers, grower cooperative associations, owners or agents, other than the original grower of the tobacco and manufacturers who produced less than 185,000 cigars, or 750,000 cigarettes or 35,000 pounds of manufactured tobacco during the first three quarters of the preceding calendar year, shall complete and mail to the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, in the detail required on forms available from him, reports showing the following information as to leaf tobacco in leaf and sheet form:

(a) *Tobacco in leaf form.* The pounds of tobacco in leaf form owned on the first day of the applicable quarter, with all stocks reported by types of tobacco and whether stemmed or unstemmed; and

(b) *Tobacco in sheet form.* The pounds of leaf tobacco stemmed or unstemmed included in and represented by all stocks of tobacco sheet owned on the first day of the applicable quarter, segregated by the classification and type of tobacco included in and represented by such tobacco sheet and further segregated as to whether for cigar binder or wrapper, or for cigarettes, except that a purchaser of tobacco sheet may, in lieu of the above, report the pounds of sheet tobacco owned on the first day of the applicable quarter, segregated as to whether for cigar binder or wrapper, or for cigarettes and give the name of the firm or firms which produced such sheet tobacco.

NOTE: The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

ADMINISTRATION

§ 30.61 Administration.

The Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, is charged with the supervision of the Division and the performance of all duties assigned thereto in the administration of the Tobacco Stocks and Standards Act. The conduct of all services, classification of leaf tobacco, or employment of inspection/grading/sampling personnel under these regulations shall be accomplished without discrimination as to race, color, religion, sex, or national original. Information concerning such administration may be obtained from the Director.

Done at Washington, D.C., this 5th day of December 1973.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.73-26149 Filed 12-7-73;8:47 am]

Rural Electrification Administration

[7 CFR Part 1701]

NONDISCRIMINATION AMONG BENEFICIARIES OF REA PROGRAMS

REA Policy and Procedure

Notice is hereby given that, pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue a revision of REA Bulletin 20-19: 320-19, Nondiscrimination Among Beneficiaries of REA Programs. The purpose of the revised bulletin is to clarify and update REA policy and procedural requirements for carrying out the provisions of Title VI of the Civil Rights Act of 1964 and the Department of Agriculture Rules and Regulations as amended July 5, 1973, in the administration of REA programs. On issuance of the revised bulletin, Appendix A to part 1701 will be modified accordingly.

Persons interested in this revision may submit written data, views, or comments to the Civil Rights Coordinator, Rural Electrification Administration, Room 4313, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 30 days from the date of the publication of this statement in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for inspection to the Civil Rights Coordinator.

A copy of the proposed revision of REA Bulletin 20-19: 320-19 may be secured in person or by written request from the Civil Rights Coordinator.

A summary of proposed substantive changes in REA Bulletin 20-19: 320-19 is as follows:

1. A new paragraph under "Compliance Assurance" has been added to assure compliance with the Rules and Regulations of the Department of Agriculture, including the July 5, 1973, amendments thereto. The new paragraph states: "Each borrower shall provide REA with an additional assurance by July 1, 1974, that it will conduct its operations in compliance with all requirements imposed by or pursuant to the Rules and Regulations. The additional assurance shall be provided on REA Form 266 (rev. 11-73) * * *. The providing of such assurance shall be prerequisite to all advances after July 1, 1974, and such assurance shall remain effective for all subsequent advances."

2. Discrimination in employment practices which tends to cause discrimination in services provided to beneficiaries is prohibited.

3. The maintenance of racial and ethnic data for consumers and subscribers has been added to ascertain information by ethnic categories of white, black, American Indians, Spanish surname, Oriental and other. Appendix C, "Sampling Procedure for Estimating the Number of Residential Patrons by Racial/Ethnic Composition," has been revised to determine the composition of all ethnic categories as required in this new subsection.

4. The time for filling complaints has been extended from 90 to 180 days.

5. A new subsection has been added encouraging cooperatives or mutual type borrowers to develop goals with respect to more effective minority members' participation. A new Appendix D, "Suggested Goals for Member Participation and Plans for Implementation," has been developed to assist in the implementation of this subsection.

6. Items 3, 4, 8 and 9 of REA Form 268, "Report of Compliance and Participation," has been revised to clarify the information gathered.

Dated: December 5, 1973.

DAVID A. HAMIL,
Administrator.

[FR Doc.73-26144 Filed 12-7-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Parts 1910, 1926]

GROUND FAULT CIRCUIT PROTECTION

Notice of Public Hearing

In February of 1972, Subpart S of 29 CFR Part 1910 and Subpart K of 29 CFR Part 1926 were both amended in order, among other things, to adopt the updated version of the National Electrical Code, NFPA 70-1971; ANSI C1-1971 (Rev. of 1968) (37 FR 3431). The last paragraph of section 210-7 of the Code provides as follows:

"All 15- and 20-ampere receptacle outlets on single-phase circuits for construction sites shall have approved ground-fault circuit protection for personnel. This requirement shall become effective on January 1, 1974."

Ground fault circuit interrupters (GFCI) presently approved are designed to interrupt electrical power if a ground fault current of 5 milliamperes or greater develops in the circuits or equipment

being supplied by 15- and/or 20-ampere receptacles.

On November 8, 1973, the Department of Labor's Advisory Committee on Construction Safety and Health unanimously voted to recommend to the Assistant Secretary of Labor for Occupational Safety and Health to hold the January 1, 1974, effective date of the GFCI requirement in abeyance pending further study. Additionally, on November 19, 1973, representatives of the National Constructors Association also petitioned the Assistant Secretary to postpone the effective date of the requirement. The National Constructors Association alleges that a level of 5 milliamperes is too low a value for application at construction sites and that this results in "nuisance tripping" of the electrical power. It, therefore, requests that the January 1, 1974, effective date be postponed pending reconsideration in order to determine whether the GFCI should be set to trip at some other higher level.

The recommendation of the Advisory Committee on Construction Safety and Health and the petition of the National Constructors Association raise serious questions as to whether the GFCI requirement is feasible.

On December 4, 1973, this requirement was amended by postponing the effective date pending reconsideration of the requirement. (38 FR 33397).

Therefore, to provide an opportunity to obtain relevant data, it is concluded that a public hearing concerning this requirement should be provided and the effective date held in abeyance pending conclusions obtained from written comments and the public hearing.

Interested persons are encouraged to submit written data, views, and arguments, concerning this requirement to the Office of Standards, Room 509, 400 First Street, N.W. Washington, D.C. 20210, before January 30, 1974. Any written submissions received will be available for inspection and copying at the Office of Standards.

Accordingly, pursuant to authority in section 6(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1600; 29 U.S.C. 657), section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96; 40 U.S.C. 333), 5 U.S.C. 552, and Secretary of Labor's Order No. 12–71 (36 FR 8754), an informal public hearing concerning the requirement of Section 210–7 of the National Electrical Code will be held beginning at 10 a.m. on Tuesday, February 26, 1974, in Room 107 A, B, and C of the U.S. Department of Labor, 14th Street and Constitution Avenue, N.W., Washington, D.C. The hearing will be conducted by an Administrative Law Judge assigned by the Chief Administrative Law Judge of the Department of Labor. Beginning at 9:30 a.m. on February 26, 1974, a prehearing conference will be held in order to establish the order and time for the presentation of statements and settle any other procedural matters relating to the proceeding. All documents that are intended to be submitted for the record at the hearing should be submitted in duplicate. The hearing will be reported verbatim, and a transcript shall be available to any interested person on such terms as the Administrative Law Judge may provide.

Persons desiring to appear at the hearing must file a notice of intention to appear with the Office of Standards, Room 509, 400 First Street NW., Washington, D.C. 20210, before February 15, 1974. The notice must contain the following information:

(1) The name and address of the person to appear;
(2) The capacity in which he will appear;
(3) The approximate amount of time needed for the presentation;
(4) The specific provision of the regulation which will be addressed or which is objected to;
(5) The position that will be taken with respect to each provision addressed;
(6) A summary of the evidence or testimony, with respect to each provision, proposed to be adduced at the hearing.

The Administrative Law Judge shall have all the powers necessary or appropriate to conduct a fair and full hearing; including the powers:

(1) To regulate the course of the proceeding;
(2) To dispose of procedural requests, objections, and comparable matter;
(3) To confine the presentations to the issues relevant to the proceeding;
(4) To regulate the conduct of those present at the hearing by appropriate means;
(5) In his discretion, to permit cross-examination of any witness on crucial issues;
(6) In his discretion, to keep the record open for a reasonable, stated time to receive written recommendations, and supporting reasons, and additional data, views and arguments from any person who has participated in the oral proceedings.

Within a reasonable period of time after the completion of the public hearing or posthearing comment period, if provided, the Administrative Law Judge shall certify the entire record of this proceeding to the Assistant Secretary of Labor, including the transcript thereof, together with written submissions received concerning the regulation, exhibits filed during the hearing, and any posthearing comments.

The regulation will be reviewed in the light of all oral and written submissions received as part of the record in this proceeding and will be changed accordingly.

(Sec. 6(b), Pub. L. 91–596, 84 Stat. 1600 (29 U.S.C. 657); sec. 107, Pub. L. 91–54, 83 Stat. 96 (40 U.S.C. 333); 5 U.S.C. 552; Secretary of Labor's Order No. 12–71, 36 FR 8754)

Signed at Washington, D.C., this 30th day of November 1973.

JOHN H. STENDER,
Assistant Secretary of Labor.

[FR Doc.73-26101 Filed 12-7-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 102]

COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOOD

Size and Style of Type for Listing of Ingredients

In the FEDERAL REGISTER of March 14, 1973 (38 FR 6964), the Commissioner of Food and Drugs promulgated a new Part 102 to permit the adoption of common or usual names for nonstandardized food. Section 102.1 (21 CFR 102.1) set out general principles applicable to the requirements for such names.

Section 102.1(a) requires that the common or usual name of a food identify or describe the food in as simple and direct terms as possible. Paragraphs (b) and (c) of § 102.1 require that explanatory phrases be utilized as part of the name where the name would otherwise be incomplete, misleading, or create an erroneous impression. The regulations require that the portion of the common or usual name of the food specified in § 102.1(b) and/or (c) must be no less than half the height of the largest type appearing in the part of the common or usual name of the food required by § 102.1(a).

Questions have arisen as to whether any word contained in the portion of the food name specified in § 102.1(a) may be larger than any other word used in that part of the name, and similarly whether any word used in the portion of the name specified in § 102.1(b) and/or (c) may be larger or more prominent than any other word utilized in that portion of the name. It has long been the position of the Food and Drug Administration that any emphasis of a particular term, giving it undue prominence (e.g., using a larger type size or a different style of type for an ingredient in the statement of ingredients) is misleading, in violation of section 403(a) and (f) of the Federal Food, Drug, and Cosmetic Act. This was not explicitly stated in Part 102 (21 CFR Part 102) because it is a widely-known and long-held FDA policy. In view of the questions that have arisen, however, the Commissioner has decided to amend Part 102 in order explicitly to include this policy. This will preclude the possibility of confusion.

Questions have also arisen as to whether the full name specified in a regulation under subpart B of Part 102 must appear wherever the name of the food appears on the label or in labeling. The Commissioner advises that, pursuant to § 1.8(a) (21 CFR 1.8(a)), the full common or usual name of a food must appear wherever the name of the food is used on the principal display panel(s), but not on other panels unless the failure to include the full name would be misleading. This rule applies in the case of all food, including food for which a common or usual name is specified in Subpart B

of Part 102, unless a specific regulation provides otherwise. One example of a regulation which provides for complete use of the common or usual name of the food is in § 102.12(d) (21 CFR 102.12(d)), where it is required that the entire common or usual name for a food package for use in the preparation of main dishes or dinners is required on panels other than the principal display panel when the name of the finished food is used as a product identification of such panels. The Commissioner concludes that the regulations are sufficiently clear on these matters and that no clarification or change is necessary.

Finally, questions have arisen as to whether all components of a frozen dinner must be listed as required by § 102.11(b)(2) (21 CFR 102.11(b)(2)), even though they repeat principal components included in the descriptive term permitted by § 102.11(b)(1), and whether a standardized name may be used to designate one or more of those components. The Commissioner advises that, even though the descriptive term permitted by § 102.11(b)(1) may properly include one or more of the components in the food, all components must be stated together as required by § 102.11(b)(2), even though this is repetitive. Where there is a United States Department of Agriculture or FDA standard of identity for a component, it may be listed by its standardized name as a single component pursuant to § 102.11(b)(2) even though it may contain one or more ingredients and even though it counts as two or more of the three components required under § 102.11(a)(1). A multi-ingredient component for which there is no standard, or in any event, no common or usual name established under Part 102, is not, however, subject to this rule. Part 102 provides for petition to recognize such common or usual names, in which case they may be used pursuant to § 102.11(b)(2). The Commisisoner concludes that the regulations are sufficiently clear on these matters and that no clarification or change is necessary.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041, as amended, 1047–1048, as amended, 1055; 21 U.S.C. 321(n), 343, 371(a)), and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that Part 102 be amended in § 102.1 by adding a new paragraph (e), to read as follows:

§ 102.1 General principles.

* * * * *

(e) Every word appearing in the part of the common or usual name of the food required by paragraph (a) of this section shall appear in the same size and style of type, and every word appearing in the part of the common or usual name of the food required by paragraphs (b) and/or (c) of this section shall appear in the same size and style of type, except as otherwise provided in a regulation pertaining to the food.

Interested persons may, on or before January 9, 1974, 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: December 3, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-26104 Filed 12-7-73;8:45 am]

Office of Education

[45 CFR Part 170]

CONSTRUCTION OF ACADEMIC FACILITIES

Proposal Regarding Financial Assistance

In accordance with section 503 of the Education Amendments of 1972 (P.L. 92–318), and pursuant to the authority contained in Title VII of the Higher Education Act of 1965, as amended (Academic Facilities Construction, which continued and amended the Higher Education Facilities Act of 1963, Public Law 88–204, as part of the Higher Education Act), the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Title 45, Part 170, of the Code of Federal Regulations to read as set forth below.

1. *Program purpose.* Title VII of the Higher Education Act provides for grants, loans, and annual interest grants to higher education institutions to finance or to reduce the cost of borrowing from private sources for construction, rehabilitation, and improvement of academic facilities.

2. *Section 503 procedures and effect.* Section 503 of the Education Amendments of 1972 requires the Commissioner to study all rules, regulations, guidelines, or other published interpretations or orders issued by him or by the Secretary after June 30, 1965, in connection with, or affecting, the administration of Office of Education programs; to report to the Committee on Labor and Public Welfare of the Senate and the Commitee on Education and Labor of the House of Representatives concerning such study; and publish in the FEDERAL REGISTER such rules, regulations, guidelines, interpretations, and orders, with an opportunity for public hearing on the matters so published. The regulations proposed below reflect the results of this study as it pertains to the program under Title VII of the Higher Education Act. Upon publication of revised Part 170 in final form, incorporating amendments proposed to the Office of Education by written comment or through public hearing, all preceding rules, regulations, guidelines, and other published interpretations and orders issued in connection with or affecting Part 170 will be superseded effective thirty days after such publication.

3. *Effect of Office of Education general provisions regulation.* The proposed regulation differs from the current regulation only in that a few provisions have been deleted such as those relating to Federal audits, labor standards compliance, and record retention which are presently covered in 45 CFR Part 170 and which will be covered in the future under the overall Office of Education general provisions regulation, published under notice of proposed rulemaking in the FEDERAL REGISTER at 38 FR 10386 (April 26, 1973), in connection with the same study under section 503 of the Education Amendments of 1972 of which this publication is a part.

4. *Citations of legal authority.* As required by section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)) and section 503 of the Education Amendments of 1972, a citation of statutory or other legal authority for each section of the regulations and guidelines has been placed in parentheses on the line following the text of the section.

On occasion, a citation appears at the end of a subdivision of the section. In that case the citation is to all that appears in that section above the citation. When the citation appears only at the end of the section, it applies to the entire section.

5. *Opportunity for public hearing.* Pursuant to section 503(c) of the Education Amendments of 1972, the Commissioner will provide interested parties an opportunity for a public hearing on these regulations, as follows:

A hearing will take place at the U.S. Office of Education on January 12, 1974, in the auditorium of Regional Office Building Three (ROB–3), 7th and D Streets SW., Washington, D.C. 20202, beginning at 10 a.m.

The purpose of the hearing is to receive comments and suggestions on the published materials.

Interested parties may also submit written comments and recommendations to U.S. Office of Education, Room 2079–G, Federal Office Building Six, 400 Maryland Avenue SW., Washington, D.C. 20202. Attention: Chairman, Office of Education Task Force on section 503. All relevant material received prior to the date of the hearing will be considered. Comments and suggestions submitted in writing will be available for review in the above office between the hours of 9 a.m. and 4:30 p.m., Monday through Friday of each week.

Parties interested in attending the hearing should notify the Office of Education at the 400 Maryland Avenue, SW., address, shown above, and are urged to submit a written copy of their comments with such notification. Each party planning to make oral comments at the hearing is urged to limit his presentation to a maximum of fifteen minutes.

(Catalog of Federal Domestic Assistance No. 13.457, Higher Education Academic Facilities Construction—Interest Subsidization; 13.458, Higher Education Academic Facilities Construction—Public and Private Colleges and Universities;

13.459, Higher Education Academic Facilities—Public Community Colleges and Technical Institutes)

Dated: October 18, 1973.

JOHN OTTINA,
U.S. Commissioner of Education.

Approved: November 30, 1973.

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

PART 170—FINANCIAL ASSISTANCE FOR CONSTRUCTION OF HIGHER EDUCATION FACILITIES

Subpart A—General Provisions

Subpart B—Grants for Construction of Academic Facilities

Subpart C—Grants for Construction of Graduate Academic Facilities

Subpart D—Loans for Construction of Academic Facilities

Subpart E—Annual Interest Grants for Construction of Academic Facilities

AUTHORITY: Secs. 701–782, Pub. L. 89–329, Title VII, as amended, 86 Stat. 288–303 (20 U.S.C. 1132a–1132e), unless otherwise noted.

Subpart A—General Provisions

§ 170.1 Definitions.

(a) "Act" means Public Law 89–329, the Higher Education Act of 1965, as amended. Unless otherwise indicated, title references are to titles of the Act. All terms defined in the Act shall have the same meaning as given them in the Act. All references to sections are to sections of this part, unless otherwise indicated.

(b) "Academic facilities," as defined in the Act, are further defined and subdivided into the following categories:

(1) "Instructional and library facilities" means all rooms or areas used regularly for instruction of students, for faculty offices, or for library purposes, and service areas which adjoin and are used in connection with such rooms or areas.

(2) "Instruction - related facilities" means all rooms or areas other than instructional and library facilities which are used for purposes related to the instruction of students, research, or for the general administration of the educational or research programs of an institution of higher education and service areas which adjoin and are used in conjunction with such rooms or areas.

(3) "Health-care facilities," as authorized under Titles VII A and VII C, means infirmaries and all other rooms or areas designed to be used for medical examination or treatment of students and institutional personnel, and service areas which directly serve such rooms or areas.

(4) "Related supporting facilities" means all other areas and facilities which are necessary for the utilization, operation, and maintenance of "instructional and library facilities," "instruction-related facilities," or "health care facilities," as defined above. This term includes building service and circulation areas and central maintenance and utility facilities which serve more than one building, to the degree that such central facilities are designed and used to serve academic facilities of the aforementioned categories, rather than other, nonacademic facilities such as dormitories, chapels, stadiums, or facilities which are excluded by statute from the definition of eligible academic facilities because they are used by ineligible schools or departments.

(20 U.S.C. 1132c–1)

(c) "Assignable area" means square feet of area in facilities which are designed and available for assignment to specific functional purposes (such as instruction, research, and administration, and including noneligible purposes such as student sleeping rooms, apartments, or chapel rooms). Areas used for general circulation within the building, for public washrooms, for building maintenance and custodial services, or in central maintenance and utility facilities which exist only to support the operation and utilization of other structures on the campus and which are not available for assignment to other specific functional purposes, as illustrated above, shall be classified as nonassignable area.

(20 U.S.C. 1132c–1 (1) and (2))

(d) "Branch campus" means a separately organized unit of an institution of higher education which is located apart from the parent institution and which meets in its own right the definition of an institution of higher education as defined in the Act.

(20 U.S.C. 1141)

(e) "Capacity/enrollment ratio" means the ratio of (1) the square feet of assignable area of instructional and library facilities as defined in paragraph (b)(1) of this section to (2) the total student clock-hour enrollment, at a particular campus of an institution. For purposes of this definition, "student clock-hour enrollment" means the aggregate clock hours (sometimes called contact hours) per week in classes or supervised laboratory or shop work for which all resident students (i.e., students enrolled for credit courses on the campus) are enrolled as of a particular date. Where formally established independent study programs exist, systematically determined equivalents of class or laboratory hours may be included under "student clock-hour enrollment."

(20 U.S.C. 1132a–4)

(f) "Developing institution" means an eligible institution of higher education which has the desire and potential to make a substantial contribution to the higher education resources of our Nation but which for financial and other reasons is struggling for survival and is isolated from the main currents of academic life.

(20 U.S.C. 1051)

(g) "Equipment" means manufactured items which have an extended useful life and are not consumed in use and which have an identity and function which are not lost through incorporation into a different or more complex unit or substance. Equipment is further subdivided into two categories: Built-in equipment and initial equipment.

(1) "Built-in equipment" means equipment which is a permanent part of the structure.

(2) "Initial equipment" means all items of equipment other than built-in equipment, which are necessary and ap-

propriate for the initial functioning of a particular academic facility for its specific purpose. No equipment shall be considered as initial equipment unless it has been acquired or contracted for prior to the date on which the facility is first used for education of students.

(20 U.S.C. 1132e-1(2))

(h) "Full-time equivalent number of students" means:

(1) For purposes of determining State allotments, the number of full-time students enrolled in programs which consist wholly or principally of work normally creditable towards a bachelor's or higher degree plus one-third of the number of part-time students enrolled in such programs, plus 40 percent of the number of students enrolled in programs which are not chiefly transferable towards a bachelor's or higher degree plus 28 percent of the remaining number of such students. Student enrollment figures for each fiscal year for the purposes of this computation shall be those contained in the most recent Office of Education survey containing data on opening fall enrollments in higher education.

(20 U.S.C. 1132a-1, 1132a-2)

(2) For purposes of reporting undergraduate enrollment trends and projections in connection with applications for financial assistance for individual institutions under Title VII A of the Act, the "full-time equivalent number of students" may be defined for each State by the State commission by specific State plan provision. In the absence of such a definition in the applicable State plan, "full-time equivalent number of students" for application purposes shall be the total number of full-time students plus one-third of the number of part-time students. For the purpose of this definition, full-time students are those carrying at least 75 percent of a normal student-hour load.

(20 U.S.C. 1132a-4)

(i) "Institution of higher education, or institution," means only so much of an educational institution in any State as meets the requirements set forth in section 1201(a) of the Act. The term "educational institution" limits the scope of this definition to establishments at which teaching is conducted.

(20 U.S.C. 1141)

(j) "Project" means the facilities (all or a portion of one or more structures) which are eligible for grant or loan assistance under a particular title of the Act, and for which grant or loan assistance is requested in a specific grant or loan application. Only facilities to be part of a unified construction activity and to be constructed on the same campus may be included in the same project application.

(20 U.S.C. 1132e-1(2))

(k) "State commission" means the State agency designated or established in each State which is broadly representative of the public and of institutions of higher education in that State.

(20 U.S.C. 1132a-2)

(l) "State plan" means the document submitted by a State commission and approved by the Commissioner, which sets forth the standards, methods, and administrative procedures whereby the State Commission will review projects proposed by applicants in the State for Federal assistance under Title VII A of the Act, and will determine and recommend the relative priority of each such project and the Federal share of the costs eligible for Federal financial participation for each such project.

(20 U.S.C. 1132a-3(a))

§ 170.2 Office of Education general provisions.

Assistance provided under Title VII of the Act, except Part C, is subject to applicable provisions contained in Subchapter A of this chapter (relating to fiscal, administrative, property management, and other matters). Assistance under Part C of Title VII of the Act is, however, subject to Subpart K of Subchapter A of this chapter (relating to construction requirements). (20 U.S.C. 1132a)

§ 170.3 Modification of general requirement for competitive bidding on contracts for construction and for acquisition and installation of built-in equipment.

(a) Owner-furnished material or equipment may be procured in accordance with the procedures set out in 45 CFR Part 100a, Subpart I (Procurement standards).

(b) In order to assure the eligibility of costs under § 170.5, recipients must obtain the approval of costs to be incurred both before advertising for or soliciting bids and before awarding any construction contract covered under the Act. Such approval will be given only after Federal assistance has been approved for the facility by an appropriate Federal agency.

(20 U.S.C. 1132a-6(a)(2)(F))

§ 170.4 Fiscal control and fund accounting procedures by State commissions.

Each State plan shall contain specific information regarding fiscal control and fund accounting procedures as required by the Commissioner to insure proper disbursement of and accounting for Federal funds which may be paid to the State commission for expenses for the proper and efficient administration of the State plan.

(20 U.S.C. 1132a-3)

§ 170.5 Retention of records by State commissions.

State commissions shall establish a complete case file on each Title VII-A application received; inform applicants of official actions and determinations by letter or similar type of correspondence, and shall retain records regarding each case for at least 2 years after final action with respect to any such application. In addition, each State commission shall maintain a full record of all hearings on appeals pursuant to section 704(a)(5) of the Act, and all proceedings by which it establishes relative priorities and recommended Federal shares for eligible projects considered as of each specified closing date and shall retain such records for at least 3 years.

(20 U.S.C. 1132a-3(a)(b))

§ 170.6 Determination of costs eligible for Federal participation.

(a) Determination of costs eligible for Federal participation will be based for each individual project, whether application is made under Title VII-A, VII-B, or VII-C of the Act, upon: (1) The date on which a given cost item was incurred or contracted for; (2) whether the cost is an allowable "development cost," as defined in section 782(3) of the Act, and has been incurred in accordance with the requirements set forth in these regulations; (3) the portion of the proposed facility which is eligible under the type of assistance for which the application is submitted; and (4) the amount of any financial assistance under any other Federal program which the applicant has obtained or is assured of obtaining for the project.

(b) For a project for which an application is filed for the first time under any program of the Act on or after July 1, 1972, the following shall be excluded from the eligible development cost:

(1) Any cost for the acquisition of land which was incurred more than 2 years prior to the date an application is filed;

(2) Any cost for the acquisition of an existing structure incurred more than 1 year prior to the date an application is filed;

(3) Any cost for initial equipment incurred before the date an application is filed; or

(4) Any cost for construction (including new construction, remodeling, rehabilitation, or conversion) or for built-in equipment where the contract has been entered into prior to the date an application is filed and prior to the concurrence of the Commissioner in the award of the contract.

(20 U.S.C. 1132e-1 (3) and (4))

(c) With respect to applications for annual interest grants submitted under Subpart E of this part, where the construction contract or contract for the purchase or installation of built-in equipment was entered into on or before July 1, 1966, an exception to the provisions set forth in paragraph (b) of this section may be made by the Commissioner in unusual cases where he finds that the applicant is financially hard pressed and has secured only short-term (not in excess of 5 years) financing of the academic facilities with respect to which the annual interest grant is requested, which short-term financing must be replaced in order to reduce the financial hardships, and where such academic facilities provide significant addi-

tional enrollment capacity for disadvantaged students. In making the foregoing findings the Commissioner will take into account:

(1) The number of disadvantaged students enrolled by the college and the percentage of the total enrollment represented by that number,

(2) The number of low-income families residing in the area served by the college and the average family income in that area,

(3) The immediacy of the college's need to obtain new financing, the availability of financing from other sources, and the effect of the burden of the present and proposed new financing on the college's ability to continue serving disadvantaged students,

(4) The number of disadvantaged students who benefit from the facilities for which the college is seeking financing, and

(5) The extent of programs offered by the college to assist disadvantaged students in taking maximum advantage of their educational opportunity.

In no event will an exception be made by the Commissioner pursuant to this paragraph unless the applicant produces evidence that the provisions of § 170.3 have been met and has satisfied the Commissioner that the reasons for the applicant not having timely filed an application or secured the Commissioner's approval as provided for in paragraph (b)(4) of this section were not due to any unwillingness on the part of the applicant to meet such conditions.

(20 U.S.C. 1132c-4)

§ 170.7 Urgency of need for projects of public institutions.

(a) Notwithstanding other project eligibility requirements, the Commissioner under Parts B, C, and D of Title VII of the Act and the State commission under Part A of Title VII of the Act, shall not approve an application for assistance of a public institution of higher education unless the Commissioner or State commission, as appropriate, determines that the need for the project is urgent in light of the capacity of other public institutions of higher education which enroll students from basically the same geographic area as the applicant institution.

(b) If the applicant institution has a history of not serving persons of a particular race, color, or national origin and if there are within the geographic area which the institution serves one or more public institutions of higher education which have a history of not serving persons of another race, color, or national origin, the Commissioner or the State commission, as appropriate, shall not determine that such urgency of need exists unless the applicant provides evidence satisfactory to the Commissioner that the construction and proposed use of the facilities will not establish, increase, or impede the elimination of the racial identifiability of any of these institutions.

(20 U.S.C. 1132a-4, 1132b, 1132c-4, 1132d-1 and Shannon vs. HUD, 436 F 2d 809)

Subpart B—Grants for Construction of Academic Facilities

§ 170.11 Institutional eligibility for grants under section 702 of the Act.

To qualify for a grant from funds allotted pursuant to section 702 of the Act, an institution or a branch campus of an institution shall meet the requirements specified in section 1201(a) and 782(6) of the Act.

(a) An institution which is not accredited by a nationally recognized accrediting agency or association listed pursuant to section 1201 of the Act may qualify, alternatively, by obtaining a certification from the Commissioner (dated no earlier than 2 years prior to the date of filing of the application for a grant) stating that the institution has met the requirements set forth in subsection 1201(a)(5) of the Act.

(b) An institution or a branch campus of an institution shall be determined to be organized and administered principally to provide a 2-year program as specified in section 782(6) of the Act, if:

(1) More than 50 percent of the full-time equivalent student enrollment at the institution or branch campus is in 2-year programs of the types specified in section 782(6) of the Act; and

(2) The application for a grant pursuant to section 702 of the Act contains a statement that the institution or branch campus is organized and administered principally to provide such programs, and such statement is supported by information available to or obtained by the State Commission.

(20 U.S.C. 1132a-1, 1141)

§ 170.12 Institutional eligibility for grants under section 703 of the Act.

To qualify for a grant from funds allotted pursuant to section 703 of the Act, an institution shall meet requirements specified in section 1201(a) of the Act. An institution which is not accredited by a nationally recognized accrediting agency or association listed pursuant to section 1201(a) of the Act may qualify, alternatively, by obtaining a certification from the Commissioner (dated no earlier than 2 years prior to the date of filing of the application for a grant) stating that the institution has met the requirements set forth in subsection 1201(a)(5) of the Act.

(20 U.S.C. 1132a-2)

§ 170.13 Conditions for grant approval.

(a) An application for a grant under Title VII A of the Act shall be approved only if the Commissioner is satisfied, on the basis of information submitted with the application, that:

(1) The facilities included in the Title VII A project are intended for use predominantly in undergraduate instruction, extension, and continuing education programs, and/or health care to students or personnel of the institution;

(2) The requirements of section 705 of the Act will be met; and

(3) The application meets all requirements of section 707(a) of the Act.

(b) In determining whether an institution of higher education shall be eligible for a grant in accordance with section 705 of the Act, the State commission shall base its determination on the following criteria:

(1) To establish whether a substantial expansion of student enrollment capacity, health care capacity, or continuing education capacity is being provided, the State commission must determine that the increase to be provided in any one of the three types of capacities will exceed 10 percent of current capacity, or, in the case of enrollment capacity an increase of 10,000 S.F. of instructional and library space. For purposes of this paragraph student enrollment capacity means "instructional and library facilities," health care capacity means "infirmaries and all other rooms or areas designed to be used for medical examination or treatment of students and institutional personnel," and extension and continuing education capacity means "academic facilities" used principally for extension and continuing education programs of the institution.

(2) To establish whether such substantial expansion or creation of capacity is urgently needed, the State commission shall give consideration to:

(i) The planned enrollment growth of the institution (10 percent over 4 years to be considered minimal growth at existing institutions);

(ii) The capacity enrollment ratio at the campus to be expanded (other utilization measures may be substituted); and

(iii) Serious deficiencies in the quality of programs due to inadequacies in existing space.

(3) As used in section 705 of the Act, "other construction to be undertaken within a reasonable time" means construction approved to start within 1 year of the date of application.

(c) In determining whether an institution of higher education would experience a decrease in enrollment capacity if an urgently needed facility is not constructed, the Commissioner shall give consideration to:

(1) The age and condition of existing instructional and library facilities which will be withdrawn from use, and

(2) Any other factors which will cause facilities to be functionally inadequate for instructional or library purposes.

(20 U.S.C. 1132a-6(a)(2))

§ 170.14 Submission and processing of Title VII A applications.

(a) *Closing dates for filing of applications.* Closing dates for which applications may be filed and accepted by the State commission shall be established in the State plan. For each category of application (i.e., applications for public community colleges and public technical institutes and applications for institutions of higher education other than public community colleges and public technical institutes) the State plan shall provide at least two closing dates for any Federal fiscal year, and all such closing dates shall be between July 31 and February 15: *Provided, however,* That where the Commissioner determines unusual

circumstances so warrant, the State plan may provide for a closing date after February 15.

(b) *Submission of project applications.* Applications shall be submitted directly to the appropriate State commission, together with any supplemental information which may be required by the State commission. The State commission shall officially record the date of receipt of each application. Applications must be initially submitted in advance of inviting bids for construction. The application may be considered at only those closing dates which occur no later than 12 months after construction has started.

(c) *Verification of application data and institutional and project eligibility.* Before determining the relative priority or Federal share for any application for grant assistance under Title VII A of the Act, the State commission shall satisfy itself that the data contained in the application appear to be valid, and that the institution and the project appear to meet basic eligibility requirements set forth in the Act and the regulations governing the administration of the Act. In any case where in the opinion of the State commission a question may be raised as to the eligibility of an institution, the State commission shall promptly forward a copy of the application to the Office of Education for a clarification of such eligibility. In any such case, the State commission shall continue to process and rank such application as if it were eligible, but shall delay final action on all applications under the same category considered as of the same closing date until receipt of notification by the Office of Education of the disposition of the eligibility question.

(d) *Determination of relative priorities and Federal shares.* All eligible applications received by each specified closing date shall be considered by the State commission together with others of the same category (i.e., applications for public community colleges and public technical institutes for funds allotted under section 702 of the Act, and applications for all other institutions of higher education for funds allotted under section 703 of the Act) and assigned relative priorities and recommended Federal shares in accordance with the provisions of the State plan.

(e) *Procedures where funds are insufficient to provide full Federal shares for all eligible projects.* (1) In any case where the funds available in a State allotment for projects considered as of a particular closing date are insufficient to cover all eligible applications, the State commission shall nevertheless determine the full Federal share, calculated according to the State plan, for all projects in their order of relative priority, until the remaining available funds are insufficient to provide the full Federal share as calculated for the next project in order of priority.

(2) If the State plan provides for apportionment of the State allotment among closing dates, the State plan may provide also that sufficient funds will be made available immediately, from such funds as were apportioned to later closing dates in the same fiscal year, so that the full Federal share as initially calculated will be available for the first project for which only a part of the Federal share would otherwise have been available. In any case where the State allotment is apportioned among closing dates and no such provision is included in the State plan, all projects for which the full Federal share, as calculated, cannot be provided for by the available funds shall be carried over to any subsequent closing dates in the same fiscal year.

(3) If the State allotment is not apportioned among closing dates, or in the case of the last closing date in the fiscal year, the amount of the remaining funds shall be offered as a partial Federal share for the first project in order of relative priority for which less than the full Federal share as calculated is available. The offer and acceptance of such a lesser Federal share shall in no way be deemed to diminish the scope of the project. An applicant which agrees to accept such a partial Federal share shall in all cases have the option to submit a supplemental application as provided in paragraph (e) (1) of this section. If the applicant offered such a partial Federal share declines to accept it, the remaining funds and the application for which the partial Federal share was declined shall be carried over to the next closing date, if any, in the same fiscal year.

(f) *Recommendation by State commissions.* Promptly upon completing its consideration of applications as of each closing date, and no later than March 31 of each Federal fiscal year, each State commission will forward to the Commissioner: (1) A current project report, on forms supplied by the Commissioner, for the pertinent category of applications, listing each application received or carried over from the previous closing date, each application returned to the applicant and the reason for return of such application, each application considered as of the closing date, and the priority and Federal share determined according to the State plan for each project considered and (2) the application form and exhibits in the number of copies requested by the Commissioner, for each project assigned a priority high enough to qualify for a Federal grant within the amount of funds available in the allotment for the State.

(g) *Notification to applicants.* The State commission shall promptly notify each applicant of the results of all determinations regarding its application as of each closing date, and any applicant shall, upon request in accordance with such orderly procedures as are established by the State commission, be furnished access to the records of official State commission proceedings on the basis of which relative priorities and Federal shares of all applications were determined.

(h) *Disposition of applications which are not recommended for grants.* Applications which are not recommended for a grant within the fiscal year in which they are filed may be retained by the State commission, but the unsuccessful applicants should be notified when there are no longer any funds available in the State allotments for the fiscal year. Applications may be reconsidered the following fiscal year for any project which does not receive a recommendation for a grant and which the applicant states in writing a desire to have reconsidered in a subsequent year. In addition, whenever any application is carried over from one closing date to the next those portions of the application requiring data on enrollments and available instructional, library, and/or health care facilities must be amended to reflect most recent opening fall term data.

(i) *Grant award.* For a Title VII A project application which meets all eligibility requirements the Commissioner will approve the application and reserve Federal funds from the appropriate State allotment and will prepare and send to the applicant a grant award, which sets forth the pertinent terms and conditions of the grant.

(j) *Amendment of project applications.* Any time prior to a closing date for which an application is to be considered, the applicant may make changes in the application by written notification to the State commission. After any such closing date, no changes in applications shall be permitted, except corrections or submission of additional data as requested by the State commission.

(k) *Project changes.* After a project has been forwarded to the Commissioner by the State commission, no substantial changes in the nature or scope of the project shall be approved by the Commissioner without first verifying that such changes would not have affected the State commission's original recommendation of the project for a grant.

(l) *Supplemental applications.* Any time after approval of a Title VII A grant, an applicant may, for reasons of not having received the maximum Federal share allowable under the Act of the applicable State plan, filed a supplemental application. The supplemental application shall take the form of a written request to the State commission and should contain all amended application data necessary to assign a priority to the application and to calculate a revised eligible development cost of the project where applicable. In no event, however, will a supplemental application be considered by a State commission (1) for a closing date which is more than 12 months after construction has been started or (2) for a closing date which is after the date the project has been substantially completed, whichever is earlier.

(20 U.S.C. 1132a-6(c))

§ 170.15 Criteria for standards and methods to determine relative priorities of eligible projects.

(a) The State plan shall set forth separately the standards and methods for determining the relative priorities of eligible projects for the construction of

academic facilities (1) for public community colleges and public technical institutes and (2) for institutions of higher education other than public community colleges and public technical institutes. The standards and methods set forth for each of the two categories of eligible projects shall provide separately for new institutions or new branch campuses and for established institutions or campuses. Unless otherwise defined in the State plan, a new institution or branch campus (as distinguished from an established institution or branch campus) shall be one which was not in operation and admitting students as of the fourth fall term preceding the date of application for assistance under Title VII A.

(b) The standards for determining relative priorities for established institutions or branch campuses shall include the following, each of which shall be assigned at least the percentage of the total weight assigned to all standards for established institutions or branch campuses:

(1) One or more standards dealing with the planned for and reasonably expected numerical and/or percentage increase in full-time equivalent undergraduate student enrollment at the campus at which the facilities are to be constructed occurring between the opening of the fall term which opened preceding the closing date for which the application is being considered and the opening of either the third, fourth, or fifth term thereafter (at least 20 percent of total weight with priority advantage given to higher numerical and/or percentage increases).

(2) One or more standards (at least 10 percent of total weight) dealing with the amount and/or percentage by which the construction of the project will increase or replace the assignable area in instructional and library facilities and health care facilities on the campus at which the facilities are to be constructed.

(3) One or more standards designed to favor projects for institutions or branch campuses which are most effectively utilizing their existing academic facilities (at least 10 percent of total weight).

(4) A standard (at least 5 percent of total weight) designed to favor projects submitted by institutions or branch campuses that are committed to the enrollment of a substantial number of students from low-income families.

(5) A standard (at least 5 percent of total weight) designed to favor projects submitted by institutions or branch campuses which are committed to the enrollment of a substantial number of veterans returning to civilian life.

(c) The standards for determining relative priorities for new institutions or branch campuses shall include the following, each of which shall be assigned at least the indicated percentage of the total weight assigned to all standards for new institutions or branch campuses:

(1) A standard dealing with the planned for and reasonably expected numerical increase in full-time equivalent undergraduate student enrollment at the campus at which the facilities are to be constructed occurring between the opening of the fall term which opened preceding the closing date for which the application is being considered and the opening of either the third, fourth, or fifth fall term thereafter (at least 30 percent of total weight, with priority advantage given to higher numerical increases).

(2) A standard (at least 10 percent of total weight) dealing with the amount by which the construction of the project for which a Title VII A grant is requested will provide for assignable area in instructional and library facilities and/or health care facilities on the campus at which the facilities are to be constructed.

(3) A standard (at least 5 percent of total weight) designed to favor projects submitted by institutions or branch campuses that are committed to the enrollment of a substantial number of students from low-income families.

(4) A standard (at least 5 percent of total weight) designed to favor projects submitted by institutions or branch campuses which are committed to the enrollment of a substantial number of veterans returning to civilian life.

(d) The State plan may include additional standards for determining relative priorities which are not inconsistent with the standards set forth in paragraphs (b) and (c) of this section and which will carry out the purposes of the Act.

(e) The methods for application of the standards for determining relative priorities shall provide for the assignment of point scores for each standard applied, such that the potential total score for each project will be the same whether the project is for a new institution or branch campus or for an established institution or branch campus. The assignment of points for each standard may be by any one of the following methods or by similar objective methods, a different one of which may be used in connection with each standard:

(1) Applications may be ranked according to relative performance for the standard, and assigned a point score for relative rank (e.g., 10 points placement in the highest 10 percent, 9 points for placement in the second highest 10 percent, 8 points for placement in the third highest 10 percent, etc.).

(2) Applications may be compared to a scoring table for the standard, and assigned points accordingly (e.g., for numerical increase in full-time equivalent undergraduate enrollment, a scoring table might provide for 10 points for an increase of 1,000 or more, 8 points for an increase of 800–999, 6 points for an increase of 600–799, etc.).

(3) Applications may be compared to a fixed requirement for the standard, and assigned points if they meet the requirement or denied points if they do not. This type of scoring should be used where comparison against the standard involves a "yes—no" decision (e.g., Is the proposed project located in a geographic area of the State in which an unfilled need for creation or expansion of undergraduate enrollment capacity has been documented in a statewide study? If "yes," award 5 points if "no," award 0 points).

(f) The methods for application of the standards shall provide for determination of relative priorities on the basis of the total of the points earned by each application for each applicable standard and shall specify factors to be applied in determining which application shall receive the higher priority in the case of identical scores.

(g) The standards and methods for determining relative priorities must be developed on the basis of information which is to be submitted on the application form prescribed by the Commissioner, or required by the State commission to be submitted on supplemental State forms to accompany the application, or contained in published reports or publications readily available to the State commission and to all institutions within the State. Whenever supplemental forms or definitions or data in public reports or publications are to be used in connection with optional State plan standards, the State plan shall include a section setting forth such definitions and supplementary data sources and an appendix illustrating the supplemental State forms.

(h) In no event shall an institution's readiness to admit out-of-State students be considered as a priority factor adverse to such institution and in no event may the nature of the control or sponsorship of the institution, or the fact that construction of the project had commenced, or that part of the cost of a project has been incurred before or under a contract entered into prior to the date of the application, be considered as a priority factor either in favor of, or adverse to, an institution.

(20 U.S.C. 1132a–5(a))

§ 170.16 Criteria for standards and methods to determine Federal shares of eligible projects.

(a) Unless the Federal share is specified in the State plan as a uniform percentage of the costs eligible for Federal financial participation, the State plan shall prescribe the standards and methods in accordance with which the State commission shall determine the Federal share of such costs, but in no event may the Federal share of a project exceed the percentage of the eligible project development cost specified by the Act.

(b) Standards and methods for determining the Federal share pursuant to paragraph (a) of this section: (1) Must be objective and simple to apply; (2) may involve the use only of data which are to be submitted on the application form prescribed by the Commissioner, required by the State commission to be submitted on supplemental State forms to accompany the application, or contained in reports or publications readily available to the State commission and the institutions of higher education in the State; (3) must be such as will enable an applicant to calculate in advance

(on the assumption that sufficient funds will be available to cover all applications) the minimum Federal share of the estimated eligible project development cost which the State commission will certify to the Commissioner if it recommends the project for a Federal grant; and (4) must be consistent with criteria published by the Commissioner with respect to the determination of relative priorities among projects and be promotive of the purposes of the Act.

(20 U.S.C. 1132a-5(b))

§ 170.17 State plans.

(a) A State plan shall be submitted to the Commissioner no later than 60 days prior to the first closing date of each fiscal year that the State desires to participate in the Title VII A grant program. The Commissioner shall approve a State plan and annual revision upon the basis that he has received satisfactory assurance and explanation regarding the basis on which the State commission submitting the plan meets the requirements of section 704(a) of the Act. A new or revised State plan submitted in accordance with section 704 of the Act shall be submitted on forms or in a format supplied by the Commissioner and shall contain all provisions required by the Commissioner pursuant to section 704 of the Act and other sections of the regulations in this part, together with such additional organizational and administrative information as the Commissioner may request.

(b) All proposed amendments to the State plan shall be submitted to the Commissioner for his approval in such form and in accordance with such instructions as are established for that purpose. Such amendments shall apply uniformly to all applications to be considered together as of any closing date, and, unless otherwise provided in the State plan, shall become effective immediately upon approval by the Commissioner, except that in no event shall any amendment which affects the standards and methods for determining priorities or Federal share or any amendment providing for an additional closing date or for the change in an existing closing date become effective sooner than 60 days after the date the proposal to make such amendment is received by the Commissioner and 30 days after the date of the Commissioner's approval of the amendments as a part of the State plan: *Provided, however,* That amendments which are required by amendments of the Act or of these regulations or are designed to implement promptly amendments of the Act or of these regulations may be effective immediately upon their approval by the Commissioner.

(c) State plan amendments conforming to the provisions in these regulations regarding determination of priorities shall be submitted and approved prior to State commission actions on any Title VII A applications for closing dates later than April 1, 1973.

(20 U.S.C. 1132a-3)

§ 170.18 Adjustments in amount of Federal share.

In any case where the costs eligible for Federal participation are determined to be less than those provided for in the grant award, the Commissioner shall redetermine the amount of the Federal share which would have been recommended for the project, based on the lesser eligible cost, under State plan provisions in effect at the time the project was recommended for a grant, as if sufficient funds had been available in the State allotment at that time to provide the maximum Federal share provided for by the plan. If such redetermined Federal share entitlement is less than the maximum amount authorized by the grant award the grant shall be reduced accordingly, and any overpayment of Federal funds shall immediately be due to the Government of the United States. If such redetermined Federal share is equal to or greater than the maximum amount of the Federal share authorized by the grant award, the final settlement shall be based on the Federal share amount authorized by the grant award.

(20 U.S.C. 1132a-6(c))

Subpart C—Grants for Construction of Graduate Academic Facilities

§ 170.41 Eligibility for grants.

Grants for construction of academic facilities from funds appropriated under Title VII B of the Act may be made only to assist institutions of higher education and cooperative graduate center boards in the construction of such academic facilities, including facilities essential to their operation, as will be dedicated to the provision of graduate education.

(20 U.S.C. 1132b(a))

§ 170.42 Submission of applications.

Applications covered by this subpart may be submitted by institutions of higher education or by cooperative graduate center boards as defined in section 782(8) of the Act. Such applications shall be submitted at such time and in such manner as may be prescribed by the Commissioner and will be processed by the staff of the Office of Education in the order of their receipt. Upon the completion of such processing as is appropriate, each application will be submitted to the panel of specialists for their review and evaluation. Applications must be submitted in advance of inviting bids for construction.

(20 U.S.C. 1132b-1 (a) and (b))

§ 170.43 Facilities panel.

The Commissioner shall not approve any application for a grant under this title until he has obtained the advice and recommendations of a panel of specialists who are not employees of the Federal Government and who are competent to evaluate such applications. The panel of specialists shall review all applications in the light of the criteria set forth in § 170.44 and shall make recommendations to the Commissioner for the approval or disapproval, in whole or in part, of each such application.

(20 U.S.C. 1132b-1(b))

§ 170.44 Criteria for evaluating applications.

In determining relative priorities in recommending grants against available funds consideration shall be given, but not limited to, the following factors which are not necessarily listed in the order of their importance:

(a) The extent to which the programs to be assisted by the proposed construction will contribute toward the establishment or development of a graduate school or cooperative graduate center of excellence, or the extent to which such program or programs will contribute toward the improvement of an existing graduate school or cooperative graduate center.

(b) The extent to which the proposed construction will increase the capacity of the institution to supply highly qualified personnel critically needed by the community, industry, government, research, and teaching.

(c) The extent to which the proposed construction will assist in attaining a wider distribution throughout the United States of graduate schools and cooperative graduate centers.

(d) The capability of the applicant to give full financial support to its program generally, and specifically to the programs of graduate education to be assisted by the proposed construction.

(e) The extent to which the program or programs to be assisted by the proposed construction are likely to draw to the institution both graduate students and faculty of a high level of competence.

(f) The adequacy of applicant's existing academic facilities with respect to the present demands made on them and the demands that can reasonable be expected to be made on them in the foreseeable future, with particular reference to the adequacy of those facilities, if any, available for the conduct of the program or programs to be assisted by the proposed construction.

(g) The extent to which the proposed construction would contribute significantly to the increase in both or either the quantity or quality of graduate education in a relatively wide geographical area.

(20 U.S.C. 1132b(a))

Subpart D—Loans for Construction of Academic Facilities

§ 170.51 Eligibility for loans.

Loans may be made only for construction of academic facilities for institutions of higher education or for cooperative graduate centers.

(20 U.S.C. 1132c(a)(2))

§ 170.52 Submission of applications.

Each institution, cooperative graduate center board or higher education building agency desiring a loan for the construction of academic facilities shall submit an application for such assist-

ance, in the manner and containing the information specified by the Commissioner. Applications must be submitted in advance of inviting bids for construction.

(20 U.S.C. 1132c)

§ 170.53 Special terms and conditions.

Before approving a loan the Commissioner will require:

(a) Satisfactory evidence that the applicant has or will have a fee simple or such other estate or interest in the facilities and site, access thereto, sufficient in the opinion of the Commissioner to assure undisturbed use and possession for the purpose of the construction and operation of the facilities for not less than 50 years from the date of application.

(b) Satisfactory evidence of the ability of the applicant to comply with the appropriate terms and conditions for repayment of the loan.

(c) Satisfactory evidence that the applicant has the necessary legal authority to finance, construct, and maintain the proposed facilities, to apply for and receive the proposed loan, and to pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(d) Satisfactory assurances that the project for which the loan is requested is related to a plan for development of the institution, branch campus, or cooperative graduate center for which it will be constructed, and is associated with either a planned increase in student enrollment or a planned improvement in the instructional programs offered by the institution, branch campus, or cooperative graduate center.

(e) Satisfactory assurance that the applicant will not mortgage to others without the consent of the Commissioner the facility to be constructed with the assistance of the loan during the life of the loan.

(20 U.S.C. 1132c-2(b)(1))

(f) Satisfactory assurance that not less than 20 percent of the development cost of the facility will be financed from non-Federal sources except that in the instance of an institution qualifying as a developing institution pursuant to Title III of the Act, the applicant is not required to provide such an assurance.

(20 U.S.C. 1055(b)(1); 1132c-1(a))

§ 170.54 Determination of nonavailability of equally as favorable terms and conditions.

No loan will be made unless the Commissioner finds that the applicant is unable to secure the amount of such loan from other sources upon terms and conditions equally as favorable as the terms and conditions applicable to loans under this part. For the purpose of making such determination, the applicant shall be required to comply with such procedures as the Commissioner may establish, including, where deemed necessary, public advertising for bids from other sources.

(20 U.S.C. 1132c-1(a)(2))

§ 170.55 Forms of evidence of indebtedness.

The evidence of indebtedness shall be in such form as may be prescribed by the Commissioner.

(20 U.S.C. 1132c-1(b))

§ 170.56 Security for loans.

All loans shall be secured in a manner which the Commissioner finds sufficient to reasonably assure repayment. The security may be one or a combination of the following:

(a) A first mortgage on the facilities and site thereof.

(b) Negotiable stocks or bonds of a quality and value acceptable to the Commissioner.

(c) A pledge of unrestricted and unencumbered income from an endowment or other trust funds acceptable to the Commissioner.

(d) A pledge of a specified portion of annual general or special revenues of the institution, acceptable to the Commissioner.

(e) General obligations of a State or local public body.

(f) Such other types of security as the Commissioner may find acceptable in specific instances.

(20 U.S.C. 1132c-1(b))

§ 170.57 Length and maturity of loans.

(a) The maximum repayment period for loans under Title VII C of the Act shall be 30 years, except where the Commissioner finds that a longer repayment period is required.

(b) Substantially level total annual installments of principal and interest, sufficient to amortize the loan from the third year through the final year of the life of the loan, will be required unless otherwise authorized by the Commissioner.

(c) Loans maturing in less than 30 years, or loans which do not mature serially, may be considered by the Commissioner in order to fit any such loan into an applicant's total financial plan.

(d) In no case shall a loan repayment period exceed the estimated useful life of the facilities to be constructed with the assistance of the loan.

(20 U.S.C. 1132c-1(b))

§ 170.58 Bond Counsel opinion.

At appropriate stages in the loan application and development procedure, a legal memorandum or opinion of bond counsel will be required with respect to the legality of the proposed bond or note issue, the legal authority to offer the issue and secure it by the proposed collateral, and the legality of the issue upon delivery. "Bond Counsel" means either a law firm or individual lawyer, thoroughly experienced in the financing of construction projects by the issuance of bonds, and whose approving opinions have previously been accepted by purchasers of bonds offered at public sales. In addition, where the borrower is a public institution or agency, the proposed bond counsel shall be a recognized bond counsel in the municipal field. The legal memorandum or opinion to be provided by such an acceptable bond counsel in each case generally shall be as follows:

(a) A memorandum by bond counsel, submitted with the loan application, stating that there is or will be authority to finance, construct, maintain the project, and to issue the proposed obligations and to pledge or mortgage the assets and/or revenues offered to secure the loan, citing the basis for such authority.

(b) A preliminary approving opinion of bond counsel, submitted at the time the applicant proposes to advertise for construction bids for the project, to the effect that when the bonds or notes described in the loan agreement are sold and delivered they will comply with the applicable provisions of the loan agreement and will be valid and binding obligations of the issuer and will be payable in accordance with their terms.

(c) The final approving opinion of bond counsel, delivered at the same time as the delivery of the bonds or notes, stating that the bonds or notes (1) are those described in the loan agreement and the authorizing proceedings, (2) have been duly authorized, sold, and delivered to the Commissioner, and (3) constitute the valid and binding obligations of the issuer payable in accordance with their terms.

(20 U.S.C. 1132c-2(b)(6))

§ 170.59 Determination of priorities for loan approvals.

Loan applications shall be processed in such order and according to such standards and methods as the Commissioner may determine. Such standards and methods shall be developed as may be neessary and appropriate to encourage distribution of the available loan funds in accordance with actual needs and may include establishment of closing dates for consideration of applications and for determination of priorities.

(20 U.S.C. 1132c-2(b))

§ 170.60 Loan agreement.

For project applications which meet all requirements of the Act and of the regulations governing the administration of the Act, and upon approval by the Commissioner together with a reservation of Federal funds, a loan offer will be prepared by the Commissioner and sent to the applicant. The loan offer will set forth the pertinent terms and conditions for the loan, and will be conditioned upon the fulfillment of these terms and conditions. The accepted loan offer will constitute the loan agreement between the Commissioner and the applicant for the partial financing of the construction of the approved project.

(20 U.S.C. 1132c-2(b))

§ 170.61 Loan closing.

Loan closing shall be accomplished at such time as may be determined by the Commissioner.

(20 U.S.C. 1132c-2(b))

§ 170.62 Interim financing.

If necessary, the applicant shall arrange for interim financing, subject to the approval of the Commissioner, to cover the cost of construction pending the loan closing. Where the Commissioner finds that an applicant is unable to secure necessary interim financing on reasonable terms, he may provide for advances against the approved loan.

(20 U.S.C. 1132c-2(b))

§ 170.63 Construction fund.

The proceeds of the sale of the bonds or notes, any interim advances against the approved loans, and all other moneys to be used in paying for the construction, of which the project is a part, shall be deposited into a separate bank account to be maintained in a bank of the applicant's choice and to be known as the Construction Fund. All expenditures for the construction shall be made from this fund. Accounting for this fund shall be in accordance with generally accepted accounting principles. When necessary and appropriate, the Commissioner may approve other arrangements for the deposit of construction funds and the construction fund accounting, provided such arrangements provide adequate accountability for the total construction receipts and expenditures.

(20 U.S.C. 1132c-2(b))

§ 170.64 Investment of idle construction funds.

Where the moneys on deposit in the construction fund exceed the estimated disbursements for the project for the next 90 days, the borrower shall, if permitted by State or local law, direct the depository bank to invest such excess funds in direct obligations of the U.S. Government or obligations the principal of or interest on which is guaranteed by the U.S. Government, which shall mature not later than eighteen (18) months from the date of such investment.

(20 U.S.C. 1132c-2(b))

§ 170.65 Disposal of balance remaining in the construction fund.

The balance of moneys remaining in the construction fund at the completion of construction shall be disposed of in accordance with the provisions of the loan agreement.

(20 U.S.C. 1132c-2(b))

Subpart E—Annual Interest Grants for Construction of Academic Facilities

§ 170.71 Eligibility for annual interest grants.

(a) Annual interest grants may be made to institutions of higher education, higher education building agencies, and cooperative graduate center boards, to reduce the cost to them of borrowing funds, other than those available under this part, for the construction of academic facilities.

(20 U.S.C. 1132c-4)

(b) No annual interest grant shall be made unless the Commissioner finds that the applicant is unable to secure a loan in the amount with respect to which the annual interest grant is to be made, from other sources upon terms and conditions equally as favorable as the terms and conditions applicable to direct Federal loans under Subpart D of this part. For the purpose of making such determination, the applicant shall comply with such procedures as the Commissioner may establish, including public advertising for bids from other sources.

(20 U.S.C. 1132c-4(e)(2))

(c) Annual interest grants may not be made with respect to loans consummated prior to the filing of an application under this subpart or Subpart D of this part.

(20 U.S.C. 1132c-4(3)(2))

(d) Annual interest grants may not be made with respect to loans (or portions thereof) which cover a construction activity that was begun more than 12 months before the closing date for which consideration is being requested, unless an exception is granted specifically pursuant to § 170.7(c).

(20 U.S.C. 1132c-3(b)(1))

§ 170.72 Amount of annual interest grants.

Except where limitation of general applicability is promulgated, each grant shall be in an amount approximately equal to but not more than the difference between (a) the average annual debt service which is required to be paid, during the life of the loan, on the amount borrowed from private sources for the construction of an academic facility covered by the application, and (b) the average annual debt services which the institution would have been required to pay, during the life of the loan, with respect to such amount if the applicable interest rate were 3 percent per annum. The amount of the annual interest grant stipulated in the agreement may be amended by the Commissioner to reflect changes in the amount or terms of the loan. An increase in the annual grant amount resulting from a request to increase the amount of loan to be subsidized must be made not later than 12 months after construction has started, through the submission of an amended application and is subject to priority considerations applicable at the time such a supplemental request is filed. A request for an increase in the annual grant amount resulting from a change in the rate of interest or the term at the time of actual consummation of the loan will be considered apart from the priority ranking system.

(20 U.S.C. 1132c-4(b))

§ 170.73 Submission of applications.

Each applicant desiring to receive annual interest grants shall submit an application for such grant assistance, in the manner and containing the information specified by the Commissioner. A copy of each application shall be furnished to the State Commission prior to filing with the Regional Office. The Commission will review and evaluate the application and provide comments regarding (a) space utilization, (b) enrollment projections, and (c) over-all need for the facility for which assistance is requested. Following its review, the State Commission will furnish its evaluation to the applicant. If the applicant does not agree with the evaluation, the applicant may include, with the application, a statement supporting its counter position. Applications then shall be submitted to the appropriate Regional Office of the Department of Health, Education, and Welfare together with all required State agency comments. Applications must be submitted in advance of inviting bids for construction.

(20 U.S.C. 1132c-4)

§ 170.74 Condition for approval of annual interest grants.

An application for annual interest grants will be approved only if the Commissioner is satisfied that:

(a) The facilities to be constructed are urgently needed to accommodate more students or to replace inadequate facilities in order to prevent a decrease in student enrollment capacity;

(b) Funds will be available as required to pay the total development cost to the facilities;

(c) The applicant has or will have a fee simple or such other estate or interest in the facilities and site, including access thereto, sufficient in the opinion of the Commissioner to assure undisturbed use and possession for the purpose of the construction and operation of the facilities for not less than 50 years from the date of application;

(d) The applicant has the necessary legal authority to finance, construct, and maintain the proposed facilities, to apply for and receive the proposed loan and annual interest grants, and to pledge or mortgage any assets or revenues to be given as security for the proposed loan; and

(e) The applicant's financing plan meets the conditions of § 170.76 and is otherwise practicable and feasible.

(20 U.S.C. 1132c-4)

§ 170.75 Limits governing extent of Federal assistance.

The principal amount of loan (or portion thereof) on which an annual interest grant is approved, together with the amount of any other Federal financial assistance the applicant has obtained or is assured of obtaining under any other Federal program, may not exceed 90 percent of the eligible development cost. Further, the aggregate principal amount of loans (or portions thereof) with respect to which annual interest grants are approved during any Federal fiscal year may not exceed $5 million per campus.

(20 U.S.C. 1132c-4)

§ 170.76 Approval of financing plans.

(a) Except as provided in paragraph (b) of this section, in order to be ac-

ceptable a financing plan submitted pursuant to § 170.73 must:

(1) Provide that the term of the loan with respect to which an annual interest grant is to be paid does not exceed 30 years or the useful life of the facilities with respect to which such annual interest grant is to be made, whichever is the lesser;

(2) Provide that such loan is to be repaid in substantially level annual installments of interest and principal over the term of the loan, except that interest only may be paid for an initial period not exceeding 5 years; and

(3) Contain such other terms and conditions as will assure the Commissioner that the support provided by the Government over the term of the loan is no more than is necessary to effectuate the purposes of this subpart.

(b) Financing plans may also be acceptable where the term of the loan is longer than 30 years or the annual installments of interest and principal are not substantially level, if the Commissioner finds that unusual circumstances warrant such exception: *Provided, however,* That in no event shall the term of the loan exceed 40 years.

(20 U.S.C. 1132c–4)

§ 170.77 Evidence of lowest possible cost of loan.

An applicant shall demonstrate to the satisfaction of the Commissioner that the loan it proposes to obtain is at the lowest possible net interest cost. In the case of an applicant proposing to issue tax-exempt bonds to finance the construction of academic facilities, a sale pursuant to public advertising or bids for the securities in an advertising medium acceptable to the Commissioner will be deemed to meet this requirement. Prior to advertising bonds for sale, the applicant shall submit to the Commissioner for approval a draft of the proposed notice of sale and a statement of essential facts concerning the sale. An applicant not issuing tax-exempt securities will be expected to submit offers from at least three (3) lending institutions normally engaged in making long term construction loans. The applicant must have furnished each such institution with the information necessary to enable it to specify in its offer the amount, interest rate, maturity period, security and prepayment provisions of the loan. A loan offer must be approved by the Commissioner before the applicant enters into a firm and binding agreement with a lender.

(20 U.S.C. 1132c–4)

§ 170.78 Annual interest grant agreement.

Upon approval of an application for annual interest grant, the Commissioner shall prepare and send to the applicant a proposed agreement, which shall contain the terms and conditions relating to the receipt of an annual interest grant including a description of the project and the facilities, the maximum principal amount of the loan (or portion thereof) on account of which annual interest grants payments will be made, the maximum annual grant amount and the anticipated terms of the annual interest grant payments. The proposed agreement shall also provide that where a loan is not consummated prior to execution of such agreement by the Commissioner, no grant shall be made thereunder unless the Commissioner concurs in the rate of interest and other terms and conditions of the loan. The agreement once executed by the applicant and the Commissioner creates a contractual obligation on the part of the Commissioner to make annual interest grants in future years in accordance with the terms and conditions of the agreement for so long as the applicant carries out its obligations under the agreement. The agreement for annual interest grants is not entered into for the benefit of, nor to induce the making of loans by or the sale of bonds to, third parties, and the Commissioner shall not entertain grievances or claims of such third parties.

(20 U.S.C. 1132c–4)

§ 170.79 Payment of annual interest grants.

Payments under an annual interest grant agreement will be made by the Government once a year. The date of such payment will coincide as closely as possible with the anniversary date of the loan or, a date during the year when debt service requirement related to the loan is greatest. Once established, the payment date shall remain fixed for the duration of the loan. The first payment shall accrue from a date not earlier than the date of initial use of the project to the date established for the annual payment. The last payment will accrue from the effective date of the next-to-last payment to the date the loan is completely repaid. Payment of annual interest grants shall be made directly to the grantee or to a trustee, paying agent, or lender pursuant to an assignment of such payments by the grantee.

(20 U.S.C. 1132c–4)

§ 170.80 Reduction of grant where refinancing produces lower costs.

Where the Commissioner finds that the applicant could have accelerated repayment of the loan outstanding and obtained a new loan where to do so would have resulted in a net savings in the cost of the loan, the amount of annual interest grants shall be computed as if such refinancing had been undertaken.

(20 U.S.C. 1132c–4)

§ 170.81 Priority considerations; closing dates.

Priority shall be given first to applications from public community colleges and public technical institutes, developing institutions (as defined in § 170.1) and to institutions enrolling 20 percent or more students from low-income families. All applications from other institutions of higher education will be considered next. Within the two priority categories, applications shall be processed in such manner as is appropriate to encourage distribution of the available funds to those institutions or branch campuses that are (a) in urgent need of additional academic facilities to meet increasing enrollments or to prevent a decrease in enrollment due to inadequate facilities and (b) committed to the enrollment of substantial numbers of veterans. Closing dates by which applications must be filed in order to be considered for funds allocated for such closing date shall be on September 1 and February 1 in each fiscal year in which funds are available unless otherwise announced by the Commissioner. Applications filed by September 1 will be considered as filed for the February 1 closing date. Available funds will be divided equally among closing dates.

(20 U.S.C. 1132c–4)

§ 170.82 Preceding provisions not exhaustive of authority of Government.

The provisions of this subpart are not exhaustive of the authority of the Government to impose, at such time as it may deem appropriate, further limitations respecting the amount of the annual interest grant or the amount on which such grant is based.

(20 U.S.C. 1132c–4)

[FR Doc.73-26126 Filed 12-7-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73–WA–4]

TERMINAL CONTROL AREA AND CONTROL ZONE AT DETROIT, MICHIGAN

Proposed Designation and Alteration

The Federal Aviation Administration (FAA) is considering the adoption of a Group II Terminal Control Area (TCA) for Detroit, Mich., and the alteration of the control zone for the airport. Rules for the control and segregation of all aircraft operated within terminal control areas are contained in Part 91, §§ 91.24, 91.70, and 91.90 of the Federal Aviation Regulations. Further information concerning flight within TCAs is contained in FAA Advisory Circular 91–30, Terminal Control Areas (TCAs), dated 6/11/70.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Additionally, comments are invited on the potential impacts of this proposal on the quality of the human environment. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018. All communications received on or before February 8, 1974, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The establishment of terminal control areas at 22 large hub airports was proposed in Notice 69-41 and supplemental notices thereto, and adopted on May 20, 1970 (35 FR 7782), to create a safer environment in those congested terminal areas. The need for TCAs has been well established, and a priority implementation schedule has been developed which is based on the air traffic congestion at each location, the capability of the terminal air traffic control facility to provide separation service to VFR aircraft, the experience gained from earlier established TCAs, and the publication dates of associated aeronautical charts.

Notice 69-41 and the amendments thereto delineated those major hub cities for which TCAs were planned. This Notice is intended to produce the input necessary to design an appropriate airspace configuration that can provide the safest environment with the least impact on the airspace users. TCAs have now been designated at all Group I locations, and this Notice proposes a configuration for a Group II TCA at Detroit, Mich.

This proposal was discussed at an FAA/Industry meeting held in Detroit on June 7, 1973, to consider user operational requirements. Of the twenty-six user representatives invited to the meeting, ten were in attendance. In addition, representatives from the Canadian Ministry of Transport were at the meeting.

During presentation of the proposal, the existing aircraft and pilot requirements for operation within TCA airspace were reviewed. The ATC transponder and automatic pressure altitude requirements after January 1, 1975, were also explained.

Representatives of the Parahawk Sport Parachute Club requested airspace out to a one-mile radius of the Salem, Mich., Airport to accommodate their operations. It was determined that the club's requirements could be satisfied without degrading aircraft operations if the airspace within a three-mile radius arc of the Salem VORTAC were excluded from the TCA.

The Detroit City Airport Manager requested that a cutout area for Detroit City Airport also be considered. In response to this the FAA representative explained that Area D was required for radar vectoring. He also pointed out that the floor of the proposed TCA airspace in this area was 5,000 feet MSL. As this is 4,375 feet above Detroit City Airport surface, it should not interfere with operations at the airport.

User representatives expressed a strong desire that, wherever possible, TCA airspace arcs should be designated using a DME distance. This is not possible at the present time because no DME equipment is available on Detroit Metropolitan Airport.

The TCA airspace proposal presented at this meeting was limited to United States airspace west of the United States/Canadian Border. Prior to that time the Canadian Ministry of Transport had not become involved in designation of this type of airspace. Concern was expressed at the FAA/Industry meeting, that the proposed TCA would not provide the same measure of protection for aircraft making Runway 9 departures and 27 approaches to Detroit Metropolitan Airport as would be provided to other runways. The FAA is consulting with the Canadian government with respect to designation by Canada, of airspace over Canadian territory which will be compatible with our TCA. This airspace is described as follows:

Area E. That airspace extending upward from 2,300 feet MSL to and including 8,000 feet MSL within three miles each side of Detroit Metropolitan Wayne County Airport Runway 27 ILS localizer course extending from the United States/Canadian Border to 11.5 miles east of Runway 27 threshold.

Area F. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL bounded on the west and northwest by the United States/Canadian Border; on the northeast by the Windsor VOR 320°T (324°M) radial; on the southeast by the Windsor VOR 217°T(221°M) radial excluding Area E previously described.

In addition to this airspace there is a ten nautical mile radius positive control zone around Windsor Airport with a ceiling of 2,600 feet MSL. The Canadian representatives plan to raise the ceiling of this positive control zone to 3,000 feet which will make it compatible with TCA airspace. They also indicated they were experiencing difficulty with United States pilots violating the Windsor positive control zone rules as they are different from rules governing operations in the United States Control Zones. It is planned that, when the VFR Terminal Area Chart for Detroit is developed, Canadian airspace, the Windsor positive control zone, and the rules for operating in Canadian airspace will be included on the chart.

A review of the Detroit Metropolitan Wayne County Airport Control Zone indicates that the airport geographical position, from which a portion of the control zone and TCA would be centered, has been recomputed. Accordingly, action would be taken to amend the control zone to reflect the same geographical position coordinates as the terminal control area.

In consideration of the foregoing, and for reasons stated in Docket No. 9880 (35 FR 7782), it is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

1. In § 71.171 (38 FR 351) the Detroit, Mich. (Metropolitan Wayne County Airport), Control Zone would be amended by deleting the coordinates "Latitude 42°13'05" N., Longitude 83°21'00" W." and substituting the coordinates "Latitude 42°13'07" N., Longitude 83°20'55" W. therefor.

2. In § 71.401(b) (38 FR 622), the Detroit, Mich., Terminal Control Area would be added as follows:

Detroit, Mich., Terminal Control Area

Primary Airport

Detroit Metropolitan Wayne County Airport (Lat. 42°13'07"N., Long 83°20'55"W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within the Detroit, Mich. (Metropolitan Wayne County Airport), Control Zone.

Area B. That airspace extending upward from 2,300 feet MSL to and including 8,000 feet MSL within a ten-mile radius of Detroit Metropolitan Wayne County Airport and that airspace within three miles each side of Detroit Metropolitan Wayne County Airport Runway 27 ILS localizer course extending from the ten-mile radius area east to the United States/Canadian Border, excluding Area A previously described and the Detroit, Mich. (Willow Run Airport), Control Zone.

Area C. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a sixteen-mile radius of Detroit Metropolitan Wayne County Airport, excluding Areas A and B previously described, that airspace within a three-mile radius arc of the Salem VORTAC, west of the Salem VORTAC 197°T(200°M) radial, and east of the United States/Canadian Border.

Area D. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL south of Detroit Metropolitan Wayne County Airport, bounded on the north by a sixteen-mile radius arc of the Detroit Metropolitan Wayne County Airport, on the east by the United States/Canadian Border, on the south by a twenty-five mile radius arc of the Detroit Metropolitan Wayne County Airport, on the west by the Salem VORTAC 197°T(200°M) radial and the Waterville VORTAC 353°T(355°M) radial; and an area north of Detroit Metropolitan Wayne County Airport bounded on the south by a sixteen-mile radius arc of Detroit Metropolitan Wayne County Airport, on the northwest by the Salem 052°T(055°M) radial, on the northeast by the Windsor VOR 320°T(324°M) radial and on the southeast by the United States/Canadian border.

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

Issued in Washington, D.C., on December 3, 1973.

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

[FR Doc.73-26078 Filed 12-7-73;8:45 am]

[14 CFR Parts 71, 73]

[Airspace Docket No. 73-SO-74]

TEMPORARY RESTRICTED AREAS

Proposed Designation

The Federal Aviation Administration (FAA) is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations that would designate temporary restricted areas in the Camp LeJeune/New Bern/Fayetteville/Wilmington area, and in the coastal region adjacent to Jacksonville and Beaufort-Morehead City, N.C. The restricted areas would be used to contain a joint military

exercise "Solid Shield 74" to be conducted from May 26 through June 8, 1974. Those areas containing airspace at or above 14,500 feet MSL would also be included in the continental control area for the duration of their time of designation.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before January 9, 1974, will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

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

The proposed amendments would designate the following temporary restricted areas:

1. R-5309A Solid Shield 74, N. C.

Boundaries.

Beginning at Lat. 34°57'30" N., Long. 77°-02'00" W.; thence SW along the boundary of R-5306B, R-5306C, and R-5306D to Lat. 34°-42'00" N., Long. 77°17'30" W.; thence counterclockwise along connecting arcs of 8.5-mile radius circles centered on the New River MCAS (Lat. 34°42'25" N., Long. 77°26'35" W.) and the Albert J. Ellis Airport (Lat. 34°-49'49" N., Long. 77°36'42" W.); to Lat. 34°-55'30" N., Long. 77°42'00" W.; to Lat. 34°-56'00" N., Long. 77°48'30" W.; to Lat. 35°-12'15" N., Long. 77°35'00" W.; thence counterclockwise along an arc of an 8.5-mile radius circle centered on Stallings Field (Lat. 35°19'40" N., Long. 77°36'55" W.); to Lat. 35°15'00" N., Long. 77°30'00" W.; thence to point of beginning.

Designated altitudes. Surface to and including 10,000 feet MSL.

Time of designation. Continuous, May 26–June 8, 1974, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center, Leesburg, Va.

Using agency. United States Atlantic Command, Norfolk, Va.

2. R-5309B Solid Shield 74, N. C.

Boundaries.

Beginning at Lat. 34°56'00" N., Long. 77°-48'30" W.; to Lat. 34°55'30" N., Long. 77°-42'00" W.; thence clockwise along the arc of an 8.5-mile radius circle centered on the Albert J. Ellis Airport (Lat. 34°49'49" N., Long. 77°36'42" W.); to Lat. 34°49'50" N., Long. 77°27'45" W.; thence S to Lat. 34°34'00" N., Long. 77°43'40" W.; to Lat. 34°36'30" N., Long. 77°49'30" W.; to Lat. 34°51'30" N., Long. 77°52'00" W.; thence to point of beginning.

Designated altitudes. From 5,000 to and including 10,000 feet MSL, May 26–30, 1974, inclusive, and surface to and including 10,000 feet MSL, May 31–June 6, 1974, inclusive.

Time of designation. Continuous, May 26–June 6, 1974, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center, Leesburg, Va.

Using agency. United States Atlantic Command, Norfolk, Virginia.

3. R-5309C Solid Shield 74, N.C.

Boundaries.

Beginning at Lat. 34°49'50" N., Long. 77°-27'45" W.; thence E along the arc of an 8.5-mile radius circle centered on the New River MCAS (Lat. 34°42'25" N., Long. 77°26'35" W.); to Lat. 34°42'00" N., Long. 77°17'30" W.; thence along the westerly and southerly boundaries of R-5306D and R-5306E and the westerly boundary of W-122 to Lat. 34°18'00" N., Long. 77°37'30" W.; to Lat. 34°27'00" N., Long. 77°30'30" W.; to Lat. 34°34'00" N., Long. 77°43'40" W.; thence to point of beginning.

Designated altitudes. Surface to and including 10,000 feet MSL.

Time of designation. Continuous, May 26–June 8, 1974, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center, Leesburg, Va.

Using agency. United States Atlantic Command, Norfolk, Va.

4. R-5309D Solid Shield 74, N.C.

Boundaries.

Beginning at Lat. 35°12'00"N., Long. 77°-58'30"W.; to Lat. 34°57'30"N., Long. 78°02'-30"W.; to Lat. 35°02'00"N., Long. 78°40'00" W.; to Lat. 35°11'00"N., Long. 78°40'00"W.; thence to point of beginning.

Designated altitudes. Surface to and including 10,000 feet MSL.

Time of designation. Continuous, May 26–June 8, 1974, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center, Leesburg, Va.

Using agency. United States Atlantic Command, Norfolk, Va.

5. R-5309E Solid Shield 74, N.C.

Boundaries.

Beginning at Lat. 34°49'20"N., Long. 78°-07'20"W.; to Lat. 34°24'00"N., Long. 78°24'-00"W.; to Lat. 34°24'00"N., Long. 78°42'30" W.; to Lat. 34°50'30"N., Long. 78°46'00"W.; to Lat. 34°53'45"N., Long. 78°42'00"W.; thence to point of beginning.

Designated altitudes. Surface to and including 10,000 feet MSL.

Time of designation. Continuous, May 26–June 6, 1974, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center, Leesburg, Va.

Using agency. United States Atlantic Command, Norfolk, Va.

6. R-5309F Solid Shield 74, N.C.

Boundaries.

Beginning at Lat. 34°24'00"N., Long. 78°-24'00"W.; to Lat. 34°09'30"N., Long. 78°34'-30"W.; to Lat. 34°10'00"N., Long. 78°41'00" W.; to Lat. 34°24'00"N., Long. 78°42'30" W.; thence to point of beginning.

Designated altitudes. Surface to and including 10,000 feet MSL.

Time of designation. Continuous, May 26–June 6, 1974, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center, Leesburg, Va.

Using agency. United States Atlantic Command, Norfolk, Va.

7. R-5309G Solid Shield 74, N.C.

Boundaries.

Beginning at Lat. 34°43'15"N., Long. 76°-47'30" W.; to Lat. 34°38'15"N., Long. 76°41'-30" W.; thence W along the N boundary of W-122 to Lat. 34°37'30"N., Long. 76°56'00" W.; thence N and E along the boundary of R-5306C and R-5306B to point of beginning.

Designated altitudes. From 1,000 to and including 17,000 feet MSL.

Time of designation. Continuous, May 26–June 6, 1974, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center, Leesburg, Va.

Using agency. United States Atlantic Command, Norfolk, Va.

8. R-5309H Solid Shield 74, N. C.

Boundaries.

Beginning at Lat. 35°12'00" N., Long. 77°58'30" W.; to Lat. 34°57'30" N., Long. 78°02'30" W.; to Lat. 34°24'00" N., Long. 78°24'00" W.; to Lat. 34°09'30" N., Long. 78°34'30" W.; to Lat. 34°10'00" N., Long. 78°41'00" W.; to Lat. 34°51'10" N., Long. 78°46'00" W.; thence clockwise along a 10-nautical mile radius circle centered on the Fayetteville Municipal Airport (Lat. 34°59'22" N., Long. 78°52'52" W.) to Lat. 35°00'00" N., Long. 79°05'00" W.; to Lat 35°02'30" N., Long. 79°05'30" W.; thence N along the E boundary of R-5311A to Lat. 35°10'30" N, Long 79°01'00" W; to Lat 35°11'00" N, Long 78°40'00" W.; thence to point of beginning.

Designated altitudes. From 10,000 to and including 17,000 feet MSL.

Time of designation. Continuous, May 26–June 6, 1974, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center, Leesburg, Va.

Using agency. United States Atlantic Command, Norfolk, Va.

9. R-5309I Solid Shield 74, N.C.

Boundaries.

Beginning at Lat. 35°12'15" N., Long. 77°35'00" W.; to Lat. 34°51'30" N., Long. 77°52'00" W.; to Lat. 34°22'00" N., Long. 77°47'30" W.; thence counterclockwise along the Wilmington, N.C., 8.5-mile transition area; to Lat. 34°20'00" N., Long. 78°01'30" W.; to Lat. 34°09'00" N., Long. 78°20'00" W.; to Lat. 34°09'30" N., Long. 78°34'30" W.; to Lat. 34°24'00" N., Long. 78°24'00" W.; to Lat. 34°57'30" N., Long. 78°02'30" W.; to Lat. 35°12'00" N., Long. 77°58'30" W.; thence to point of beginning.

Designated altitudes. From 10,000 to and including 17,000 feet MSL.

Time of designation. Continuous, May 26–June 6, 1974, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center, Leesburg, Va.

Using agency. United States Atlantic Command, Norfolk, Va.

10. R-5309J Solid Shield 74, N.C.

Boundaries.

Beginning at Lat. 35°23'00" N., Long. 76°34'30" W.; thence southerly along the W boundaries of R-5306A, R-5306B, R-5306C, and R-5306D to Lat. 34°39'10" N., Long. 77°20'50" W.; to Lat. 34°40'20" N., Long. 77°22'12" W.; to Lat. 34°38'12" N., Long. 77°26'00" W.; to Lat. 34°36'05" N., Long. 77°26'08" W.; to Lat. 34°33'00" N., Long. 77°19'00" W.; to Lat. 34°30'20" N., Long. 77°15'50" W.; thence southerly along the W boundary of W-122 to Lat. 34°05'00" N., Long. 77°43'00" W.; to Lat. 34°12'30" N., Long. 77°46'30" W.; thence counterclockwise along the Wilmington, N.C., 8.5-mile transition area to Lat. 34°22'00" N., Long. 77°47'30" W.; to Lat. 34°51'30" N., Long. 77°52'00" W.; to Lat. 35°12'15" N., Long. 77°35'00" W.; thence counterclockwise along the Kinston, N.C., 8.5-mile transition area; to Lat. 35°20'00" N., Long. 77°27'30" W.; to Lat. 35°32'30" N., Long. 77°09'00" W.; thence to point of beginning.

Designated altitudes. From 10,000 to and including 17,000 feet MSL.

Time of designation. Continuous, May 26–June 6, 1974, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center, Leesburg, Va.

Using agency. United States Atlantic Command, Norfolk, Va.

Temporary Restricted Areas R-5309G, H, I, and J, defined above, would also be included in the continental control area for the duration of their time of designation.

The proposed restricted areas would be used to contain a joint military training exercise, "Solid Shield 74," involving coordinated amphibious/airborne assault operations. Several military units would participate; however, live ordnance would not be used and supersonic flight would be prohibited. Similar exercises have been conducted annually in the same general area for several years. As with the previous exercises, "Solid Shield 74" would provide the military services with an opportunity to test and evaluate the coordination procedures used during complex joint military operations. The proposed restricted areas would be required for safety to separate nonparticipating aircraft from the extensive air activity of the participating military forces. Throughout the exercise the using agency would allow scheduled air carrier flights and other nonparticipating aircraft into or through the temporary restricted areas when exercise operations permit. The using agency would provide all necessary communication lines required by the Federal Aviation Administration and it would also provide a wide area telecommunications service number so that nonparticipating pilots can obtain clearances on an individual basis without charge to themselves. This number would be published in Part 3 of the Airman's Information Manual (AIM) effective during the exercise period. The Federal Aviation Administration would establish temporary routing to reroute air carrier and other nonparticipating aircraft around the restricted areas when clearance through the areas cannot be approved.

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

Issued in Washington, D.C., on December 4, 1973.

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

[FR Doc.73-26077 Filed 12-7-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 180]

PHOSALONE

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

Dr. C. C. Compton, Coordinator, Interregional Research Project No. 4, State Agricultural Experiment Station, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California submitted a petition (PP 3E1401) proposing establishment of a tolerance for residues of phosalone (*S*-[6-chloro-3-(mercaptomethyl)-2-benzoxazolinone]*O,O*-diethyl phosphorodithioate) in or on the raw agricultural commodity artichokes at 25 parts per million.

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

1. The insecticide is useful for the purpose for which the tolerance is proposed.

2. There is no reasonable expectation of residues in eggs, meat, milk or poultry, and 180.6(a)(3) applies.

3. The proposed tolerance will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038), it is proposed that § 180.263 be amended by inserting the new paragraph "25 parts per million * * *" after the paragraph "50 parts per million * * *", as follows:

§ 180.263 Phosalone; tolerances for residues.

* * * * *

25 parts per million in or on artichokes.

* * * * *

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act containing any of the ingredients listed herein may request, on or before January 9, 1974, that this proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons may, on or before January 9, 1973, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, S.W., Waterside Mall, Washington, D.C. 20460, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. All written submissions made pursuant to this proposal will be made available for public inspection at the office of the Hearing Clerk.

Dated: December 5, 1973.

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

[FR Doc.73-26120 Filed 12-7-73;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-C5]

U.S. ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

Notice of Cancelled Meeting

The meeting of the U.S. Advisory Commission on International Educational and Cultural Affairs scheduled for Friday, December 14, 1973, at the Department of State, Room 1410, as announced on Wednesday, November 28 (FR Vol. 38, No. 228, page 32825), has been cancelled because some members were unable to attend and to date the appointments of new members have not been announced, so a quorum could not be obtained.

MARGARET G. TWYMAN,
Staff Director,
Commission Secretariat.

DECEMBER 7, 1973.

[FR Doc.73-26234 Filed 12-7-73;8:45 am]

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 73-332]

FOREIGN CURRENCIES

Certification of Rates

DECEMBER 3, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 73-294 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Austria schilling:	
November 26, 1973	$0.0513
November 27, 1973	.0516
November 28, 1973	.0516
November 29, 1973	.0514
November 30, 1973	.0519
Belgium franc:	
November 26, 1973	.025245
November 27, 1973	.025265
November 28, 1973	.025300
November 29, 1973	.025210
November 30, 1973	.025285
Denmark krone:	
November 26, 1973	.1640
November 27, 1973	.1648
November 28, 1973	.1630
November 29, 1973	.1629
November 30, 1973	.1630
France franc:	
November 26, 1973	.2207
November 27, 1973	.2223
November 28, 1973	.2214
November 29, 1973	.2221
November 30, 1973	.2226
Germany deutsche mark:	
November 26, 1973	.3781
November 27, 1973	.3828
November 28, 1973	.3804
November 29, 1973	.3805
November 30, 1973	.3812
Italy lira:	
November 26, 1973	.001654
November 27, 1973	.001656
November 28, 1973	.001653
November 29, 1973	.001652
November 30, 1973	.001653
Japan yen:	
November 26, 1973	.003570
November 27, 1973	.003570
November 28, 1973	.003574
November 29, 1973	.003570
November 30, 1973	.003570
Malaysia dollar:	
November 26, 1973	.4100
Netherlands guilder:	
November 26, 1973	.3623
November 27, 1973	.3638
November 28, 1973	.3627
November 29, 1973	.3623
November 30, 1973	.3623
Portugal escudo:	
November 26, 1973	.0401
November 27, 1973	.0402
November 28, 1973	.0404
November 29, 1973	.0400
November 30, 1973	.0401
Sweden krona:	
November 26, 1973	.2250
November 28, 1973	.2259
Switzerland franc:	
November 26, 1973	.3119
November 27, 1973	.3129
November 28, 1973	.3128
November 29, 1973	.3115
November 30, 1973	.3120

[SEAL] R. N. MARRA,
Director, Appraisement and Collections Division.

[FR Doc.73-26158 Filed 12-7-73;8:45 am]

Fiscal Service

[Dept. Circ. 570, 1973 Rev., Supp. No. 5]

INDIANA LUMBERMANS MUTUAL INSURANCE COMPANY

Surety Company Acceptable on Federal Bonds

A Certificate of Authority as an acceptable surety on Federal bonds has been issued by the Secretary of the Treasury to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $730,000.00 has been established for the company.

Name of company, location of principal executive Office, and State in which incorporated:

Indiana Lumbermans Mutual Insurance Company

Indianapolis, Indiana

Indiana

Certificates of Authority expire on June 30 each year, unless sooner revoked, and new Certificates are issued on July 1 so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact fidelity and surety business and other information. Copies of the Circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Audit Staff, Washington, D.C. 20226.

Dated: December 4, 1973.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc.73-26102 Filed 12-7-73;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Defense Advisor

DEFENSE INDUSTRY ADVISORY GROUP IN EUROPE (DIAGE)

Notice of Closed Meeting

The Defense Industry Advisory Group in Europe (DIAGE) will hold a closed meeting on December 13, 1973, in the United States Mission to the North Atlantic Treaty Organization, Brussels, Belgium.

The agenda topics will be: The implications of the Oil Crises on U.S. Defense Industry in Europe; status of NATO projects; and discussion of activities of U.S. defense industry firms in Europe.

Any person desiring information about the advisory group may telephone Brussels 41.44.00 Ext. 5729, or write to the Executive Secretary, Defense Industry Advisory Group, USNATO, Hq. NATO, 1110 Brussels, Belgium.

MAURICE W. ROCHE,
Director, Correspondence & Directives Division, OASD (Comptroller).

DECEMBER 5, 1973.

[FR Doc.73-26079 Filed 12-7-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

AFOGNAK, ALASKA

Final Decision Concerning Eligibility as a Native Village

This is a written decision on protests filed pursuant to 43 CFR Part 2650 by C. A. Yates, Regional Forester, U.S. Forest Service, P.O. Box 1628, Juneau, Alaska 99801, A. W. Boddy, Executive Secretary, Alaska Wildlife Federation and Sportsmen's Council, 1700 Glacier Avenue, Juneau, Alaska 99801, and J. L. Holt, Kodiak, Alaska, hereinafter referred to as Protestants. The protest of the U.S. Forest Service was dated November 2, 1973, and it was received on November 2, 1973, by the Director, Juneau Area Office, Bureau of Indian Affairs, and the Protest of the Alaska Wildlife Federation and Sportsmen's Council was dated October 23, 1973, and it was received on November 2, 1973, by the Director, Juneau Area Office, Bureau of Indian Affairs. The protest of J. L. Holt was dated November 2, 1973 and received on the same day by the Director, Juneau Area Office, Bureau of Indian Affairs. Protestant U.S. Forest Service states in part as follows: "* * *. It is our opinion that the Native's residence as shown by the census of April 1, 1970, should be the place to which the Native is enrolled unless satisfactory evidence to the contrary is provided. * * *. We believe that Afognak cannot qualify as a village on April 1, 1970." Protestant also objects because Native enrollment lists are not made public.

Protestant Alaska Wildlife Federation and Sportmen's Council object to Afognak because "* * * Afognak was not occupied at all in 1970 because of the damage inflicted in the 1964 earthquake and the destruction of the village by a tidal wave. The community relocated to Port Lions. How can there be two claims, one for Afognak and one for Port Lions. * * *." Protestant also objects by stating "Your attention is also respectfully directed to 43 U.S.C.A. Section 1602(c) defining "Native village" where once again the basic criteria is established as the 1970 census enumeration and its date."

Protestant Holt by telegram from Kodiak stated that the Village of Afognak, among others on the basis of "personal knowledge that these locations are not 'villages' " and that "most show no viable sign of habitation * * *." No evidence in support of his protest was received.

The Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688–716), and 43 CFR, Part 2650 provides for the settlement of certain land claims of Alaska Natives and for other purposes. Section 11(b)(2) of the Act is quoted as follows: "Within two and one-half years from the date of enactment of this Act, the Secretary shall review all of the villages listed in subsection (b)(1) hereof, and a village shall not be eligible for land benefits under subsections 14 (a) and (b), and any withdrawal for such village shall expire, if the Secretary determines that—

(a) Less than twenty-five Natives were residents of the village on the 1970 census enumeration date as shown by the census or *other evidence satisfactory to the Secretary*, who shall make findings of fact in each instance; * * *." (Emphasis ours).

The 1970 Census is not, therefore, the exclusive source of information for the determination of residency. Part 43h of Title 25 of the Code of Federal Regulations provides for the enrollment of the Natives. A main source of "other evidence satisfactory to the Secretary of the Interior" is the official enrollment which not only contains evidence of race but of residence (on the 1970 census date) as well.

Subpart 2651.2 of Title 43 CFR contains the authority for the Director, Juneau Area Office, Bureau of Indian Affairs, to act for the Secretary of the Interior in the determination of the eligibility of Natives for land benefits under the Act.

As of October 30, 1973, 389 Natives had been certified for enrollment in the Native Village of Afognak. On July 19, 1973, a field investigation was completed of Afognak and at that time fourteen Natives who used the village for a period of time in 1970 had been certified for enrollment to this village. The 25 or more Natives who have been certified for enrollment to Afognak represent a majority of the residents of the village in 1970. Pursuant to § 2651.2(b)(2) of Title 43 of the Code of Federal Regulations Afognak had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style, and at least 13 persons who enrolled thereto had used the village during 1970 as a place where they actually lived for a period of time, and these regulations also provided that no village which is known as a traditional village shall be disqualified if it meets the other criteria specified in § 2651.2(b)(2) by reason of having been temporarily unoccupied in 1970 because of an Act of God or government authority occurring within the preceding 10 years.

The Director, Juneau Area Office, Bureau of Indian Affairs, has examined and evaluated the protests together with his record of findings of fact and proposed decision, and does hereby render a decision determining that the Native Village of Afognak, is eligible for land benefits under said Act. The decision of the Director, Juneau Area Office, Bureau of Indian Affairs, shall be published in the FEDERAL REGISTER and in one or more newspapers of general circulation in the State of Alaska and a copy of the decision and findings of fact upon which the decision is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska, and any other party of record. Such decision shall become final unless appealed to the Secretary of the Interior by a notice filed with the Ad Hoc Board as established in § 2651.2(a)(5) of Title 43 CFR, on or before January 9, 1974. Appellant shall have not more than 15 days from the date of receipt of his notice of appeal within which to file an appeal brief, and the opposing parties shall have not more than 15 days from the date of receipt of the appellant's brief within which to file an answering brief. No more than 15 days shall be allowed for the filing of additional briefs in connection with such appeals. All hearings held in connection with such appeals shall be conducted in the State of Alaska. The decision of the Ad Hoc Board shall be submitted to the Secretary of the Interior for his personal approval.

JOHN A. MOORE II,
Acting Director.

NOVEMBER 30, 1973.

[FR Doc.73-26111 Filed 12-7-73;8:45 am]

CHITINA, ALASKA

Final Decision Concerning Eligibility as a Native Village

This is a written decision on a protest filed pursuant to 43 CFR Part 2650 by Phil R. Holdsworth, Manager, Alaskan Exploration, INEXCO Mining Co., 1009 Mendenhall Apartments, Juneau, Alaska 99801, hereinafter referred to as Protestant. The protest of INEXCO Mining Co. was dated October 31, 1973 and was received on the same date by the Director, Juneau Area Office, Bureau of Indian Affairs.

Protestant INEXCO Mining Co. states: "I am still actively engaged in this area and have spent time in Chitina as recently as October 16, 1973. The old cabins in the village, and even the newest building—the schoolhouse—are today in such a deteriorated condition as to be uninhabitable."

The Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688–716), and 43 CFR Part 2650 provides for the settlement of certain land claims of Alaska Natives and for other purposes. Section 11(b)(2) of the Act is quoted as follows: "Within two and one-half years from the date of enactment of this Act, the Secretary shall review all of the villages listed in subsection (b)(1) hereof, and a village shall not be eligible for land benefits under subsections 14 (a) and (b) and any withdrawal for such village shall expire, if the Secretary determines that—

(a) Less than twenty-five Natives were residents of the village on the 1970 census enumeration date as shown by the census or *other evidence satisfactory to the Secretary*, who shall make findings of fact in each instance; * * *:" (Emphasis ours).

The 1970 Census is not, therefore, the exclusive source of information for the determination of residency. Part 43h of Title 25 of the Code of Federal Regulations provides for the enrollment of the Natives. A main source of "other evidence satisfactory to the Secretary of the Interior" is the official enrollment which not only contains evidence of race but of residence (on the 1970 census date) as well.

As of October 30, 1973, 237 Natives had been certified for enrollment in the Native Village of Chitina. On August 10, 1973 a field investigation was completed for Chitina and at that time 17 Natives who used the village for a period of time in 1970 had been certified for enrollment to this village. The 25 or more Natives who have been certified for enrollment to Chitina represent a majority of the residents of the village in 1970. It had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style and at least thirteen Natives enrolled thereto have used the village during 1970 as a place where they actually lived for a period of time.

The Director, Juneau Area Office, Bureau of Indian Affairs, has examined and evaluated the protest, together with his record of findings of fact and proposed decision, and does hereby render a decision determining that the Native Village of Chitina is eligible for land benefits under said Act.

The decision of the Director, Juneau Area Office, Bureau of Indian Affairs, shall be published in the Federal Register and in one or more newspapers of general circulation in the State of Alaska and a copy of the decision and findings of fact upon which the decision is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska, and any other party of record. Such decision shall become final unless appealed to the Secretary of the Interior by a notice filed with the Ad Hoc Board as established in § 2651.2 (a) (5) of Title 43 CFR, on or before January 9, 1974.

Appellant shall have not more than 15 days from the date of filing of his notice of appeal within which to file an appeal brief, and the opposing parties shall have not more than 15 days from the date of receipt of the appellant's brief within which to file an answering brief. No more than 15 days shall be allowed for the filing of additional briefs in connection with such appeals. All hearings held in connection with such appeals shall be conducted in the State of Alaska. The decision of the Ad Hoc Board shall be submitted to the Secretary of the Interior for his personal approval.

JOHN A. MOORE II,
Acting Director.

NOVEMBER 30, 1973.

[FR Doc.73-26110 Filed 12-7-73;8:45 am]

KAGUYAK, ALASKA

Final Decision Concerning Eligibility as a Native Village

This is a written decision on protests filed pursuant to 43 CFR Part 2650 by Gordon W. Watson, Area Director, Bureau of Sport Fisheries and Wildlife, Alaska Area Office, 813 D Street, Anchorage, Alaska, 99501 and J. L. Holt, Kodiak Alaska, hereinafter referred to as Protestants. The protest of Bureau of Sport Fisheries and Wildlife was dated October 30, 1973 and was received November 2, 1973 by the Director, Juneau Area Office, Bureau of Indian Affairs and the protest of J. L. Holt was dated November 2, 1973 and received on the same date by the Director, Juneau Area Office, Bureau of Indian Affairs.

Protestant Bureau of Sport Fisheries and Wildlife states "* * * Kaguyak did not exist as a village in 1970 and that the site has been permanently abandoned".

Protestant Holt stated that among others, the village of Kaguyak on the basis of "personal knowledge that these locations are not 'villages' " and that "most show no viable sign of habitation . . .".

The Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688–716), and 43 CFR Part 2650 provides for the settlement of certain land claims of Alaska Natives and for other purposes. Section 11(b)(2) of the Act is quoted as follows: "Within two and one-half years from the date of enactment of this Act, the Secretary shall review all of the villages listed in Subsection (b)(1) hereof, and a village shall not be eligible for land benefits under subsections 14 (a) and (b), and any withdrawal for such village shall expire, if the Secretary determines that—

(a) Less than twenty-five Natives were residents of the village on the 1970 census enumeration date as shown by the census or *other evidence satisfactory to the Secretary*, who shall make findings of fact in each instances; * * *". (Emphasis ours).

The 1970 Census is not, therefore, the exclusive source of information for the determination of residency. Part 43h of Title 25 of the Code of Federal Regulations provides for the enrollment of the Natives. A main source of "other evidence satisfactory to the Secretary of the Interior" is the official enrollment which not only contains evidence of race but of residence (on the 1970 census date) as well.

Subpart 2651.2 of Title 43 CFR contains the authority for the Director, Juneau Area Office, Bureau of Indian Affairs, to act for the Secretary of the Interior in the determination of the eligibility of Natives for land benefits under the Act.

As of October 30, 1973, 25 Natives had been certified for enrollment in the Native Village of Kaguyak. On August 17, 1973, a field investigation was completed of Kaguyak and at that time eighteen Natives who used the village for a period of time in 1970 had been certified for enrollment to this village. The 25 or more Natives who have been certified for enrollment to Kaguyak represent a majority of the residents of the village in 1970. It had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style and at least thirteen Natives enrolled thereto have used the village during 1970 as a place where they actually lived for a period of time.

The Director, Juneau Area Office, Bureau of Indian Affairs, has examined and evaluated the protest, together with his record of findings of fact and proposed decision, and does hereby render a decision determining that the Native Village of Kaguyak is eligible for land benefits under said Act.

The decision of the Director, Juneau Area Office, Bureau of Indian Affairs, shall be published in the Federal Register and in one or more newspapers of general circulation in the State of Alaska and a copy of the decision and findings of fact upon which the decision is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska, and any other party of record. Such decision shall become final unless appealed to the Secretary of the Interior by a notice filed with the Ad Hoc Board as established in § 2651.2 (a) (5) of Title 43 CFR, on or before January 9, 1974.

Appellant shall have not more than 15 days from the date of filing of his notice of appeal within which to file an appeal brief, and the opposing parties shall have not more than 15 days from the date of receipt of the appellant's brief within which to file an answering brief. No more than 15 days shall be allowed for the filing of additional briefs in connection with such appeals. All hearings held in connection with such appeals shall be conducted in the State of Alaska. The decision of the Ad Hoc Board shall be submitted to the Secretary of the Interior for his personal approval.

JOHN A. MOORE II,
Acting Director.

NOVEMBER 30, 1973.

[FR Doc.73-26112 Filed 12-7-73;8:45 am]

Bureau of Land Management

COLORADO

Competitive Lease Offer of Oil Shale Lands

Notice is hereby given that on January 8, 1974, Colorado TRACT C-a, as hereafter described in paragraph 1, will be offered for oil shale lease by sealed bids to the qualified bidder submitting the highest amount per acre as bonus for the privilege of leasing the lands in accordance with the provisions of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended (30 U.S.C. 181–263), and the general Notice of Sale of Oil Shale Leases published in the Federal Register of November 30, 1973 (38 FR 33187).

1. TRACT C-a:

T. 1 S., R. 99 W., 6th P.M.,
Sec. 32, E½, E½W½;
Sec. 33, all;
Sec. 34, W½, SE¼, W½NE¼, SE¼NE¼.
T. 2 S., R. 99 W., 6th p.m.,
Sec. 3, all;
Sec. 4, all;
Sec. 5, E½, E½W½ (including lots 1, 2, and 3);
Sec. 8, E½;
Sec. 9, all;
Sec. 10, all.

The area described aggregates 5,089.70 acres.

2. *Lease terms:* The lease will be issued on a form the full text of which is published as Appendix "A" to the general Notice of Sale published in the FEDERAL REGISTER on November 30, 1973. The lease will be issued for a period of 20 years and so long thereafter as production is had in commercial quantities, subject to readjustment of terms at the end of each 20-year period. The lessee will be required to pay royalty on production in the amount and manner prescribed in section 7 of the lease, and to maintain a bond as provided in section 9.

3. *Minimum Royalty:* Section (7)(e)(1) of the lease form requires the payment of a minimum royalty for the sixth and each succeeding year which shall for this tract be based upon the following production rate and oil shale grade:

Tract	Shale grade (gallons per ton)	6th year production rate (thousands of tons per year)	15th year production rate (thousands of tons per year)
Tract C-a...	30	1,130	11,300

4. *Bidding Procedures:* The lease will be offered competitively through sealed bidding. A lease will be issued only to the qualified bidder submitting the highest amount per acre as a bonus for the privilege of leasing the lands. No specific form of bid is required but all bids must identify the lease sale and must show the total amount bid, the amount bid per acre, and the amount submitted with the bid. Oil and Gas Bid Form No. 3120–17 may be adapted for this purpose. No telephonic or telegraphic bids will be accepted, and no oil payment, overriding royalty, logarithmic, or sliding scale bid will be considered. Bids shall not be modified after they have been submitted. Bids must be for the full tract described in this Notice of Sale. Bids must be submitted in sealed envelopes plainly marked "Sealed Bid for Oil Shale Lease. Not to be opened before 10 a.m., M.S.T. on January 8, 1974." Bids may be mailed or delivered in person until 10 a.m., M.S.T., January 8, 1974, to the State Director, Colorado State Office, Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202. Bids received after that time will be returned unopened. Bidders are warned against violation of section 1860 in Title 18 U.S.C. prohibiting unlawful combination or intimidation of bidders.

5. *Payment of bonus and advance rental:* All bids must be accompanied by a certified check, cashier's check, bank draft, money order, or cash for one-fifth of the bonus bid payable to the Bureau of Land Management, which amount shall be returned to the bidder after the lease sale should he be an unsuccessful bidder. If the bidder, after being notified that his bid has been accepted and that he will be awarded a lease, fails to comply with the applicable regulations or the terms of this notice, or if he fails to execute the lease within 15 days after receiving the lease form, his deposit will be forfeited.

Each bid must also be accompanied by a certified check, cashier's check, bank draft, money order, or cash for the first year's annual rental of $2,545.00. This amount shall be returned to all unsuccessful bidders after the lease sale.

6. *Evidence of qualifications:* Each bid must be accompanied by a statement over the bidder's signature or that of his authorized agent with respect to his qualifications. The statement shall contain the following information:

(a) If the bidder is an individual, a statement as to whether native born or naturalized; if an association, it must submit a certified copy of the articles of association and a statement by its members as to their citizenship. If the bidder is a corporation, it must submit statements showing: (i) The State in which it is incorporated; (ii) that it is authorized to hold leases for oil shale deposits, and the names of the officers authorized to act in such matters in behalf of the corporation; (iii) the percentage of the corporate voting stock and of all the stock owned by aliens or those having addresses outside the United States; and (iv) the name, address, and citizenship of any stockholder owning or controlling 20 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or in behalf of aliens, or persons who have addresses outside the United States, the corporation must give their names and addresses, the amount and class of stock held by each, and to the extent known to the corporation or which reasonably can be ascertained by it, the facts as to the citizenship of each. The bid of a corporation also shall be accompanied by a copy either of the minutes of the meeting of the board of directors or of the by-laws indicating that the person signing the bid has authority to do so, or in lieu of such a copy, a certificate by the Secretary of the corporation to that effect, over the corporate seal, or appropriate reference to the record of the Bureau of Land Management in connection with which such articles and authority have been furnished previously; and

(b) The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375, on Form 1140–8 (November 1973) and Form 1140–7 (December 1971).

7. *Bid opening:* The bids will be opened at 10 a.m., M.S.T., January 8, 1974, at the Colorado State Office, Bureau and Land Management. The opening of bids is for the purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, M.S.T., January 8, 1974, that bid will be returned unopened to the bidder as soon thereafter as possible.

8. *Acceptance or rejection of bids:* No bid for this tract will be accepted and no lease for this tract will be awarded to any bidder unless the bidder has complied with all requirements of this Notice, his bid is the highest for the offered tract, and the amount of the bonus bid has been determined to be adequate by the United States. The Government reserves the right to reject any or all bids. Any cash, checks, drafts, or money orders submitted with the bid may be deposited in an unearned escrow account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bids on behalf of the United States.

9. *Preliminary Development Plan:* Within forty-eight hours after being informed that his bid has been accepted and that a lease will be issued to him, the successful bidder must transmit a preliminary development plan, in duplicate, to the Officer conducting the lease sale. This plan will be made public upon issuance of the lease, and, therefore, confidential information relative to the lessee's operations should not be included in the submission. Confidential information should be submitted in the same manner, but under separate cover. The submission or acceptance of these plans will not be binding on the lessee, or lessor and will not authorize any action by the lessee, but the plan is required for the lessor's guidance in establishing initial supervision of the lessee's activities. The preliminary development plan should include the method of development, the proposed location of on- and off-site facilities, the schedule for development, and monitoring programs to determine environmental criteria.

10. *Further information:* Information concerning this oil shale lease sale may be obtained from the Oil Shale Coordinator, Room 5623, Interior Building, Washington, D.C. 20240; the Deputy Oil Shale Coordinator, Building 56, Denver Federal Center, Denver, Colorado; the Chief, Division of Upland Minerals, Bureau of Land Management, Room 7146, Interior Building, 18th & C Streets NW., Washington, D.C. 20240; and the State Director, Colorado State Office, Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202.

ED HASTEY,
Acting Director,
Bureau of Land Management.

[FR Doc.73-26217 Filed 12-7-73;8:45 am]

OIL SHALE LEASES

Notice of Sale; Corrections

In section 1(C)(1) of the Oil Shale Lease Environmental Stipulations change lines 20 through 33, column 3, page 33194, volume 38 of the FEDERAL REGISTER, published on November 30, 1973, from:

"In paragraph (2) of this subsection. Once the monitoring program has begun the baseline data shall be collected continuously as long as the Mining Supervisor shall require under paragraph (2) of this subsection. The baseline data shall be conducted for at least one full year prior to the submission of the detailed development plan under section 10(a) of this lease. The plan shall, at the

discretion, or with the approval, of the Mining Supervisor, be modified at any time as necessary as a result of study of the baseline data obtained after the submission of the plan. Exploratory operations, as approved by"

to:

"in paragraph (2) of this subsection. The baseline data shall be collected for a period of at least two consecutive full years, one full year of which shall be prior to the submission of the detailed development plan under section 10(a) of this lease. If the detailed development plan is submitted prior to the collection of the second year's data, the plan already submitted shall, at the discretion, or with the approval, of the Mining Supervisor, be modified as necessary as a result of study of the additional baseline data. Exploratory operations, as approved by".

In section 1(C)(2) of the Oil Shale Lease Environmental Stipulations change line 48, column 3, page 33194, volume 38 of the FEDERAL REGISTER, from "visor. The monitoring program shall, there-" to

"visor. After the collection of the required baseline data for at least two years, the Lessee shall not be required to conduct a monitoring program on the Leased Lands until a date six months prior to the commencement of development operations. The monitoring program shall, there-".

ED HASTEY,
Acting Director,
Bureau of Land Management.

Approved: December 6, 1973.

JACK O. HORTON,
Assistant Secretary
of the Interior.

[FR Doc.73-26216 Filed 12-7-73;8:45 am]

Office of the Secretary

[INT DES 73-74]

OCALA NATIONAL FOREST, FLORIDA

Availability of Draft Environmental Impact Statement and Public Hearing Regarding Oil and Gas Operations

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental impact statement on Proposed Oil and Gas Operations in the Ocala National Forest, Florida. The proposal prompting preparation of the draft statement is an application by Amoco Production Company for a permit to drill an exploratory well on one of its existing oil and gas leases in the Forest. However, the potential for additional drilling exists whether or not oil or gas is discovered in the initial well. Accordingly the statement outlines the potential effects of oil and gas operations conducted in the Forest and the environmental impacts resulting therefrom, ranging from the drilling of a single well to total operations which could occur in the event of a major discovery.

The statement is available for public review in the U.S. Geological Survey Library, Room 1033, GSA Building, 18th and F Streets NW., Washington, D.C.; the Central Florida Community College Library, Ocala, Florida; the Central Florida Regional Library, 15 Southeast Osceola Avenue, Ocala, Florida; the Palatka Public Library, 216 Reid Street, Palatka, Florida; the St. Johns River Junior College Library, 5001 St. Johns Avenue, Palatka, Florida; the Eustis Memorial Library, 4 North Grove Street, Eustis, Florida; and the University of Florida Library, University Station, Gainesville, Florida.

Copies are available from the U.S. Geological Survey, Room 1028, GSA Building, Washington, D.C. 20244. The GSA Building is located on F Street between 18th and 19th Streets, NW.

A public hearing will be held beginning at 9:00 a.m., EST, on January 8, 1974, in the Ramada Inn, U.S. Highway 27 and Interstate 75, Ocala, Florida, to receive oral comments on the environmental impact statement. The hearing has been scheduled for January 8 and 9 and will extend through January 10, 1974, if necessary. The hearing will afford the public and private sectors an opportunity to provide their views and additional information to the Department in the preparation of its final environmental statement which will assist the Secretary of the Interior in determining whether additional special terms and conditions are required and should be imposed to further protect the environment within the Ocala National Forest.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearing should provide their written request to the Chief, Conservation Division, U.S. Geological Survey, National Center (620) 12201 Sunrise Valley Drive, Reston, Virginia 22092, by 4:15 p.m., e.s.t., December 14, 1973. Written comments from those unable to attend the hearing should also be addressed to the Chief, Conservation Division, at the same address. The Department will accept written comments on the draft environmental statement until 4:15 p.m., e.s.t., January 25, 1974. This will allow time for those unable to testify at the hearing to make their views known and for the submission of supplemental materials by those presenting oral testimony.

Time limitations make it necessary to limit the length of oral presentations to 10 minutes; however, exceptions to this may be authorized for the applicant to discuss the proposed operations, and for others representing more than one group or organization upon application in writing to the Chief, Conservation Division, address above, by 4:15 p.m., e.s.t., December 14, 1973. Oral testimony may be supplemented by a more complete written statement which may be submitted to the hearing officer at the time of the hearing. Written statements presented in person at the hearing will be considered for inclusion in the hearing record. To the extent that time is available after presentation of oral statements by those who have made advance requests, the hearing officer will give others present an opportunity to be heard.

After all testimony and written comments have been received and considered, a final environmental statement will be prepared.

Dated December 3, 1973.

WILLIAM A. VOGELY,
Acting Deputy Assistant
Secretary of the Interior.

[FR Doc.73-26084 Filed 12-7-73;8:45 am]

[INT DES 73-73]

SEEDSKADEE PROJECT, WYOMING

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement on a proposed conversion of water use from irrigation to municipal and industrial use for marketing by the State of Wyoming for the purpose of developing the vast energy resources in southwestern Wyoming. Written comments may be submitted to the Regional Director (address below) on or before January 24, 1973.

Copies are available for inspection at the following locations:

Office of Communications, Room 7220, Department of the Interior,
Washington, D.C. 20240
Telephone (202) 343-9247

Office of Assistant to the Commissioner-Ecology, Room 7620, Bureau of Reclamation, Department of the Interior,
Washington, D.C. 20240
Telephone (202) 343-4991

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center
Denver, Colorado 80225
Telephone (303) 234-3007

Office of the Regional Director, Bureau of Reclamation,
P.O. Box 11568, Salt Lake City, Utah 84111
Telephone (801) 524-5409

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. In addition, copies may be purchased from the National Technical Information Service, Department of Commerce, Springfield, Virginia 22151. Please refer to the statement number above.

Dated: November 30, 1973.

WILLIAM A. VOGELY,
Acting Deputy Assistant
Secretary of the Interior.

[FR Doc.73-26086 Filed 12-7-73;8:45 am]

National Park Service

GRAND TETON NATIONAL PARK

Notice of Intention To Extend Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby

given that on January 9, 1974, the Department of the Interior, through the Director of the National Park Service, proposes to extend the concession contract with Mrs. Louise M. Bertschy, Harold Turner, John Turner, Jr., and Donald Turner, operating jointly, authorizing them to provide concession facilities and services for the public at Triangle X Ranch in Grand Teton National Park for a period of one (1) year from January 1, 1974, through December 31, 1974.

The foregoing concessioners have performed their obligations under the expiring contract to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, are entitled to be given preference in the renewal of their contract and in the negotiation of a new contract. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted on or before January 9, 1974.

Interested parties should contact the Assistant Director, Concessions, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: November 30, 1973.

JOHN E. COOK,
Associate Director,
National Park Service.

[FR Doc.73-26106 Filed 12-7-73;8:45 am]

[Docket Nos. DA-196, Utah, DA-499, Colorado]

POWER SITE WITHDRAWALS IN DINOSAUR NATIONAL MONUMENT

Finding and Order Regarding Revocation of Power Site

Correction

In FR Doc. 73-21519 appearing on page 28111 in the issue of Thursday, October 11, 1973, the agency bracket should read as set forth above.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

SNOWFLAKE LIVESTOCK AUCTION, ET AL.

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility number, name, location of stockyard, and date of posting

ARIZONA

AZ-106—Snowflake Livestock Auction, Snowflake, November 8, 1973.

AZ-105—Nelson Livestock Auctions, Inc., Prescott, October 15, 1973.

MISSISSIPPI

MS-151—Triangle Stockyard, Inc., Columbus, November 27, 1973.

NORTH CAROLINA

NC-145—Breeders Livestock Sales, Asheboro, September 12, 1973.
NC-146—R. H. Lanier Horse Auction, Chinquapin, September 27, 1973.

OKLAHOMA

OK-191—Beeline Auction Yards, Inc., Glenpool, September 21, 1973.

Done at Washington, D.C., this 3d day of December, 1973.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.73-26151 Filed 12-7-73;8:45 am]

Soil Conservation Service

SAN FELIPE CREEK WATERSHED PROJECT, TEXAS

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, U.S. Department of Agriculture, has prepared a draft environmental statement for the San Felipe Creek Watershed Project, Val Verde County, Texas, USDA-SCS-ES-WS-(ADM)-74-12(D).

The environmental statement concerns a plan for watershed protection and flood prevention. The planned works of improvement include conservation land treatment and one single-purpose floodwater retarding structure.

A limited supply is available at the following locations to fill single copy requests:

Soil Conservation Service, USDA, South Agriculture Building, Room 5227, 14th and Independence Avenue, SW., Washington, D.C. 20250
Soil Conservation Service, USDA, First National Bank Building, Temple, Texas 76501

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please use name and number of statement above when ordering. The estimated cost is $3.75.

Copies of the draft environmental statement have been sent for comment to various federal, state, and local agencies as outlined in the Council on Environmental Quality Guidelines. Comments are also invited from others having knowledge of or special expertise on environmental impacts.

Comments concerning the proposed action or requests for additional information should be addressed to Edward E. Thomas, State Conservationist, Soil Conservation Service, Room 605, First National Bank Building, Temple, Texas 76501.

Comments must be received on or before February 15, 1974 in order to be considered in the preparation of the final environmental statement.

[Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.]

Dated November 30, 1973.

WILLIAM B. DAVEY,
Deputy Administrator for Water Resources, Soil Conservation Service.

[FR Doc.73-26082 Filed 12-7-73;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

FARRELL TANKERS, INC.

Filing of Application for Construction-Differential Subsidy for Construction of Four 89,700 DWT Tankers

Notice is hereby given that Farrell Tankers Incorporated has filed, pursuant to Title V of the Merchant Marine Act, 1936, as amended, an application dated November 23, 1973, for a construction-differential subsidy to aid in the construction of four new 89,700 deadweight ton tankers, MA Design T8-S-100b, for use in the foreign commerce of the United States.

Any persons may inspect this application in the Office of the Secretary, Room 3099-B, Maritime Administration, Department of Commerce, 14th and E Streets NW., Washington, D.C. 20230.

Dated: November 30, 1973.

By Order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-26249 Filed 12-7-73;8:45 am]

WESTERN BULKSHIP ASSOCIATES

Filing of Amended Application for Construction-Differential Subsidy for Construction of Four 80,000 DWT OBO Vessels

Notice is hereby given that Western Bulkship Associates has filed, pursuant to Title V of the Merchant Marine Act, 1936, as amended, an amended application on December 5, 1973 for a construction-differential subsidy to aid in the construction of four new ore/bulk/oil (OBO) type vessels of approximately 80,000 deadweight tons for use in the foreign commerce of the United States. Applicant is the assigner of Waterman Marine Corporation's application of January 8, 1971 as updated September 7, 1973 for subsidy on the vessels, for which notice of filing was published in the FEDERAL REGISTER on September 25, 1973 (38 FR 26747).

Any person may inspect this application in the Office of the Secretary, Room 3099B, Maritime Administration, Department of Commerce, 14th and E Streets NW., Washington, D.C. 20230.

Dated: December 6, 1973.

By Order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-26247 Filed 12-7-73;8:45 am]

SS UNITED STATES

Amended Notice of Invitation for Bids for Sale and Operation of the Vessel

In FR Doc. 73-23961, appearing in the FEDERAL REGISTER of November 9, 1973 (38 FR 31021), notice was given pursuant to the provisions of Pub. L. 92-296, that the Maritime Administration had issued Invitation for Bid No. PD-X-969, dated November 9, 1973, inviting sealed bids from citizens of the United States for the purchase of the SS UNITED STATES, Official Number 263934.

Said notice is hereby amended to provide that bids will be received until 2:15 p.m., Eastern Standard Time, January 15, 1973, and public opening will be held at 2:15 p.m., Eastern Standard Time, on that date at the offices of the Maritime Administration, Room 3708, Commerce Building, 14th Street between E and Constitution Avenue, N.W. Washington, D.C. 20230.

In all other respects the notice of Invitation for Bids For Sale and Operation of the Vessel, SS United States, appearing in the FEDERAL REGISTER on November 9, 1973, remains unchanged.

Dated: December 6, 1973.

By Order of the Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-26246 Filed 12-7-73;8:45 am]

National Oceanic and Atmospheric Administration

CHARLES A. REPENNING, ET AL.

Notice of Applications for Scientific Research Permits

Notice is hereby given that the following applicants have applied for scientific research permits as authorized by Section 101(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and § 216.12 of the regulations Governing the Taking and Importing of Marine Mammals (37 FR 28177, December 21, 1972) and pursuant to the instructions for preparing applications for permits (38 FR 26622, September 24, 1973). The Secretary considers the following application sufficient for consideration under the provisions of § 216.15(a) of the Regulations:

1. Charles A. Repenning, Paleontology and Stratigraphy Branch, U.S. Geological Survey, Menlo Park, California 94025, to take and/or import for scientific research marine mammal specimens found dead.

The Applicant states:

a. There is no intent to take any specific species nor any specific number of any particular species;

b. Collection will be as specimens become available;

c. The project is a continuing part of the program of the U.S. Geological Survey, which is currently directed toward taxonomic studies of fossil and living pinnipeds and fossil desmostylians. The project is staffed by one scientist, the Applicant;

d. The project is intended to provide age and faunal data for Tertiary and Quaternary formations in the States of California, Oregon, Washington, and Alaska, when such information becomes critical to other Geological Survey projects;

e. In accordance with the organic act of the Geological Survey, all specimens will eventually be turned over to the Smithsonian Institution.

2. Dale W. Rice, Northwest Fisheries Center, National Marine Fisheries Service, 2725 Montlake Boulevard East, Seattle, Washington 98112, to mark up to 500 cetaceans, collecting those small odontocetes about which little taxonomic data is available, for scientific research.

The Applicant states:

a. The large cetaceans to be marked with discovery-type whale marks include fin whale (*Balaenoptera physalus*), sei whale (*Balaenoptera borealis*), Bryde's whale (*Balaenoptera edeni*), minke whale (*Balaenoptera acutorostrata*), blue whale (*Balaenoptera musculus*), right whale (*Balaena glacialis*), humpback whale (*Megaptera novaeangliae*) and sperm whale (*Physeter catodon*);

b. Small odontocetes will be collected with harpoon guns;

c. Animals will be marked or collected in international waters of the southern Indian Ocean or in the territorial waters of South Africa and Australia, until February 7, 1974;

d. This project is being conducted as a cooperative effort as part of the research programs of the Governments of Australia, South Africa, the United Kingdom and the United States;

e. The project is designed to determine the population dynamics, distribution, abundance, migration patterns and age distribution of the mysticetes and the sperm whale, and to collect data on the taxonomy, life history and ecology of small odontocetes;

f. The marks will be recovered as the whales are taken in the course of commercial whaling operations;

g. Small odontocetes collected during this project will be deposited with the sponsoring countries.

3. Dr. Frank E. South, Dalton Research Center, University of Missouri, Columbia, Missouri 65201, to take eight female California sea lions (*Zalophus californianus*) for scientific research.

The Applicant states:

a. The animals will be captured on the beach of Santa Cruz Island, Channel Islands, California, by professional collectors using hoop nets, under appropriate wind and temperature conditions, and transported by a major commercial airline to the Applicant's facility;

b. The animals will be held in a 8-foot by 8-foot by 4-foot deep pool. No more than four animals will be held in this pool at any one time;

c. The principal investigator, Dr. South, is Professor of Veterinary Physiology and Pharmacology and Investigator, Dalton Research Center. He has conducted a large number of investigations into mammalian physiology;

d. The overall aim of the current project is to mount an integrated interdisciplinary attack on the physiology of diving mammals through the use of a functional team of physiologists and engineers;

e. Diving mammals were chosen as a subject for study because of the interests of the team members, the wealth of relatively unexplored scientific territory accessible through such an approach, and the opportunity to examine the physiology of these animals during surface activity in contrast to diving; with the implicit long-range goal of extending the work to deep, high pressure diving;

f. The sea lions will be used in the following research programs:

i. *Thermoregulation.* The dominant objective is to characterize the mechanisms of thermoregulation in California sea lions with the view of placing these mechanisms in the context of current theories of temperature regulations. A mathematical model will be developed.

ii. *Sleep Physiology and Behavior.* The quality and distribution of sleep in sea lions will be determined under varying environmental conditions. The information is to be evaluated in terms of environmental effects on sleep as well as the applicability or universality of current sleep theory;

iii. *Renal Physiology.* Investigate the extraction ratio, titration curves of PAH and clearance of creatinine and inulin at varying plasma concentrations; variation in renal blood flows during diving; urinary osmotic pressure and electrolyte content changes during and following a dive;

iv. *Gut Absorption of Calcium.*

g. He has not experienced illness or mortality in either of the two marine mammals maintained for research purposes during the year preceding the date of this application;

h. Nor mortalities are planned or expected during this project. Should a death occur, it is planned that the carcass will be used for surgical anatomic dissection by advanced veterinary students or entered into the mammology collection at the University of Missouri or some similar institution.

4. Dr. Howard E. Winn, Professor of Oceanography and Zoology, University of Rhode Island, Kingston, Rhode Island 02881, to import up to 30 skin samples from the humpbacked whale (*Megaptera novaeangliae*) for scientific research.

The Applicant states:

a. Ten of the requested samples will be imported from the fishery at Beguia, West Indies, between December 1973 and April 1976;

b. Twenty of the samples will be taken within the same time period as above, from humpback whales at sea, over an area from Rhode Island to Antigua with concentrated work in the area from Grand Turk to Anguilla, particularly Silver-Navidarl Banks and Virgin Banks;

c. Skin samples from the whales at sea will be obtained with a biopsy dart fired

from a crossbow. Most shots of the crossbow impact at an oblique angle to the surface of the skin, so that the dart head never penetrates to the stops but only removes a small piece of flesh and blubber;

d. Removal of such a tissue sample will not cause serious or permanent injury to the whale involved;

e. The skin samples will be subjected to cytological analysis, which will permit, upon examination of stained chromatin material, efficient identification of the sex of each whale;

f. Identification of the sex of the whale at sea would prove useful in establishing the context in which vocalizations are produced, assessing population levels and determining which sex groups, or combinations thereof, comprise the population;

g. This technique of sexing whales, without serious injury, provides a reasonable alternative to more obvious techniques which involve killing animals or attempting to view urogenital openings underwater.

5. Dr. Howard E. Winn, University of Rhode Island, Kingston, Rhode Island 02881, to take one male and one female grey seal pup (*Halichoerus grypus*) for scientific research on the vocal behavior of grey seals.

The Applicant states:

a. The seal pups will be taken from the Basque Islands, Nova Scotia, Canada, between January 15, and February 15, 1974;

b. The seals will be captured using a fish net of heavy cord and transported by truck to the Applicant's facility;

c. The seals will be maintained for three years. At completion of research, the seals will be transferred to an approved facility. Any skeleton or dead specimen will be donated to the Smithsonian Institution;

d. The animals will be maintained in a wooden tank, 20 feet in diameter and six feet deep. The facilities and arrangements for maintaining the seals have been reviewed and found adequate by a licensed veterinarian;

e. The seals will undergo experiments during the first three years of life to determine ontogeny of vocalization, response to playback vocalizations, geographic dialectics, echolocation, activity patterns, auditory discrimination, and a hearing curve. This project is a continuation of the project which commenced in January 1973.

6. Dr. H. L. Stone, Marine Biomedical Institute, University of Texas Medical Branch, 200 University Boulevard, Galveston, Texas 77550, to take 20 marine mammals consisting of California sea lions (*Zalophus californianus*) and/or harbor seals (*Phoca vitulina*) for scientific research on the reflex adjustment of the circulation in the diving reflex.

The Applicant states:

a. The animals will be taken, over a two-year period, from either San Miguel Island or Santa Cruz Island, between November 1 and March 1, using hoop nets;

b. The animals will be taken by professional capturers and transported via air-freight to the Applicant's facility;

c. The animals will be housed in individual pens, six feet wide and eight feet long, with a six foot-by-15 foot-by six foot deep pool. Up to six animals will be on hand at any one time;

d. Dr. Stone has conducted a number of studies on cardiovascular and cerebral physiology and morphology. Other staff members have had practical experience in the handling and maintenance of marine mammals;

e. The current research project is a continuation of a five-year program, which commenced with the receipt of the two animals taken to date, out of ten authorized, which were permitted under a Letter of Exemption granted to alleviate economic hardship;

f. The research project will attempt to determine changes in cerebral and coronary blood flows during a dive and to delineate the neural pathways involved in cardiovascular control;

g. The 20 animals requested are scheduled to be utilized over a period of 24 months. If fewer animals are permitted, the length of time of utilization will be proportionately shortened;

h. The long range goal of this project is an understanding of central nervous system control of heart activities. This understanding may be utilized to facilitate control of heart rate and cerebrovascular disease, through an attempt to reinforce natural reflexes, rather than resorting to chemotherapeutic control systems;

i. The animals will be sacrificed to describe the neuroanatomy, extracranial and intracranial vascular supply, innervation of the circle of Willis, distribution of isotopes within the heart, gross anatomy of the brain, morphology of neuromuscular junction and neural pathways and adaptation.

Documents submitted in connection with these applications are available for viewing at the following locations:

Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, telephone 202-343-4543 (All applications);

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, telephone 617-281-0640 (Applications No. 4, 5);

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702, telephone 813-893-1341 (Applications No. 4, 6);

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, telephone 213-548-2575 (Applications No. 1, 3, 6);

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99801, telephone 907-586-7221 (Application No. 1);

Regional Director, National Marine Fisheries Service, Northwest Region, Lake Union Building, 1700 Westlake Avenue North, Seattle, Washington 98109, telephone 206-442-7575 (Applications No. 1, 2).

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is sending copies of the applications to the Marine Mammal Commission and the Committee of Scientific Advisors.

Pursuant to § 216.15 of the regulations, interested parties may submit written data or views on these applications on January 9, 1974.

Comments should be sent to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

All statements and opinions contained in this notice in support of these applications are those of the Applicants and do not reflect the views of the National Marine Fisheries Service.

Dated: December 4, 1973.

WILLIAM F. ROYCE,
Acting Director,
National Marine Fisheries Service.

[FR Doc.73-26135 Filed 12-7-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 5897]

FOLIC ACID PREPARATIONS, ORAL AND PARENTERAL FOR THERAPEUTIC USE

Drugs for Human Use; Drug Efficacy Study Implementation; Amendment; Correction

FR Doc. 73-15699 appearing on page 20750 in the issue of Thursday, August 2, 1973, is correct as published. In the FEDERAL REGISTER of October 16, 1973 (38 FR 28710) this document was inadvertently miscorrected by inserting the word "pregnancy" in the first line between the words "alcoholism" and "hemolytic" in the last paragraph of the section headed "Dosage and Administration."

The paragraph, correct as first published, reads as follows:

In the presence of alcoholism, hemolytic anemia, anticonvulsant therapy, or chronic infection, the maintenance level may need to be increased.

Dated: December 4, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Compliance.

[FR Doc.73-26210 Filed 12-7-73;8:45 am]

[DESI 9023; Docket No. FDC-D-568; NDA 9-535]

MALLINCKRODT PHARMACEUTICALS

Antihypertensive Combination Drug Containing Cryptenamine Tannates and Reserpine; Withdrawal of Approval of New Drug Application

On January 30, 1973, there was published in the FEDERAL REGISTER (38 FR 2776) a notice of opportunity for hearing (DESI 9023) in which the Commissioner of Food and Drugs proposed to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of the new drug applications for

certain antihypertensive combinations, including the subject drug. The basis of the proposed withdrawal of approval was the lack of substantial evidence that such fixed combination drugs will have the effects that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling and that each component of such drugs contributes to the total effects claimed. Pursuant to that notice, on February 28, 1973 Mallinckrodt Pharmaceuticals requested a hearing concerning Unitensen-R Tablets containing cryptenamine tannates and reserpine (NDA 9-535).

By letter of October 23, 1973, Mallinckrodt withdrew its request for a hearing and requested that approval of NDA 9-535 be withdrawn, stating that manufacturing and marketing of Unitensen-R has stopped.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application reviewed and are subject to this notice. See 21 CFR 130.40 (37 FR 23185, Oct. 31, 1972). Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, MD 20852.

The Commissioner of Food and Drugs, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1053, as amended; 21 U.S.C. 355), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to him (21 CFR 2.120), finds that on the basis of new information before him with respect to the drug evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug will have the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Therefore pursuant to the foregoing finding, approval of the above new drug application and all amendments and supplements applying thereto is withdrawn effective on December 20, 1973.

Shipment in interstate commerce of the above-listed drug product or of any identical, related, or similar product, not the subject of an approved new drug application, will then be unlawful.

Dated: December 3, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-26105 Filed 12-7-73;8:45 am]

[DESI 7337; Docket No. FDC-D-616; NDA No. 7-337]

COMBINATION DRUGS CONTAINING OXYCODONE WITH HOMATROPINE OR PENTYLENETETRAZOL

Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Application

In a notice (DESI 7337) published in the FEDERAL REGISTER of April 20, 1972 (37 FR 7827) the Commissioner of Food and Drugs announced his conclusions pursuant to the evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the drugs described below which were marketed by Endo Laboratories, Inc., 1000 Stewart Avenue, Garden City, Long Island, NY 11530.

1. That part of NDA 7-337 pertaining to Percodan Tablets containing oxycodone hydrochloride, oxycodone terephthalate, homatropine terephthalate, aspirin, phenacetin, and caffeine; and

2. That part of NDA 7-337 pertaining to Nucodan Tablets containing oxycodone hydrochloride, oxycodone terephthalate, homatropine terephthalate, and pentylenetetrazol.

Both drug products were regarded as possibly effective for moderate to moderately severe pain. The evaluation of possibly effective was based upon the lack of evidence justifying the inclusion of homatropine terephthalate in either formulation and of pentylenetetrazol in the second formulation, and on deficiencies in the labeling. The possibly effective indications have been reclassified as lacking substantial evidence of effectiveness in that no new evidence of effectiveness of the drugs formulated as described has been received.

Subsequent to the notice of April 20, 1972, Endo Laboratories proposed revised labeling and reformulation of Percodan tablets and Percodan-Demi tablets (not submitted to the Academy for review and not included in the April 20, 1972 notice). The revised formulation eliminated homatropine terephthalate. An amended notice was published in the FEDERAL REGISTER of December 9, 1972 (37 FR 26356) stating that as reformulated, Percodan is effective for relief of moderate to moderately severe pain, and setting forth labeling and marketing conditions for preparations containing oxycodone hydrochloride, oxycodone terephthalate, aspirin, phenacetin, and caffeine.

Therefore, notice is given to the holder of the new drug application and to any other interested person that the Commissioner proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (e)) withdrawing approval of those parts of NDA 7-337 which provide for products containing oxycodone hydrochloride and oxycodone terephthalate, with or without other active components, in combination with homatropine terephthalate and/or pentylenetetrazol, on the grounds that new information before him with respect to the drugs, evaluated together with the evidence available to him at the time of their approval, shows there is a lack of substantial evidence that the drugs will have all the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application(s) reviewed. See 21 CFR 130.40 (37 FR 23185, October 31, 1972). Any manufacturer or distributor of such an identical, related, or similar product is an interested person who may in response to this notice submit data and information, request that the new drug application(s) not be withdrawn, request a hearing, and participate as a party in any hearing. Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, Maryland 20852.

In accordance with the provisions of section 505 of the Act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Part 130), the Commissioner hereby gives the applicant(s) and any other interested person an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn.

On or before January 9, 1974, the applicant(s) and any other interested person is required to file with the Hearing Clerk, Food and Drug Administration, Room 6-86, 5600 Fishers Lane, Rockville, Maryland 20852, a written appearance electing whether or not to avail himself of the opportunity for a hearing. Failure of an applicant or any other interested person to file a written appearance of election within the specified time will constitute an election by him not to avail himself of the opportunity for a hearing. No extension of time may be granted.

If no person elects to avail himself of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing approval of pertinent parts of the application(s).

If an applicant or any other interested person elects to avail himself of the opportunity for a hearing, he must file, on or before January 9, 1974, a written appearance requesting the hearing, giving the reasons why approval of the new drug application(s) should not be withdrawn, together with a well-organized and full-factual analysis of the clinical and other investigational data he is prepared to prove in support of his opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing (21 CFR 130.14(b)).

If review of the data submitted by an applicant or any other interested person warrants the conclusion that there exists substantial evidence demonstrating the effectiveness of the product(s) for the labeling claims involved, the Commissioner will rescind this notice of opportunity for hearing.

If review of the data in the application(s) and data submitted by the applicant(s) or any other interested person in a request for a hearing, together with the reasoning and factual analysis in a request for a hearing, warrants the conclusion that no genuine and substantial issue of fact precludes the withdrawal of approval of the application(s), the Commissioner will enter an order of withdrawal making findings and conclusions on such data.

If, upon the request of the new drug applicant(s) or any other interested person, a hearing is justified, the issues will

be defined, a hearing examiner will be named, and he shall issue, as soon as practicable on or before January 9, 1974, a written notice of the time and place at which the hearing will commence. All persons interested in identical, related, or similar products covered by the new drug application(s) will be afforded an opportunity to appear at the hearing, file briefs, present evidence, cross-examine witnesses, submit suggested findings of fact, and otherwise participate as a party. The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

Requests for a hearing and/or elections not to request a hearing may be seen in the Office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

(Sec. 505, 52 Stat. 1052-53, as amended; 21 U.S.C. 355), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: December 3, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-26106 Filed 12-7-73;8:45 am]

Office of the Secretary

DR. IRVING WOLF

Certification as Agent

Pursuant to the provision of 18 U.S.C. 207, having found that Dr. Irving Wolf, formerly a Public Health Service Fellow in the National Institute on Alcohol Abuse and Alcoholism possesses outstanding scientific and technological qualifications, I hereby certify that the national interest would be served by Dr. Wolf's acting as agent for or appearing personally before the Department of Health, Education, and Welfare on behalf of the University Research Corporation of Washington, D.C. in connection with a contract with said corporation certified as HSM 42-73-74 (NIA) which is a matter in which Dr. Wolf participated personally and substantially as an employee of the Department of Health, Education, and Welfare.

This Certification is directed to be published in the FEDERAL REGISTER.

Dated: December 5, 1973.

FRANK CARLUCCI,
Acting Secretary.

[FR Doc.73-26125 Filed 12-7-73;8:45 am]

OFFICE OF THE ASSISTANT SECRETARY FOR HUMAN DEVELOPMENT; OFFICE OF RURAL DEVELOPMENT

Organization and Functions

1R80.00 Mission. The Director, Office of Rural Development serves as the principal staff assistant to the Assistant Secretary for Human Development for coordination of rural development activities in the Department. The Office identifies barriers to the delivery of HEW services in non-metropolitan areas; designs and recommends human services delivery systems in rural areas; coordinates efforts with other Federal agencies for the selection of target areas for the delivery of human services through a Departmental rural network; represents the Department on interdepartmental task forces concerned with rural development.

1R80.10 Organization. The Director, Office of Rural Development reports directly to the Assistant Secretary for Human Development. The Office of Rural Development includes intra and interdepartmental liaison staff, and training and technical assistance staff.

1R80.20 Functions. The departmental liaison activities include promotion of efforts to identify barriers to the delivery of HEW services in non-metropolitan areas through agency program development as well as in Secretarial initiatives such as the Services Integration Targets of Opportunity. ORD designs and recommends alternative delivery systems to agencies as well as contributes to OS planning, budgeting, and legislative processes; prepares directives for carrying out the decisions of the Assistant Secretary and monitors directives to assure completion; consults with the Departmental rural network to discuss and resolve issues pertinent to rural development.

In its interdepartmental liaison function, ORD provides liaison at the staff level to the Department of Agriculture Interdepartment Task Force on Rural Development in support of section 603 (b) of the Rural Development Act of 1972. It develops new relationships with the Federal Regional Council Subcommittee on Rural Development through the Office of the Deputy Under Secretary for Regional Affairs; provides headquarters liaison to the Inter-departmental Task Force on Concerted Services in Training and Education; and represents the Assistant Secretary on interdepartmental committees and with special interest groups on matters concerning rural development.

In the training and technical assistance area, ORD provides a clearinghouse function for policy issues and program information to regional offices, units of general purpose governments and other interested parties. It fosters efforts towards developing capacity for working with non-metropolitan areas within regional offices, particularly in the Office of the Regional Director, through seminars, training conferences and joint site visits for the purpose of delivering technical assistance.

Dated: December 3, 1973.

S. H. CLARKE,
Acting Assistant Secretary for Administration and Management.

[FR Doc.73-26124 Filed 12-7-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Hazardous Materials Regulations Board

TRANSPORTATION OF HAZARDOUS MATERIALS

Special Permits Issued

Pursuant to Docket No. HM-1, Rule-making procedures of the Hazardous Materials Regulations Board, issued May 22, 1968 (33 FR 8277) 49 CFR Part 170, following is a list of new DOT Special Permits upon which Board action was completed during November 1973:

Special permit No.	Issued to—Subject	Mode or modes of transportation
6820	Shippers registered with this Board to ship Sodium dichloro-s-triazinetrione in DOT Specification 12A and 12B fiberboard boxes having inside 2-pound, 5-pound or 10-pound cartons.	Highway.
6821	Shippers registered with this Board to ship a dry corrosive compound containing not more than 48% caustic soda in a 90 mil, 7 gallon capacity polyethylene container.	Highway.
6822	Hanco Manufacturing Co., Memphis, Tenn. to make one shipment of stabilized sulfur trioxide in a non-DOT Specification portable tank.	Highway.
6823	Shippers registered with this Board to ship flammable liquids, n.o.s. in a DOT 12P fiberboard box with an inside DOT. 2U polyethylene container not over 5-gallons capacity.	Highway.
6824	Bio-Lab, Inc., Decatur, Georgia to ship Calcium hypochlorite mixtures, and other dry oxidizing materials, in polyethylene bottles overpacked in fiberboard boxes.	Highway.
6825	Cosden Oil and Chemical Company to ship liquefied ethylene in a DOT proposed Specification 113C120W tank car meeting AAR specifications.	Rail.
6827	Ethyl Corp., Baton Rouge, La. to make export shipments of Motor fuel antiknock compound in non-DOT Specification closed head drums made of 12 gage steel and having capacity not exceeding 50 imperial gallons.	Highway.
6829	E. I. du Pont de Nemours & Co., Inc. Wilmington, Delaware to make several emergency shipments of Aniline oil, transferred from derailed tank cars, in a MC 312 tank motor vehicle.	Highway.
6831	Shippers registered with this Board to ship various mercaptans in DOT Specification 109A300AL-W tank cars.	Rail.

A. I. ROBERTS,
Secretary.

[FR Doc.73-26113 Filed 12-7-73;8:45 am]

ATOMIC ENERGY COMMISSION

ALABAMA POWER CO.

Establishment of Atomic Safety and Licensing Board To Rule on Petitions To Intervene

Pursuant to delegation by the Commission dated December 29, 1972, published in the FEDERAL REGISTER (27 FR 38710) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's regulations, all as amended, an Atomic Safety and Licensing Board is being established to rule on petitions and/or requests for leave to intervene in the following proceeding:

ALABAMA POWER COMPANY
(Joseph M. Farley Nuclear Plant, Units 1 and 2)
Docket Nos. 50-348-OL, 50-364-OL

This action is in reference to the "Notice of Receipt of Application for Facility Operating Licenses; Notice of Consideration of Issuance of Facility Operating Licenses; Notice of Availability of Applicant's Environmental Report; and Notice of Opportunity for Hearing" published by the Commission on October 30, 1973, in the above matter (38 FR 29907).

The members of the Board are:

Thomas W. Reilly, Esq., Chairman
Robert M. Lazo, Esq., Member
Mr. Lester Kornblith, Jr., Member

Dated at: Washington, D.C. this 4th day of December 1973.

ATOMIC SAFETY AND LICENSING BOARD PANEL,
NATHANIEL H. GOODRICH,
Chairman.

[FR Doc.73-26069 Filed 12-7-73;8:45 am]

[Docket Nos. 50-452 and 50-453]

DETROIT EDISON CO.

Notice and Order for Special Prehearing Conference

In the matter of Detroit Edison Company (Greenwood Energy Center, Units 2 and 3).

Take notice, that pursuant to the Atomic Energy Commission's "Notice of Hearing on Application for Construction Permits", dated October 17, 1973, and in accordance with § 2.751(a) of the Commission's rules of practice, a special prehearing conference will be held in the subject proceeding on January 17, 1974, at 10:00 a.m., local time, in Courtroom 219, United States District Court, 526 Water Street, Port Huron, Michigan 48060.

The special prehearing conference will deal with the matters set forth in § 2.751 (a), including such matters as:

1. Identification and simplification of the issues;

2. The necessity or desirability of amending the pleadings;

3. The obtaining of stipulations and admissions;

4. The setting of a hearing schedule; and

5. Such other matters as may aid in the orderly disposition of the proceeding.

All members of the public are entitled to attend this prehearing conference as well as the subsequent evidentiary sessions.

It is so ordered.

Issued at Washington, D.C. this 4th day of December 1973

THE ATOMIC SAFETY AND LICENSING BOARD.
FREDERICK T. SUSS,
Chairman.

[FR Doc.73-26070 Filed 12-7-73;8:45 am]

[Docket No. STN 50-437]

OFFSHORE POWER SYSTEMS

Notice of Receipt of Application for Manufacturing License and Availability of Applicant's Environmental Reports

Offshore Power Systems (a joint venture between Westinghouse Electric Corporation and Tenneco, Inc.), Post Office Box 8000, 8000 Arlington Expressway, Jacksonville, Florida 32211, pursuant to section 103 of the Atomic Energy Act of 1954, as amended, has filed an application dated July 2, 1973, which was docketed on July 5, 1973, for a manufacturing license for the manufacture of eight floating nuclear power plants. Docket No. STN 50-437 has been assigned to the application and should be referenced in any correspondence relating to the application. The eight plants would be pressurized water reactors, each with a rated core power output of 3411 megawatts thermal. The plants will be manufactured on a repetitive assembly line basis in Jacksonville, Florida. A Westinghouse pressurized water reactor and nuclear steam supply system will be installed in the floating nuclear plants. After assembly, the plants will undergo testing (without nuclear fuel) at the manufacturing site and subsequently will be towed to selected sites. The plants may be sold to electric utilities for siting along or near the Atlantic and Gulf Coasts of the United States. At present it appears that most of the plants will likely be sold to electric utilities for siting and generation along or near the Atlantic Coasts of New Jersey and Florida and the Gulf Coast of Louisiana.

This application has been docketed under one of the options of the Commission's recently announced standardization policy for nuclear power plants and will be governed by the Commission's regulations in Appendix M, 10 CFR Part 50. The applicable option involves a standard design and envelope of assumed site considerations for a specified number of plants to be manufactured at a location which is different from the location where the plants will eventually be operated.

A Notice of Hearing with opportunity for public participation is being published separately. A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.; the Jacksonville Public Library, 122 North Ocean Street, Jacksonville, Florida 32204; the Wallace R. Holst Community Library, North School, Lafayette and Evans Avenues, Brigantine, New Jersey 08203; and the New Orleans Public Library, Business and Science Division, 219 Loyola Avenue, New Orleans, Louisiana 70140.

Offshore Power Systems has also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in Appendix D to 10 CFR Part 50, a report entitled "Environmental Report—Supplement to Manufacturing License Application", which discusses the environmental considerations associated with the manufacturing of floating nuclear plants. In addition, Offshore Power Systems has filed a report entitled "Part II—Environmental Report, Supplement to Manufacturing License Application", as supplemented. This report discusses environmental considerations associated with operation of floating nuclear power plants at typical offshore locations along the Atlantic and Gulf Coasts. Both reports have been made available for public inspection at the aforementioned locations. The reports are also being made available at the Jacksonville Area Planning Board, 330 E. Bay Street, Jacksonville, Florida 32202.

After the reports have been analyzed by the Commission's Director of Regulation or his designee, draft environmental statements will be prepared by the Commission's regulatory staff. Upon preparation of the draft environmental statements, the Commission will among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statements, with a request for comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials will be made available when received. Upon consideration of comments submitted with respect to the draft environmental statements, the regulatory staff will prepare a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

Dated at Bethesda, Md., this 28th day of November 1973.

For the Atomic Energy Commission.

KARL R. GOLLER,
Chief, Pressurized Water Reactors Branch No. 3, Directorate of Licensing.

[FR Doc.73-26034 Filed 12-7-73;8:45 am]

[Docket No. STN 50-437]

OFFSHORE POWER SYSTEMS

Notice of Hearing on Application for Manufacturing License

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and Part 2, "Rules of Practice", notice is hereby given that a hearing will be held by an

Atomic Safety and Licensing Board (Board), to consider the application filed under the Act by Offshore Power Systems (the applicant), for a manufacturing license for eight pressurized water floating nuclear power plants (the facilities). The application is dated July 2, 1973 and was docketed on July 5, 1973. The facilities will each be designed for initial operation at 3411 megawatts thermal with a net electrical output of approximately 1150 megawatts. The facilities will be manufactured on a repetitive assembly line basis in Jacksonville, Florida.

This application has been docketed under one of the options of the Commission's recently announced standardization policy for nuclear power plants (Press Release No. R-85, March 5, 1973) and will be governed by the Commission's regulations in Appendix M, 10 CFR Part 50. The applicable option involves a standard design and an envelope of assumed site considerations for a specified number of facilities to be manufactured at a location which is different from the location where the plants will eventually be operated. The plants may be sold to electric utilities for siting along or near the Atlantic and Gulf Coasts of the United States. At present it appears that most of the plants will likely be sold to electric utilities for siting and generation along or near the Atlantic Coasts of New Jersey and Florida and the Gulf Coast of Louisiana.

The hearing will be conducted by an Atomic Safety and Licensing Board (Board), which has been designated by the Chairman of the Atomic Safety and Licensing Board Panel, consisting of Dr. John R. Lyman, Dr. Marvin M. Mann, and Daniel M. Head, Esq., chairman. Dr. David L. Hetrick has been designated as a technically qualified alternate, and John B. Farmakides, Esq. has been designated as an alternate qualified in the conduct of administrative proceedings. The hearing will be scheduled to begin in Washington, D.C. or such other location as may be determined by the Board.

Upon completion by the Commission's regulatory staff of a favorable safety evaluation of the application and an environmental review, and upon receipt of a report by the Advisory Committee on Reactor Safeguards, the Director of Regulation will consider making affirmative findings on Items 1–3, a negative finding on Item 4, and an affirmative finding on Item 5 specified below as a basis for the issuance of a manufacturing license to the applicant:

ISSUES PURSUANT TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. Whether in accordance with the Act:

(a) The applicant has described the proposed design of and the site parameters postulated for, the reactors including but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the design report and which can reasonably be left for later consideration, will be supplied in a supplement to the design report;

(c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved before any of the proposed nuclear power reactors are removed from the manufacturing site and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed reactors can be constructed and operated at sites having characteristics that fall within the site parameters postulated for the design of the reactors without undue risk to the health and safety of the public.

2. Whether the applicant is technically qualified to design and manufacture the proposed reactors;

3. Whether the applicant is financially qualified to design and manufacture the proposed reactors; and

4. Whether the issuance of a license for manufacture of the reactors will be inimical to the common defense and security or to the health and safety of the public.

ISSUE PURSUANT TO NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA)

5. Whether, in accordance with the requirements of Appendix D and Appendix M of 10 CFR Part 50, the manufacturing license should be issued as proposed.

In the event that this proceeding is not a contested proceeding, as defined by 10 CFR 2.4(n), the Board will determine (1) without conducting a *de novo* evaluation of the application, whether the application and the record of the proceeding contain sufficient information, the review of the application by the Commission's regulatory staff has been adequate to support the findings proposed to be made by the Director of Regulation on Item 1–4 above, and to support, insofar as the Commission's licensing requirements under the Act are concerned, the issuance of the manufacturing license proposed by the Director of Regulation; and (2) whether the review conducted by the Commission pursuant to NEPA has been adequate.

In the event that this proceeding becomes a contested proceeding, the Board will consider and initially decide Items 1–5 above as a basis for determining whether the manufacturing license should be issued to the applicant.

With respect to the Commission's responsibilities under NEPA, and regardless of whether the proceeding is contested or uncontested, the Board will, in accordance with section A.11 of Appendix D and paragraph 3 of Appendix M of 10 CFR Part 50, (1) determine whether the requirements of section 102(2)(C) and (D) of NEPA and Appendix D of 10 CFR Part 50 have been complied with in this proceeding; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine whether the manufacturing license should be issued, denied, or appropriately conditioned to protect environmental values.

The issues under the Act and NEPA will not involve consideration of the particular sites at which any of the reactors to be manufactured will be located and operated. These will be the subject of construction permit proceedings associated with the particular sites. However, in any such construction permit proceeding, the Commission will treat as resolved those matters which have been resolved in this manufacturing license proceeding unless there exists significant new information that substantially affects the conclusions reached at the earlier stage or other good cause. No construction permit for a particular site will be issued until the relevant manufacturing license has been issued.

The Board will convene a special prehearing conference of the parties to the proceeding and persons who have filed petitions for leave to intervene, or their counsel, to be held within sixty (60) days after the notice of hearing is published or at such other time as the Board deems appropriate, for the purpose of dealing with the matters specified in 10 CFR 2.751a.

The Board will convene a prehearing conference of the parties, or their counsel, to be held subsequent to any required special prehearing conference, and within 60 days after discovery has been completed or at such other time as the Board may specify, for the purpose of dealing with the matters specified in 10 CFR 2.752.

The Board will set the time and place for any special prehearing conference, prehearing conference and evidentiary hearing and the respective notices will be published in the FEDERAL REGISTER.

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715. A person making a limited appearance may make an oral or written statement on the record. He does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of Items 1–5 above. Limited appearances will be permitted at the time of the hearing at the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission and others in the manner specified below.

Any person whose interest may be affected by the proceeding, who wishes to participate as a party in the proceeding

must file a written petition under oath or affirmation for leave to intervene in accordance with the provisions of 10 CFR § 2.714. A petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have all rights of the applicant to participate fully in the conduct of the hearing, such as the examination and cross-examination of witnesses, with respect to their contentions related to the matters at issue in the proceeding.

A petition for leave to intervene must be filed with the Secretary of the Commission and others as specified below by January 9, 1974. A petition for leave to intervene which is not timely will not be granted unless the Board determines that the petitioner has made a substantial showing of good cause for failure to file on time and after the Board has considered those factors specified in 10 CFR § 2.714(a) (1)–(4) and § 2.714(d).

An answer to this notice, pursuant to the provisions of 10 CFR § 2.705, must be filed by the applicant by December 30, 1973.

Papers required to be filed in this proceeding shall be filed by mail or telegram addressed to the Secretary of the Commission, United States Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR § 2.708, an original and twenty (20) conformed copies of each such paper with the Commission. A copy of any petition for intervention or request for limited appearance should also be sent to the Chief Hearing Counsel, Office of the General Counsel, Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545 and to Vincent W. Campbell, Esq., Vice President and General Counsel, P.O. Box 8000, 8000 Arlington Expressway, Jacksonville, Florida 32211, attorney for the applicant.

For further details, see the application for a manufacturing license and the Environmental Report, as supplemented, regarding manufacturing activities dated July 2, 1973 which were docketed on July 5, 1973, and the "generic" Environmental Report which addresses environmental considerations associated with operation of floating nuclear power plants at typical offshore locations along the Atlantic and Gulf Coasts of the United States. The above items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., between the hours of 8:30 a.m. and 5 p.m. on weekdays. Copies of those documents will also be made available for inspection by members of the public at the Jacksonville Public Library, 122 North Ocean Street, Jacksonville, Florida 32204, between the hours of 9 a.m. and 9 p.m. Monday through Friday, and 9 a.m. and 6 p.m. on Saturday; the Wallace R. Holst Community Library, North School, Lafayette and Evans Avenues, Brigantine, New Jersey 08203, between the hours of 9:30 a.m. and 1 p.m. Monday through Friday, 7 p.m. and 9 p.m. Monday, Thursday and Friday, and 3 p.m. and 5 p.m. Tuesday and Wednesday; and the New Orleans Public Library, Business and Science Division, 219 Loyola Avenue, New Orleans, Louisiana 70140, between the hours of 9 a.m. and 9 p.m. Monday through Friday, 9 a.m. and 5 p.m. on Saturday, and 1:15 p.m. and 5 p.m. on Sunday. As they become available, a copy of the safety evalution report by the Commission's Directorate of Licensing, the Commission's draft and final environmental statements, the report of the Advisory Committee on Reactor Safeguards (ACRS), the proposed manufacturing license, the transcripts of the prehearing conferences and of the hearing, and other relevant documents, will also be available at the above locations. Copies of the Directorate of Licensing's safety evaluation report, the Commission's draft and final environmental statements, the proposed manufacturing license, and the ACRS report, may be obtained, when available, by request to the Deputy Director for Reactor Projects, Directorate of Licensing, United States Atomic Energy Commission, Washington, D.C. 20545.

Dated at Washington, D.C. this 5th day of December 1973.

UNITED STATES ATOMIC ENERGY COMMISSION,
GORDON M. GRANT,
Assistant Secretary of the Commission.

[FR Doc.73-26123 Filed 12-7-73;8:45 am]

[Docket Nos. 50-277, 50-278]

PHILADELPHIA ELECTRIC CO. ET AL.

Notice of Oral Argument

Notice is hereby given that, in accordance with the Atomic Safety and Licensing Appeal Board's Memorandum and Order of November 30, 1973, oral argument on the exceptions filed by the several parties to the September 14, 1973 initial decision of the Licensing Board in this proceeding—Philadelphia Electric Co. *et al* (Peach Bottom Atomic Power Station, Units 2 and 3)—has been calendared for Wednesday, December 12, 1973 at 9:15 a.m., in the 5th floor hearing room, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For the Atomic Safety and Licensing Appeal Board.

Dated: December 4, 1973.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc.73-26275 Filed 12-7-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 26131]

BRITISH AIRWAYS BOARD

Cancellation of Prehearing Conference and Hearing Regarding Transfer of Foreign Air Carrier Permits of British Overseas Airways Corporation

The notice of prehearing conference and hearing, issued in the above-entitled matter on November 28, 1973 (38 FR 33412, December 4, 1973), is hereby canceled.

Dated at Washington, D.C., December 5, 1973.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.73-26134 Filed 12-7-73;8:45 am]

[Docket 25877]

EASTERN AIR LINES, INC.

Deletion of Mayaguez, Puerto Rico; Notice of Postponment of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter, previously assigned to be held on December 11, 1973 (38 FR 30772, November 7, 1973), is hereby postponed.

This action is predicated upon the December 3, 1973 motion of Eastern Air Lines, Inc., which has been concurred in by all other parties to the proceeding (the Commonwealth of Puerto Rico, Puerto Rico International Air Lines, Inc., and the Bureau of Operating Rights).

Dated at Washington, D.C., December 4, 1973.

[SEAL] HARRY H. SCHNEIDER,
Administrative Law Judge.

[FR Doc.73-26136 Filed 12-7-73;8:45 am]

[Docket 25002]

KUONI TRAVEL, INC.

Amendment of Foreign Air Carrier Permit Travel Group Charters; Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held February 19, 1974, at 10 a.m.

(local time) in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., December 3, 1973.

[SEAL] JOSEPH L. FITZMAURICE,
Administrative Law Judge.

[FR Doc.73-26133 Filed 12-7-73;8:45 am]

[Docket No. 25904]

INTERNATIONAL FARES FOR U.S. MILITARY STATIONED OVERSEAS AND THEIR DEPENDENTS

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 21, 1974, at 10 a.m. (local time), in Room 911, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before Administrative Law Judge Milton H. Shapiro.

In order to facilitate the conduct of the conference parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Economics will circulate its material on or before January 22, 1974, and the other parties on or before February 12, 1974. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Economics, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., December 5, 1973.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.73-26137 Filed 12-7-73;8:45 am]

[Docket 25661; Order 73-11-132]

NORTH ATLANTIC PASSENGER TRAFFIC CONFERENCE

Order Relating to Passenger Fares

A North Atlantic fares agreement has been filed with the Board pursuant to section 412 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 International Air Transport Association (IATA). The agreement was adopted for January 1, 1974, effectiveness at the North Atlantic Passenger Traffic Conference held in Nice/Monaco in September/October 1973, and has been assigned the above-designated C.A.B. agreement number.

In summary, the agreement would extend the existing fare structure over the North Atlantic through October 31, 1974, with all fares within the structure increased by varying amounts depending on the types of fares, season, and market. Increases, where proposed, in differentials over New York for travel to/from selected U.S. interior gateway cities vary by type of fare and by market.[1] The present six percent surcharge, which is applicable to the New York fare for journeys commencing in the United States, would be retained and surcharges would be realigned both up and down for sales in local currency for travel originating in Europe. Finally, rules governing use of the 22/45-day excursion fare would be changed to provide that the fare for open-jaw travel will not be less than the higher of the one-way normal economy-class fare for either the outbound or inbound leg of the itinerary.

After full and careful review of the agreement, the carriers' submissions in support thereof, and the comments of other parties, the Board has decided to disapprove the proposed normal economy fares, and to approve all other fares in the package except the 22/45-day excursion fares. We will withhold action on the latter pending further review by the carriers.

I. Each of the three U.S. transatlantic carriers has submitted justification in support of the agreement.[2] The carriers contend that the agreement meets the objectives stated by the Board in its policy statement, given the constraints of the environment in air transportation. Restructuring fares under present conditions is allegedly not feasible and does not pose a valid alternative at this time because of the uncertain situation surrounding charter services. The carriers note that the future of affinity charters is in doubt, and allude to possible relaxation of TGC rules for foreign-originating travel and liberalization of ITC authority. Even assuming no change in charter rules or authority, there is no definite knowledge of the level of charter rates against which scheduled services will be required to compete. Under these circumstances it is alleged that a complete restructuring of scheduled service fares cannot be expected. Furthermore, establishment of minimum charter rates at this point in time would not warrant Board disapproval of the IATA agreement. While such minimum rate action would have a significant impact in 1975, it would be of very limited significance in 1974 because a large portion of the 1974 charter program has already been sold.

TWA, describing the difficulties encountered in the IATA negotiations, contends that while every carrier recognizes the need to be competitive with charter services, neither the individual carriers nor their governments are able to agree on the means and degree to which this objective can and should be accomplished. The carriers allege that under these circumstances, any consideration by IATA of a major change in fare structure would be protracted and result in an uncertainty as to 1974 fare levels which would adversely affect the marketing of air transportation as it did in 1973.

The carriers allege that the proposed increases in normal economy fares are both required and justified. The amounts involved are the smallest in terms of absolute dollar amounts (except for the winter GIT) and are not unreasonable when balanced against the larger increases in other fares. The carriers note that cost increases affect all traffic, and that while they should be borne proportionally more by lower discount-fare passengers, they should also be borne to some extent by normal-fare passengers. The normal economy fare increases are further justified by the pro-rate situation. As intra-European fares are higher on a per-mile basis than transatlantic sector fares (and intra-European fares are expected to increase by six percent in 1974), the net revenue to U.S. carriers which serve primarily the transatlantic sector would be reduced in the absence of the increases. U.S. carrier pro-rates must reflect the higher intra-Europe fares on interline movements. Finally, the carriers contend that present currency relationships also support an increase in normal economy fares, since the existing six percent surcharge does not adequately compensate foreign carriers for losses they have suffered due to further escalation of the value of certain local currencies in relation to the dollar.

Generally, it is contended that the increases in the 22/45-day excursion fare result in a level more closely related to cost and that the narrowing of the differential between promotional and normal fares renders the former more economic and more compensatory than previously. It is alleged that, in view of charter competition, the scheduled carriers have taken substantial risks in agreeing to increase any promotional fares. In fact, there was substantial pressure at the IATA meetings to maintain *status quo* or even decrease the 22/45-day fare.[3] The carriers allege that exposure to diversion of traffic to charters is substantial and further increases in discount fares are simply not possible of agreement.

TWA states that it is important to focus on just what cost level is appropriate for measuring the economic soundness of the 22/45-day excursion fare under present circumstances and in the context of a fare agreement which is to extend for only a 10-month period. The appropriate measurement, it contends, is a short-run profit impact test. This is particularly true because the ability to reduce capacity costs consistent with a decline in traffic is minimal, and the carriers' ability to reduce below one daily frequency is limited considering foreign-flag competition. Thus, TWA concludes that the loss of traffic which would result from pricing themselves out of the market would not in reality translate into a reduction in cost. The carrier submits that the level of the

[1] A comparison of the present and proposed fares is set forth in Appendices 1 and 2, filed as part of the original document.

[2] National, Pan American and TWA.

22/45-day excursion fare assures an optimum balance between its revenue generating ability and its relevant costs.

According to the carriers, the substantial increase in the level of youth fares effectively eliminates any unjustly discriminatory aspect of these fares. Disapproval by the Board of the youth-fare agreement would cause a new round of government-ordered youth fares, which would be at lower levels and be available under more liberal conditions.

As a further indication that approval of the agreement is warranted, the carriers cite the various problems associated with devaluation of both the U.S. dollar and the U.K. pound, plus *de facto* devaluations under currency floats which have completely distorted the fare structure in other currencies. The dollar has devalued in the range of 20–30 percent against some European currencies in the past year while the pound has declined even further. Attempts by IATA to maintain stability by "freezing" local currency levels at the pre-February 1973 exchange rates have proved less than succesful, and diversion of transatlantic traffic is occurring to circumvent "frozen levels" through a combination of sales via the United Kingdom. Thus for certain European-originating traffic, it may be considerably cheaper to buy a local-currency ticket to London and a second ticket in pounds for a transatlantic journey, than to purchase a through ticket in local currency. The U.S. carriers have successfully withstood pressures to increase basic currency fares (dollars and pounds) to reflect the full amount of devaluation. However, the situation creates an additional need for some increase in normal fares which, because of their higher levels, involve the largest currency-related undercuts in absolute dollars.

In conclusion, the carriers state that the agreement would provide much needed additional revenue[4] and offers the most realistic and best alternative for the 1974 transatlantic season. If the Board were to disapprove the agreement, the resulting situation is unlikely to produce an improvement. There is no indication that inter-governmental negotiations would be more successful than they were last year, and an open-rate situation would only precipitate a repeat of last year's events. The foreign carriers would file and advertise lower fares, and even though these fares were suspended these carriers would obtain and retain additional traffic by diverting from those carriers which did not file comparable fares. The carriers contend that, during the period required for resolution of the conflict, the likely result would be maintenance of *status quo* fares, which would be less desirable to both the Board and the carriers than the proposed agreement. Lack of agreement at this time could have a particularly adverse impact on the industry in view of the unprecedented fuel-cost increases it is facing. In the event of an open-rate situation, there would be no agreed starting point upon which to base adjustments required by these increases in cost.

Finally, the carriers contend that the Board cannot ignore the interdependence of North American countries in fixing transatlantic fares, particularly the position of Canada. The Canadian government is likely to approve the present IATA agreement. If the Board should disapprove, and if such a disapproval ultimately leads to the cessation of air services, only the operations of the U.S.-flag carriers would be adversely affected, since transatlantic services of foreign-flag carriers would continue to Canada and at least some U.S. traffic could avail itself of those services.

Comments in support of the agreement have been submitted by British Overseas Airways Corporation (BOAC) and Lufthansa German Airlines (Lufthansa). BOAC indicates that disapproval of the agreement would produce another fares crisis and divert attention from consideration of a longer term resolution of differences; that the agreement represents the best solution possible in relation to operations already committed for 1974; that the Board should support IATA's effort to achieve long-term revisions in the fare structure for 1975; and that the structure agreed to moves quite far in the direction of satisfying the Board's objectives. Lufthansa's comments relate to continuation of the six percent surcharge for U.S.-originating travel. Lufthansa estimates its 1973 revenues earned in the United States at $103,623,000. Dollar expenses incurred in the United States are estimated at $57,579,000, resulting in an excess of revenues over expenses of $46,044,000. The loss in Deutsche Marks attributed to the dollar devaluation is estimated at DM30,849,000 (3.17DM=$1 vs 2.50DM=$1), which would require an offset of $12,340,000 in additional revenue. Since the six percent surcharge would amount to $6,217,000, Lufthansa anticipates a net loss of $6,123,000 even with the surcharge.

Comments in opposition to the agreement have been filed by member carriers of the National Air Carrier Association (NACA), the Aviation Consumer Action Project (ACAP), the United States Department of Transportation (DOT), the Maryland Department of Transportation (Maryland) and the City of Philadelphia and the Philadelphia Chamber of Commerce (Philadelphia).

NACA urges disapproval of the resolutions relating to the 22/45-day excursion fare, the group inclusive-tour fare, the affinity and incentive group fare, and the youth fare. NACA alleges that the Board has clearly and repeatedly outlined the changes which are required in the transatlantic fare structure; that the new fare agreement meets none of the objectives set forth in the Board's policy statements on transatlantic fares; and that the practical considerations cited by the carriers do not require or justify approval of the fares in issue. NACA contends that it is totally irrational for the carriers to permit more than 60 percent of their passengers to travel at fares which are substantially below fully-allocated costs; that the Board has already allowed this situation to continue too long; that scheduled promotional fares can be raised without concurrent increases in charter prices; that the argument that the proposed agreement is the best which could be obtained should not intimidate the Board, and that the Board should not shrink from the threat of an open-rate situation.

ACAP likewise notes that the proposed fares do not conform to the Board's stated policy on North Atlantic Fares; that the carriers have not shown cost increases in support of the proposed fare increases; that the fare structure is discriminatory and unreasonable and should not be allowed to continue; that the proposed increases will adversely affect traffic growth; and that the Board should not reapprove the six percent increase attributed to currency devaluation. ACAP requests that the Board disapprove the entire IATA agreement, notify all affected foreign governments, and take the initiative to enter into immediate bilateral negotiations. It also requests that the Board order a full and comprehensive investigation of the transatlantic fare structure, with a view to determining the reasonableness of existing and proposed fares and establishing standards of reasonableness for the guidance of the IATA carriers.

DOT requests disapproval because IATA, for the third consecutive year, proposes a continuation of *status quo* fares plus an across-the-board increase; the carriers have made little progress toward development of a fare structure which is consistent with sound economic principles; the agreement fails to comply with the Board's policy statement; the present level of charter rates does not offer justification for approval of the agreement; and carrier justifications fail to take full account of the anticipated fuel shortages. DOT notes that disapproval would result in an open-rate situation but contends that there is sufficient time to complete a new agreement prior to April 1974.

The Baltimore and Philadelphia parties request disapproval insofar as the agreement would establish fares to interior U.S. cities. Both parties allege that the agreement does not fully comport with principles enunciated in Order 69–7–149, which would require that fares to Baltimore, Philadelphia and Washington be equal on a per-mile basis with fares between New York and European points. The parties allege that, rather than moving toward the goal of equalization, the agreement continues and even in-

[3] Pan American contends that the proposed 22/45-day peak-season excursion fare between New York-London (including the currency surcharge) would be more than double the Board's proposed minimum of 2.2 cents per seat mile for charter service.

[4] PAA projects a revenue increase of $15.35 million over continuation of *status quo* fares, an operating profit of $4 million, and a rate of return of 2.5 percent. TWA projects revenue improvement of $16.7 million, a pre-tax profit of $14.5 million, and a 6.26 percent rate of return.

creases the fare differentials to their cities.

II. By Order 72–3–104, March 30, 1972, the Board approved a North Atlantic fare structure which, while incorporating across-the-board increases to compensate for devaluation of the dollar on December 19, 1971, also significantly reduced the level of the long-duration excursion fares. In approving this agreement, the Board accepted the U.S. carriers' estimates that traffic volume would increase, primarily because of the expected generative impact of the low long-term excursion fare. The economic position of all carriers was thereby expected to improve although it was recognized that average yield would decline as a consequence of diversion of traffic from higher-rated fares to the lower excursion fare. The difference was to be made up by newly-generated volume.

The Board noted, however, that the fare structure fell far short of the long-term objective considered necessary for the industry, and expressed the concern that the discounts were of such magnitude as to attract and divert a disproportionate amount of traffic to fares which had been economically justified only on an added-cost or "fill-up" basis. Nevertheless, the Board was unable, on balance, to conclude that the agreement was adverse to the public interest for the limited period for which it was to be effective, and accordingly it was approved.

Prior to the start of IATA negotiations to establish fares for the 1973 season, the Board again indicated its belief in a public statement of policy that the first order of business should be the development of a fare structure in which each of the various fares would more closely reflect its respective cost of service. Most specifically, the Board stated that continued reliance on a structure of deeply discounted fares, which bear little relationship to either cost or value of service, would inevitably result in higher fares for other passengers or inadequate earnings for the carriers. The Board concluded that neither result was necessary or justified.

The IATA carriers were unable to agree upon North Atlantic fares for effect from April 1, 1973, and an open-rate situation ensued. The Board subsequently approved tariffs filed individually by the U.S. carriers[1] and suspended various foreign carrier tariff proposals on the grounds that the fares would not result in economic operations. Foreign governments, in turn, were unwilling to permit implementation of the fare structure proposed by the U.S. carriers and approved by the Board. Consultations between governments thereafter ensued, but consensus could not be reached. Ultimately, and with considerable impetus from devaluation of the U.S. dollar in February 1973, IATA agreed to extend *status quo* fares through 1973, subject to a six percent surcharge on fares for eastbound-originating travel to reflect the impact of dollar devaluation. This agreement was approved essentially because it proved impossible to achieve a better alternative either in IATA or through intergovernmental negotiation, the paramount public interest at that eleventh hour lay in assuring the sellers and buyers of air transportation firm prices so that firm travel plans could be made for the peak season immediately at hand and because the agreement would provide needed additional revenue for the carriers as a result of the six percent currency surcharge.

As the IATA carriers embarked upon negotiation of fares to be applicable on the North Atlantic in 1974 the Board issued a further policy statement. This statement recognized the differing marketing interests and philosophies of the carriers seeking a mutually acceptable multinational pattern of fares and, accordingly, did not require the immediate major restructuring which we believe to be the objective for the longer term. We did, however, enunciate those improvements which we considered immediately necessary to an improved economic climate on the North Atlantic. Specifically, the Board stated that:

> Notwithstanding the cross currents of competitive pricing of scheduled service vis-a-vis charter service, the Board will be disposed to withhold approval of any IATA agreement which further raises normal economy fares; fails to relate the 22/45-day excursion fare more closely to costs; and fails to eliminate unjustly discriminatory fares.

The agreement here under consideration proposes an increase in normal economy fares. It perpetuates the 22/45-day excursion fare, albeit at an increased level and with a slightly diminished percentage discount. Youth fares would also be continued.

III. The U.S. carriers request approval of the agreement primarily on the grounds that it will provide needed additional revenue. It is the best that could be negotiated in the context of unsettled charter competition, and it is to be effective for only a 10-month period. They rely heavily on the argument that a substantive revision in the overall structure of fares was not feasible in the negotiating time allowed and given the uncertainty surrounding the pricing of charter service.

The Board recognizes the disparate views of the IATA carriers serving the North Atlantic route and the difficulty of resolving these differences into a mutually acceptable agreement. We also recognize that achieving a simplified and cost-oriented fare structure is an evolving process, and indeed our statement prior to the recent IATA conference did not require an immediate or major structural revision. We did, however, express again our conviction that the time has come to set in motion a series of alterations in the fare structure which will ultimately culminate in the long-term objectives all appear to seek. Specifically, the Board identified the first step as elimination of the long-term excursion fare or, as an initial alternative, an increase in its level. It remains our conviction that this step is the key to improvement in the economics of transatlantic service, and that the answer does not lie in continuing increases in normal fares. The latter represents a trend which cannot culminate in a valid and economic structure in the longer term. It is a fallout caused by decisions made with respect to other elements of the fare structure rather than a rational, cost based decision. For this reason, we are unable to approve the proposed increases in normal economy fares.[2]

The Maryland and Philadelphia parties allege that approval of the proportional fares (add-ons over New York to Baltimore and Philadelphia) would further prejudice these cities as the proposed percentage increases, especially as applicable to normal economy fares, are higher than the percentage increases proposed for New York. Our disapproval of the proposed normal economy fares encompasses disapproval of the proportional fares which would be used in conjunction with normal economy fares to other U.S. points. However, we will approve the proportionals used to establish through first-class and promotional fares. While the new proportionals do not result in fares to Baltimore and Philadelphia precisely equal, on a fare-per-mile basis, to the specified New York fare, they are generally in accord with prior Board approvals and do not appear unreasonable. The proportional add-ons for Baltimore are to be increased by $2 for one-way first-class travel and $2 for round-trip promotional-fare travel. To Philadelphia the increases would be $1 in each case. The resulting differentials vis-a-vis the New York fare closely approximate those presently in effect, differing only as a result of rounding to whole-dollar amounts. However, we are not unmindful of the questions of preference and prejudice which the complaints raise and intend to review the matter carefully as to whether a formal investigation should be ordered.

The problems of reaching agreement within IATA on a fare structure adequate to meet the costs of providing scheduled service are so influenced by concerns about charter competition as to obscure the fundamental economic issue. While charter traffic has shown continuous growth over the North Atlantic in recent years, scheduled carriage has likewise experienced a healthy rate of growth. Nevertheless, scheduled carriers have continued to reduce fares in order to counter charter competition and maintain growth and market share, irrespective of the inherently differing cost characteristics of the two types of service. The end result has been continued erosion of the carriers' economic posture, to the point that scheduled service has recently been characterized as one "chron-

[1] Order 73–1–76, January 26, 1973.

[2] Our evaluation of the agreement before us is without reference to the fuel shortage which has recently developed or the attendant escalation in fuel costs. This is a separate and distinct matter which should appropriately be dealt with apart from the question of basic fare levels and structure. We understand that the IATA carriers are so approaching the matter.

ically priced below the cost of providing it. The voice of common sense says that it is imperative to design a better way of doing business."[7]

At the present time, almost one in every four passengers flying the North Atlantic on either Pan American or TWA uses the low 22/45-day excursion fare, and this already high penetration is apparently continuing to increase. (See Appendix 7).[7a] In the second quarter of 1972, 22/45-day excursion fare passengers accounted for 22 percent of total travel. In the second quarter of 1973, the proportion was 26 percent. This continued increase in the use of the 22/45-day excursion fare, absent a significant increase in its level, can only compound the uneconomic situation in which the industry currently finds itself. The instant agreement would retain this fare in the structure, and at levels somewhat above those now in effect. The fare between New York and London would be increased by 10.0, 7.1 and 7.0 percent winter shoulder and peak season respectively. That between New York and Rome would be increased by 8.2, 5.6 and 6.2 percent, respectively. (See Appendix 1). The net result is that the differential between the 22/45-day fares and normal economy fares would be modestly narrowed, in the range of 2 to 3 percentage points. However, the discounts would continue to approach the 50 percent mark.[8]

We recognize that this particular fare is designed to accommodate those carriers which believe it essential to be price competitive with charter services. On the other hand, both Pan American and National allege that, under the Board's proposal to establish minimum charter rates, the charge paid by the charter passenger would be less than 50 percent of the proposed 22/45-day excursion fare.[9] While the carriers' comparisons overstate the disparity, a substantial differential between charter prices and the 22/45-day excursion fare should continue to exist. Therefore, it would not seem reasonable to conclude that these competitive considerations would preclude any further increase in this excursion fare.

To the contrary, it seems reasonable to assume that an individual seeking to reduce his air travel price would already have moved to the charter level. Moreover, if as Pan American indicates a large portion of 1974 charters have already been sold, a more adequate increase in the 22/45-day excursion fare could be expected to have a limited impact during the next ten months.

We believe the results of a study conducted by IATA itself are pertinent in this connection. The findings and conclusions of "A Preliminary Invesigation of the North Atlantic Travel Market," published in August 1973, are set forth in Appendix 10. While all the information therein is relevant, we refer specifically to the finding that "altogether, air fares have a relatively low priority in the planning and decision process." The study further concludes that "it would seem that low fares currently available are not why people are traveling to Europe but that consumers (in this case acting quite rationally) are taking advantage of the good deals in fares that we are offering them."

Thus, while there might have been validity to the introduction of the deeply discounted long-term excursion fares at a time when new, larger aircraft were being introduced into service and capacity was abundant, the exigencies of the day indicate that condition may no longer prevail. It may well have been desirable to build the pool of North Atlantic travelers by offering very attractive fares on scheduled service at a time when other services were not so widely available. However, that condition is no longer the case, as many governments have determined that their respective public policies call for authorization of charter specialist carriers.

The Board's pending rulemaking proceeding looking toward establishment of minimum charter rates was initiated in part out of concern with their debasing effect on fares for scheduled service as well as concern for the economic soundness of charter rates themselves. This concern has likewise been evidenced by the actions of a number of European governments, and we believe it entirely reasonable to anticipate a greater degree of regulation in this area in the future. Accordingly, we are not persuaded by the argument that a more substantial increase in the level of the 22/45-day excursion fare is not possible until finalization of the Board's policy on minimum charter rates.[10]

Aside from differences in length of stay, the major factor which distinguishes the 22/45-day excursion fare from the 14/21-day fare is the availability of free stopover privileges. A total of four free stopovers is permitted in connection with travel on the 14/21-day excursion fare, whereas no stopovers, free or otherwise, are permitted in conjunction with the 22/45-day excursion fare. It is generally acknowledged that stopovers entail significant additional cost for the carriers, not the least stemming from the additional circuity involved. The U.S. carriers have previously attempted to secure a charge for stopovers on promotional fares. In fact, in their individual tariff filings during the open-rate situation last winter, each of the three U.S.-flag carriers proposed a $20 charge for each stopover in conjunction with the proposed 14/45-day excursion fare.[11]

TWA indicated its belief at that time that the most significant adjustment in the promotional fare structure then being proposed related to stopover privileges, stating that "recently, the point-to-point travelers are subsidizing passengers whose itineraries involve stopovers." More recently, the IATA carriers agreed to and the Board approved a charge of $25 per stopover in conjunction with group inclusive tour fares over the South Pacific. (See Order 73-7-55).

Since the primary difference between the two excursion fares from the standpoint of the actual transportation provided lies in the relative availability of the stopover option, we believe it would be reasonable that the differential between the two fares approximate the aggregate cost of this privilege. We recognize, of course, that were the long-term excursion fare increased in this order of magnitude, a number of passengers in all probability would no longer utilize scheduled services. On the other hand, some would continue to use the fare notwithstanding its higher level, and some would convert to other fares in the structure. We would expect the net result to be, if not an actual increase in revenue, an increase in profit when attendant cost savings are taken into account. With disapproval of the proposed increases in economy fares, the 22/45-day excursion fare discount from economy would range between 43 and 47 percent. In our view, that discount could be further reduced or availability of the fare further limited, without adverse effect. If improved yield and revenue is the carriers' primary concern, and we agree that it should be, remedial action should be pointed to the fare at which the highest percentage of travelers move.

The NACA carriers request that the Board disapprove the group inclusive tour and affinity/incentive group fares. The 14/21-day GIT fares are to be increased 8 to 9 percent, the affinity/incentive group fares by 7 to 10 percent, and the winter 7/8-day GIT fares by approximately 7 percent. While the resulting levels continue to be somewhat low in relationship to peak-season normal economy fares, the differential is narrowed from 49 percent to 44 percent in the case of the 14/21-day GIT fares, and from 51

[7] Address by William T. Seawell, Chairman of Pan American's Board of Directors, October 17, 1973.

[7a] Appendices 1–8 filed as part of original document.

[8] It is noteworthy that the percentage increases in the 22/45-day excursion fare are generally less than the increases proposed for the 14/21-day excursion fare, thus making the 22/45-day fare even more attractive in relation to the 14/21-day excursion fare.

[9] The Board issued a notice of proposed rulemaking (PSDR-37, Docket 25875) on September 7, 1973, proposing to amend Part 399 of the regulations to add a new policy statement concerning rates for charter services between the United States and Europe. The proposal contemplates minimum charter-rate levels between the United States and Europe for weekday charters at 2.2 cents per seat mile and 2.4 cents per seat mile for weekend charters, and that tariff filings below these levels would be considered *prima facie* unreasonable and be subject to suspension in the absence of compelling justification.

[10] We note with considerable interest that now that steps are in motion to stabilize charter rates, the instability in scheduled fares is caused by capacity problems in the market.

[11] In permitting these tariffs to become effective by Order 73-1-76, the Board found that the proposed stopover charge was responsive to economic reality and an affirmative step toward a rational pricing scheme for scheduled service.

percent to 47 percent for affinity-group travel.[12] Moreover, because of the conditions attached to travel at these fares, their use is relatively limited compared with other fares in the structure. In fiscal 1972, GIT fares accounted for no more than 12 percent of total travel, and only 3 percent of the scheduled service market utilized the affinity/incentive group fares. We have concluded to approve these fares in light of the reduced differentials vis-a-vis normal economy fares and the lesser impact which they have on the overall economics of the structure due to their relatively limited use. We are also approving the proposed 14/21-day excursion fares, which are to be increased by 8 percent. As a result, these fares will offer a discount of approximately 25 percent from normal economy fares. When compared with the previous differential of 30 percent, and considering the restrictions on use of the fare, this constitutes in our opinion a sufficient improvement in the structure to warrant approval.

The resolutions incorporated into this IATA agreement would also reestablish individual and group youth fares, albeit at significantly higher levels. These the Board has disapproved in Order 73-11-131 dated November 28, 1973. In that order, we noted the serious economic and legal implications which would stem from a continuation of these fares, which compelled us to reach the decision we did.

Finally, the agreement before us would continue imposition of a six percent currency surcharge on U.S.-originating travel to offset the adverse economic impact of the devaluation of the United States dollar. ACAP suggests that at the minimum the United States carriers should be required to submit their revenue and expense figures for each country served in order to determine whether they would in fact sustain a net loss because of devaluation. ACAP alleges that the proper way to deal with the effect of devaluation is not an increase in dollar fares, but an appropriate reduction in the fares in foreign currencies which have appreciated in value in relation to the U.S. dollar.

The Board has previously delved into this matter at some length in Order 73-10-55 dated October 15, 1973. Appendix IV of that order shows the estimated impact of the dollar devaluation on operations of foreign carriers in the United States. It shows that the national carriers of several major European countries would receive less revenue from the six percent adjustment than required to cover costs incurred in this country.

As we have previously acknowledged, the fare adjustment provides U.S. carriers with revenue somewhat in excess of that required to cover their losses from dollar devaluation. However, the six percent adjustment is not an attempt to recoup losses sustained by the U.S. carriers but rather an attempt to approximate the overall effect of devaluation on all U.S. and foreign carriers operating in the transatlantic market. In our opinion, it would not be reasonable or equitable to require that the entire impact of dollar devaluation, an official action of the United States Government, be borne by the foreign carriers by lowering prices in foreign currencies, since such a reduction would severely lessen their opportunity vis-a-vis U.S. carrier to earn a fair return. Not only would their earnings in local currency be reduced, their earnings in the United States would also suffer because of the reduced value of the dollar in terms of local currency. We recognize the agreement before us reduces in some cases the fare payable in foreign currencies. However, this is intended primarily to counter traffic diversion to neighboring softer-currency countries, rather than as an offset to effect of devaluation of the dollar.

Only Lufthansa has supplied supporting data, and we believe it has adequately demonstrated that it will incur a significant revenue loss even with the proposed surcharge. While the economic impact of the surcharge on the carriers will vary in relation to fluctuations in the value of particular local currencies vis-a-vis the U.S. dollar, it is not unreasonable to assume that the national carriers of other hard-currency countries, (*e.g.*, Swissair, KLM, Sabena and Air France) will be similarly affected. Although the dollar was officially devalued by ten percent, the value of various European currencies in relation to the dollar has appreciated in excess of ten percent. As of November 15, 1973, the West German mark appreciated 25.16 percent; the Swiss franc, 23.63 percent; the Netherlands guilder, 22.9 percent; the Belgian franc, 18.18 percent; and the French franc, 15.21 percent. Accordingly, we conclude that the six percent surcharge represents a reasonable compromise among all carriers, in a situation which must as a practical matter be dealt with on an industry-wide basis.

In summary, the Board is unable at this juncture to approve the proposed economy-class fare and the 22/45-day excursion fares. We are fully aware of the the industry's sub-standard earnings and the need for additional revenue. The carriers' justifications and their economic results as shown in Appendices 3 to 6 fully support an increase in revenue. However, achievement of this goal must be in a manner which will begin to move the fare structure toward a more economic foundation for the long term.

The carriers should be able to reconvene in IATA to reassess the matter in this context. We urge that this be done promptly in the interest of keeping uncertainty as to next year's fares to an absolute minimum. We would expect that the carriers share our concern in this regard. In these circumstances, we will reserve disposition of the proposed 22/45-day excursion fares. We are not unmindful of the difficulties which the carriers face in seeking a consensus on these fares, and do not intend to impose minimum requisites which might impede further negotiation. However, the increases agreed to would not, in our opinion, provide the degree of improvement in the economics of scheduled service in 1974, which all are seeking. At a time which augurs curtailment of capacity, it seems unrealistic to continue to offer such deeply-discounted fares. It may be that they could once be justified in a situation of expanding capacity, but the present circumstances do not foreshadow such a situation in 1974.

In the Board's opinion, it is both appropriate and necessary to afford IATA a further opportunity to deal with this matter. The role of the carriers in developing the pattern of international fares through the IATA machinery has long been acknowledged, and we believe it of great importance that it reassert itself as an effective forum to this end. Since the matter remains for the time being with the carriers, we need not now reach the requests for institution of a formal investigation of North Atlantic fares. The carriers' ability to come to grips with the principal revisions necessary to an economically sound pattern of fares on the North Atlantic in the reopened IATA conference will, of course, influence our final determination on this issue.

The Board, acting pursuant to sections 102, 204(a), 404(b), 412, and 1002 of the Act, makes the following findings:

1. It is not found that the following resolutions set forth in the agreement indicated are adverse to the public interest or in violation of the Act;

Agreement CAB	IATA No.	Title	Application
24006:			
R-5	001b	North Atlantic Special Effectiveness Resolution (Tie-in)	1/2 (N. Atl.).
R-6	001dd	North Atlantic Escape for Normal and Special fares (New)	1/2 (N. Atl.).
R-7	001qq	Special Escape for JT12 North Atlantic Agreement (New)	1/2 (N. Atl.).
R-8	002	Standard Revalidation Resolution	1/2 (N. Atl.).
R-11	022f	JT12 and JT123 (North Atlantic) Special Rules for Sale of Passenger Air Transportation (Revalidating and Amending).	1/2 (N. Atl.). 1/2/3 (N. Atl.).
R-12	022z	JT12 (North Atlantic) Special Rules for Sales of Passenger Air Transportation from TC2 to TC1 (Revalidating and Amending).	1/2 (N. Atl.).
R-13	054a	North Atlantic First-Class Fares	1/2 (N. Atl.).
R-17	070d	North Atlantic 14/21- and 14/45-Day Excursion Fares (Revalidating and Amending).	1/2 (N. Atl.).
R-18	070t	North Atlantic 14/21-Day Excursion Fares Amman, Baghdad, Beirut, Cairo, Damascus, Jerusalem, Kuwait, Nicosia, Tehran (Revalidating and Amending).	1/2 (N. Atl.).
R-19	070z	North Atlantic 14/21-Day Excursion Fares—Amman, Baghdad, Beirut, Cairo, Damascus, Jerusalem, Kuwait, Nicosia, Tehran (Revalidating and Amending).	1/2 (N. Atl.).
R-34	084z	Travel at Group Fares Within Scandinavia (New)	1/2 (N. Atl.).
R-38	095b	North Atlantic Fares for U.S. and Canadian Military Personnel and Dependents (Revalidating and Amending).	1/2 (N. Atl.).

[12] These comparisons and those cited hereafter relate to present economy fares in view of our decision to disapprove the proposed increases.

2. It is not found that the following resolutions set forth in the agreement indicated are adverse to the public interest or in violation of the Act, provided that approval is subject to conditions previously imposed by the Board;

Agreement CAB	IATA No.	Title	Application
24006:			
R-9	015	North Atlantic Proportional Fares—North American (Revalidating and Amending). As it applies to other than normal economy fares.	1/2 (N. Atl.).
R-10	016	North Atlantic Fare Development Program (New)	1/2 (N. Atl.).
R-22	075hh	North Atlantic 30-Day Winter Group Fares Middle East (Revalidating and Amending).	1/2 (N. Atl.).
R-23	075l	North Atlantic Group Fares Israel (Revalidating and Amending)	1/2 (N. Atl.).
R-24	075r	North Atlantic 8/21-Day Group Fares—Israel (Revalidating and Amending).	1/2 (N. Atl.).
R-25	075rr	North Atlantic 21-Day Group Fares—Amman, Beirut, Cairo, Damascus, Jerusalem, Nicosia (Revalidating and Amending).	1/2 (N. Atl.).
R-26	076e	North Atlantic Affinity—Group Fares (Revalidating and Amending).	1/2 (N. Atl.).
R-27	076m	North Atlantic Bulk Affinity and Incentive Group Prices—Portugal/Spain (Revalidating and Amending).	1/2 (N. Atl.).
R-28	076p	North Atlantic 14-Day Incentive Group Fares (Revalidating and Amending).	1/2 (N. Atl.).
R-29	084a	North Atlantic 21- and 28-Day Group Inclusive Tour Fares (Revalidating and Amending).	1/2 (N. Atl.).
R-30	084c	North Atlantic Winter Group Inclusive Tour Fares to Israel (Revalidating and Amending).	1/2 (N. Atl.).
R-31	084ee	North Atlantic Winter Group Inclusive Tour Fares to Middle East (Revalidating and Amending).	1/2 (N. Atl.).
R-32	084p	North Atlantic 7/8- and 7/13-Day Winter Group Inclusive Tour Fares—Europe (Revalidating and Amending).	1/2 (N. Atl.).
R-33	084pp	North Atlantic 6/16-Day Winter Group Inclusive Tour Fares—Africa (Revalidating and Amending).	1/2 (N. Atl.).

3. It is not found that the following resolutions set forth in the agreement indicated, which are indirectly applicable in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act;

Agreement CAB	IATA No.	Title	Application
24006:			
R-14	054x	Iceland-Greenland First-Class Fares (Revalidating and Amending)	1/2 (N. Atl.).
R-16	064x	Iceland-Greenland Economy-Class Fares (Revalidating and Amending).	1/2 (N. Atl.).

4. It is found that the following resolutions set forth in the agreement indicated, are adverse to the public interest and in violation of the Act; and

Agreement CAB	IATA No.	Title	Application
24006:			
R-9	015	North Atlantic Proportional Fares—North American (Revalidating and Amending). As it applies to normal economy fares.	1/2 (N. Atl.).
R-15	064a	North Atlantic Economy-Class Fares	1/2 (N. Atl.).

5. It is not found that the following resolution set forth in the agreement indicated affects air transportation within the meaning of the Act.

Agreement CAB	IATA No.	Title	Application
24006:			
R-20	070z	North Atlantic Excursion Fares, Iceland to Greenland (Revalidating and Amending).	1/2 (N. Atl.).

Accordingly, it is *Ordered* That:

1. Those portions of Agreement C.A.B. 24006 set forth in paragraph 1 above be and hereby are approved;

2. Those portions of Agreement C.A.B. 24006 set forth in paragraph 2 above be and hereby are approved subject to conditions previously imposed by the Board;

3. Those portions of Agreement C.A.B. 24006 set forth in paragraph 3 above be and hereby are approved;

4. Those portions of Agreement C.A.B. 24006 set forth in paragraph 4 above be and hereby are disapproved as they would apply in air transportation as defined by the Act;

5. Jurisdiction is disclaimed on that portion of Agreement C.A.B. 24006 set forth in paragraph 5 above;

6. Action be and hereby is deferred on that portion of Agreement C.A.B. 24006, R-21, IATA Resolution 071q North Atlantic 22/45-Day Excursion Fares (Revalidating and Amending); and

7. Tariffs implementing Agreement C.A.B. 24006 shall be marked to expire October 31, 1974.

8. Decision is deferred on the request of ACAP for an investigation of transatlantic fares.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND,
Secretary.

APPENDIX 9

HIGHLIGHTS OF THE FINDINGS AND CONCLUSIONS EXCERPTED FROM IATA SUMMARY REPORT "A PRELIMINARY INVESTIGATION OF THE NORTH ATLANTIC TRAVEL MARKET" AUGUST 1973

I. Highlights of the Findings

The decision-making process for pleasure travellers tends to be very long term—sometimes extending over several years. Early decisions about time, money and destination may change or be modified as travellers reach the final decision stage.

There is considerable confusion about airline terminology, especially as it relates to fares. This is true for all types of travellers, experienced or inexperienced, business and pleasure, on both sides of the Atlantic although Europeans seem to be somewhat less confused than North Americans.

Specific knowledge of fares is low. None of the available sources provides satisfactory information: agents are seen as inaccurate and having a financial motive in selling the higher-priced fares; airlines are unclear or inconsistent; friends claim to know but often do not.

As a result, many travellers on scheduled airlines suspect that there may have been a cheaper fare than the one they paid—one they were never told about.

In the face of this confusion about scheduled air fares, there is one clear impression in the minds of most travellers—that "charter is cheaper." While recognizing that charter travel has disadvantages, travellers see charter fares, unequivocally, as the lowest available, and the charter product as adequate.

Overall, there are more similarities than differences between pleasure and business travellers. The principal difference is the businessman's resentment toward travellers using low fares, whom he feels are being subsidized by his own full-fare tickets.

A basic problem with scheduled airline fares seems to be that a fare structure has evolved which is perceived differently by travellers and the industry itself.

Altogether, air fares have a relatively low priority in the planning and decision process.

II. Conclusions

These preliminary findings suggest that the air fare *per se* is not a major issue with North Atlantic resident travellers, except to the extent that it represents a major expenditure. A number of elements lead to this conclusion:

(1) Fares are not really understood and many people do not even know what fare they are on or how much it cost;

(2) Other elements of European travel seem to be considerably more important than the flight, which fulfills no needs other than a quick way to get across the Atlantic Ocean;

(3) It would seem that low fares currently available are not why people are traveling to Europe but that consumers (in this case acting quite rationally) are taking advantage of the "good deals" in fares that we are offering them;

(4) From the consumers' view-point there is a definite need for a simplified and/or more understandable fares structure.

[FR Doc.73-26139 Filed 12-7-73;8:45 am]

[Docket No. 25990; Order 73-11-147]

TRANS WORLD AIRLINES, INC. ET AL.

Order Provisionally Approving Agreement To Implement Fuel Allocation Program

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of November 1973.

On October 12, 1973, the Energy Policy Office adopted regulations, pursuant to the Economic Stabilization Act of 1970, as amended by P.L. 93-28, April 30, 1973, establishing a mandatory fuel allocation program that imposes controls on "middle distillate fuels," including airline turbine fuel.[1] On the same day, the Board issued Order 73-10-50, which authorized discussions to consider adjustment of schedules to the extent necessary to deal with the developing fuel emergency.

Pursuant to that order, discussions were held in Washington, D.C. on October 29, 1973 and an agreement was reached among Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc. to limit frequency in the Denver-San Francisco market.

The terms of the agreement provide for the deletion by each of the carriers of one daily non-stop roundtrip frequency.[2] The agreement further provides that the carriers may operate extra sections for operational reasons or unusual demand [3] and larger aircraft may be substituted for smaller aircraft on an irregular and infrequent basis in order to meet unusual operational requirements.

By its terms, the agreement will be implemented December 1, 1973, subject to prior approval by the Board and will terminate on April 28, 1974. In the event of a cessation or curtailment of service by any of the parties resulting from a labor dispute or other cause beyond the control of that party, the limitations of the agreement will be suspended during the period of such cessation or curtailment.

An answer in opposition to the agreement has been filed by the Department of Justice. It contends that the necessary flight reductions to accommodate the mandatory fuel allocation program can be rationally achieved by the unilateral action of each carrier. The Department further contends that promulgation of the fuel allocation program undercuts the primary justification for permitting air carriers to enter into collective agreements to reduce capacity and divide airline markets because it requires all carriers to reduce operations to conform to the availability of fuel. The Department has made no specific request relative to the Board's disposition of the matter.

The Mandatory Fuel Allocation Program, which went into effect November 1, 1973, coupled with existing fuel shortages, limits an air carrier's future fuel consumption to the level of the corresponding month of 1972. As a result, TWA, United and Western must cut back on fuel consumption on domestic services by approximately 50,250,000 gallons during the five-month period of the agreement as follows: TWA, 21,100,000 gallons; United, 14,500,000 gallons; and Western, 14,650,000 gallons. In order to meet these cutback levels, the carriers must make fuel-saving adjustments to their schedules. Moreover further fuel supply reductions will soon be upon us. As we have stated in Order 73-10-110, the Board is concerned that unilateral reductions in capacity may result in inadequate levels of service which would be detrimental to the public interest. Accordingly, we feel that mutual reductions in capacity which can be properly monitored by the Board and provide for a continuous level of adequate service will best serve the public interest.

Based on the foregoing, it is the conclusion of the Board that the agreement before us should be approved subject to certain conditions. The service proposed in the agreement reasonably satisfies the needs of the traveling public as well as saving large amounts of fuel.[4] The Denver-San Francisco market is characterized by a satisfactory multiplicity of frequencies which have experienced low load factors in the past.[5] Under these circumstances, the traveling public will continue to receive an adequate frequency of service and the carriers will be a step closer toward reaching their allocated fuel levels.[5a]

In view of the imminence of the implementation date, and the short period within which the carriers were compelled to adjust schedules, we will grant the request for waiver of the recent amendment to the Board's Procedural Regulation PR-138, which would otherwise require 21 days for answers to the application. However, the Board will receive any comments hereafter filed in this docket as part of its ongoing evaluation of the impact of the agreement. We also find that enforcement of section 405(b) of the Act, requiring 10 days' notice of schedule changes to the Postmaster General, would be an undue burden upon the carrier applicants by reason of the limited extent of, and unusual circumtances affecting their operations and is not in the public interest, particularly in light of the reduced fuel supplies and the further reductions that will be forthcoming. Pursuant to section 416 of the Act, we will therefore grant TWA, United and Western an exemption from section 405(b), and from any regulations made pursuant thereto, to permit implementation of the subject schedule changes without 10 days' prior notice to the Postmaster General.

In order to effectively monitor the implementation of this agreement the Board will retain jurisdiction, pursuant to section 412 of the Act, for the purpose of modifying, amending or revoking our approval of the agreement at any future date. Furthermore, we shall require each carrier to report within 15 days after the end of each month any schedule changes in the Denver-San Francisco market during the term of the agreement. (See Appendix A).[6]

Accordingly, it is ordered, That:

1. Agreement CAB 24073 be and it hereby is approved pursuant to section 412 of the Act, subject to the following conditions:

(a) The Board shall retain jurisdiction to modify, amend or revoke approval at any time, or take whatever other action may be deemed appropriate;

(b) Any schedule changes resulting pursuant to the agreement herein approved shall be reported to the Board within 15 days after the end of each month in accordance with the format of Appendix A.[7]

2. Within 28 days hereafter, each carrier shall file with the Board's Docket Section a report containing the following additional data for the Denver-San Francisco market:

a. Seats operated in 1972/1973 (November through April).
b. Passengers carried in 1972/1973.
c. Forecast passengers in 1973/1974.
d. Projected seats in 1973/1974.
e. Equipment type to be operated in the market.
f. Calculations in developing fuel savings for this market.
g. 1972 fuel use by month for the system of each carrier.
h. 1972 fuel use by month in the agreement market.

3. Pursuant to section 416 of the Act, TWA, United and Western be and they hereby are relieved from the provisions of section 405(b) of the Act, and from all regulations enacted in pursuance thereof, to the extent necessary to permit the implementation of the subject modifications without 10 days prior notice to the Postmaster General;

4. The request of the applicants that the Board waive the recent amendment to the Board's Procedural Regulation PR-138, which would otherwise permit 21 days for answers to this application, be and it hereby is granted; and

5. Copies of this order shall be served on the Departments of Defense, Justice and Transportation; the U.S. Postal Service; and all certificated and supplemental air carriers.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

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[1] EPO Reg 1, 38 FR 28660.

[2] The market is presently being served by 12 non-stop roundtrip flights daily. (11 narrow-bodied and 1 wide-body) Under the terms of the agreement, service will be reduced to 9 non-stop roundtrip flights daily. (8 narrow-bodied and 1 wide-body)

[3] Such extra sections cannot be published, advertised or otherwise held out to the public.

[4] The carriers estimate that the elimination of one daily round trip by each carrier will result in a daily savings of 19,000 gallons of fuel or 567,000 gallons monthly.

[5] The three carrier average load factor for December 1972-April 1973 was 41.1%.

[5a] As we have said before, the Board will not tolerate transfer of freed capacity to non-capacity markets. See Order 73-10-110.

[6] Such reports will enable the Board to analyze such schedule change(s) to insure that freed capacity is not being unnecessarily shifted to nonagreement markets.

[7] In addition, Western shall file with the Board's Docket Section a report stating, on a system-wide basis, average seat miles operated per gallon of fuel used, by type of equipment; and shall maintain records, subject to inspection by the Board, or by such other persons as the Board may authorize, detailing the fuel used each month, throughout its system, on a city-pair and flight-by-flight basis (including charter operations). These requirements previously were imposed upon TWA and United in Order 73-10-110.

APPENDIX A

	Type of equipment				
	2-engine	3-engine narrow body	4-engine narrow body	3-engine wide body	4-engine wide body
Capacity market(s)					
Miles scheduled weekly in preceding general schedule filed with CAB					
Changes contained in this general schedule					
Miles scheduled weekly in this general schedule					
Noncapacity market(s)					
Miles scheduled weekly in preceding general schedule filed with CAB					
Changes contained in this general schedule					
Miles scheduled weekly in this general schedule					

[FR Doc.73-26059 Filed 12-7-73;8:45 am]

[Dockets 23780, 24399, 25661; Order 73-11-131]

NATIONAL AIR CARRIER ASSOCIATION AND INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Relating to Youth and Student Fares in Foreign Air Transportation

By Order 71-9-3, dated September 1, 1971, the Board instituted this investigation of certain tariffs which set forth special fares for persons falling within specified age groups (youth fares) and for persons defined in the tariffs as students (student fares) for travel between the United States and foreign points. Most of these tariffs applied between United States and European points and had been filed within a short period prior to issuance of our order of investigation. These youth and student fares had not been agreed to by the carrier members of the International Air Transport Association (IATA) but were filed in response to orders issued by several European governments.[1]

Subsequently, at traffic conferences within the IATA framework, the carriers agreed to establish youth fares for transatlantic services for the year beginning April 1, 1972, at the same level as the 22-45-day excursion fares and to limit the fares to persons under 22 years of age. The student qualification attaching to some fares was dropped. The Board ordered the fares investigated and approved the agreement pending investigation by Order 72-3-104, dated March 30, 1972. We consolidated the investigation of the agreed fares into Docket 23780, since these fares presented the same issues as embodied in the original tariff filings. The carriers did not implement the modified youth fares, however.[2] Similarly, by Order 72-11-58, dated November 14, 1972, the Board ordered investigated in Docket 23780 and approved pending investigation an IATA agreement establishing youth fares through March 31, 1973. The fares were marked to become effective December 1, 1972, and ranged up to 21 percent above those in effect pursuant to government orders, with eligibility limited to persons between the ages of 12 and 24. Confirmed reservations were to be available only within seven days prior to the scheduled departure of the flight. However, since not all governments approved the agreement, tariffs implementing the agreement were withdrawn and never became effective. Subsequently, an IATA agreement was filed proposing youth fares during the off-peak season at the levels previously agreed (up to a 21 percent increase) and peak-season fares at levels ranging up to 26 percent above those in effect. The age eligibility throughout the period would remain between 12 and 24 years, and the 7-day reservation rule would apply. The Board, by Order 72-12-64, adopted December 14, 1972, approved the agreement through March 31, 1973, and ordered the fares investigated in Docket 23780.[3]

As a consequence of the inability of the carrier members of IATA to reach an agreement on transatlantic fares for effect on and after April 1, 1973, the United States and foreign-flag carriers providing scheduled services between the United States and Europe filed individual tariffs proposing new fares to be effective on that date. A number of the foreign carriers and TWA proposed to retain youth and student fares, while Pan American, National, Air Canada, and some foreign carriers would have canceled them. Before these filings became effective, a new IATA agreement was filed on March 29, 1973, proposing extension of the previous youth-fare agreement from April 1 through December 31, 1973. The fares were proposed to be increased by 6 percent on April 15 to reflect currency revaluation. The Board approved these fares through December 31, subject to investigation and further consideration, by Order 73-4-64, dated April 13, 1973.[4] Recently filed IATA resolutions propose reestablishing youth/student fares effective January 1, 1974.

The purpose of the investigation instituted in Docket 23780 was to determine whether the youth and student fares applicable in foreign air transportation are or will be unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if they are so found, to take action to correct the situation under section 1002(f) of the Federal Aviation Act of 1958.[5] Under the Act, as then constituted, the Board had no power to suspend fares in foreign air transportation nor to investigate their reasonableness, although the very large discounts and their virtually unlimited availability raised obvious and serious questions as to reasonableness.[6]

Public Law 92-259, enacted March 22, 1972, amended the provisions of the Federal Aviation Act relating to the regulation of rates and fares applicable in foreign air transportation. In brief, section 1002(j) empowers the Civil Aeronautics Board (1) to investigate the reasonableness of such rates and fares as well as questions of discrimination, preference, and prejudice, (2) to cancel any such fares found, after hearing, to be unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and (3) to suspend proposed or existing rates and fares for up to 365 days while they are being investigated. Compliance with orders issued pursuant to this subsection is an express condition to the certificates or permits of any air carrier or foreign air carrier. Orders of suspension, rejection, or cancellation adopted pursuant to this section of the Act are subject to disapproval[7] by the President on the basis of national defense or foreign policy considerations.

On April 10, 1972, certain member carriers of the National Air Carrier Association (NACA) filed a complaint in Docket 24399 requesting suspension of

[1] The investigation also includes youth and student fares applicable between the United States and Mexico, Taiwan, and points in the Caribbean and South and Central America. Subsequent orders directed investigations of youth and student fares for travel between the United States and other foreign points and consolidated them into Docket 23780. Orders 71-12-84, dated December 17, 1971; 71-12-108, dated December 23, 1971; 72-5-41, dated May 10, 1972. Other youth and student tariffs have also been filed which are included within the scope of the investigation.

[2] The United States and Canadian carriers filed tariffs to reflect the agreed fares but were forced by competitive considerations to cancel their filings when the European carriers did not file similar tariffs.

[3] Since the Government of Belgium disapproved the agreement with respect to transportation to and from that country, the previously effective youth and student fares remained in effect in that market.

[4] See also Opinion and Order 73-10-55, dated October 15, 1973.

[5] The formal investigation was deferred pending decision in the investigation of domestic youth fares, which was consolidated into the Discount Fares Phase of the Domestic Passenger-Fare Investigation, Docket 21866-5. The Board's final order in that proceeding was issued May 1, 1973 (Order 73-5-2).

[6] The youth and student fares applied in the peak season and peak directions without blackout periods. Various maximum age limits applied in the several tariffs, ranging up to 30 years. Some tariffs allowed the carriage of children as well. Discounts were as large as 73 percent from normal economy fares in the transatlantic markets.

[7] Section 801(b).

youth and student fares in foreign air transportation and investigation of the reasonableness of the fares and a motion to consolidate such investigation into Docket 23780. Answers to NACA's complaint were filed by Pan American World Airways, Inc. (Pan American), Trans World Airlines, Inc. (TWA), and four foreign air carriers.[8] Because of subsequent events and the action we have determined to take, we need not address ourselves in detail to the allegations made in the pleadings.[9]

In view of the fact that most tariffs setting forth youth and student fares are marked to expire December 31, 1973, we have determined that it is not necessary to invoke our suspension power under section 1002(j) at this time.[10] Rather, we will dismiss the investigation as to those fares which expire December 31, and continue the investigation only as to those proposed to extend beyond that date. We are also disapproving the IATA resolutions proposing to reestablish youth/student fares effective January 1, 1974. All carriers are advised that any tariffs proposing extension of such fares beyond December 31, as well as those currently bearing no such expiry date,[11] are subject to our suspension power under section 1002(j) of the Act.

The Board is taking this action in view of its statutory obligation to insure the development of a sound and nondiscriminatory passenger-fare structure in the interests of both the carriers and the traveling public as a whole. We are not unmindful that other nations have legitimate interests and objectives which may differ from ours. However, in our view, the economic and legal implications of the youth and student fares are so serious from a broad public interest standpoint that we are compelled to take a stringent regulatory stand with respect to them.

In addition to the obvious issues of discrimination, we have serious reservation, despite TWA's contentions, that the youthf ares are economically justified and result in improvement in revenues. These fares are well below the lowest fare generally available, the 22–45-day excursion fare, which itself represents a very substantial reduction from normal economy fares. From data available to the Board, as supplied by TWA, for the year ending June 1973 youth fares represent approximately 12 percent of TWA's total transatlantic passengers. IATA, in a special study by the Commercial Research Committee dated June 1972, indicates that for the entire year 1972, youth-fare passengers would represent 8 percent of the total IATA scheduled transatlantic market. TWA's participation therefore exceeds that projected for the total industry. Further, the youth fares generally have applied to all passengers 12 through 25 years of age. It is reasonable to assume that virtually all passengers in this age group would have used the youth fares, as those fares represented significant discounts from other fare categories. A survey conducted by the Port of New York Authority for the period May 1968 through April 1969 indicates that passengers 12 through 25 years of age represented approximately 18 percent of the total scheduled transatlantic traffic out of New York. Such traffic volumes during peak periods inevitable create pressures to add capacity but make little or no contribution to the costs of providing that capacity. There exists a serious question whether use of the fares at current or proposed levels will burden other farepayers, or prejudice the carriers by impairing their ability to achieve a reasonable profit.

In view of the foregoing, we find that the IATA agreement establishing youth/student fares in air transportation is adverse to the public interest and should be disapproved.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 102, 204(a), 403, 404, 412, and 1002 thereof,

It is ordered, That: 1. The investigation in Docket 23780 is limited to the fares and provisions set forth in Appendix B hereof and is dismissed as to all other fares and provisions previously ordered investigated;

2. The following resolutions incorporated in Agreement C.A.B. 24066 as they would apply in air transportation be and hereby are disapproved:

Agreement CAB	IATA No.	Title	Application
24066:			
R-35	092	Student Fares (Revalidating)	1/2 (N. Atl.).
R-36	092f	North Atlantic Individual Youth Fares (Revalidating and Amending).	1/2 (N. Atl.).
R-37	092g	North Atlantic Group Youth Fares (Revalidating and Amending).	1/2 (N. Atl.).

3. Action on the complaint and motion filed in Docket 24399 is hereby deferred;

4. Copies of this order be served upon the carriers set forth in Appendix A, which are hereby made parties to the investigation in Docket 23780, and upon all scheduled air carriers and foreign air carriers and the National Air Carrier Association.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[12]

[SEAL] EDWIN Z. HOLLAND,
Secretary.

APPENDIX A

Aeronaves de Mexico, S. A.
Aerovias Condor de Colombia, Ltda.
Aerovias Nacionales de Colombia.
Aerovias Quisqueyana, C por A.
Air West (Hughes Air Corp d/b/a AirWest).
Area, Aerovias Ecuatorianas, C. Ltda.
Braniff Airways, Incorporated.
Cathay Pacific Airways, Limited.
Compania Mexicana de Aviacion, S. A.
Continental Air Lines, Inc.
Eastern Air Lines, Inc.
K.L.M. Royal Dutch Airlines.
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Servicos Aereos Cruzeiro do Sul S. A.
Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (Sabena).
Trans World Airlines, Inc.
United Air Lines, Inc.
"VARIG", S.A. (Viacao Aerea Rio-Grandense).
Viacao Aerea Sao Paulo, S/A "VASP".
Western Air Lines, Inc.

[FR Doc.73-26138 Filed 12-7-73;8:45 am]

[8] Air France, Sabena Belgian World Airlines, KLM Royal Dutch Airlines, and Swiss Air Transport Company Ltd. (Swissair).

[9] We note that TWA's suggestion that we should permit the youth and student fares to remain in effect pending investigation because the domestic youth fares were in effect during the investigation in Docket 21866-5 ignores the fact that that investigation was undertaken upon order of the United States Court of Appeals after the fares had become effective and that the Board has no authority to suspend existing fares in interstate air transportation. TWA also suggests that we should have suspended the foreign youth and student fares when they were first filed; of course, we had no authority to do so at that time. TWA's position also ignores the significant differences in both the level and the discriminatory aspects of the domestic youth fares and the international youth and student fares, such as the much greater discounts and the applicability to "students" of advanced age as well as their children. Domestic youth fares are applicable to all youth from 12 through 21 years of age; the discount for reservations was approximately 20 percent and for standby, 33⅓ percent. Order 73-5-2, dated May 1, 1973, required the reduction of these discounts to 17 and 22 percent on June 1, 1973, and to 8 and 11 percent on December 1, 1973, and cancellation of the fares on June 1, 1974.

[10] TWA is mistaken in contending that the Congress did not intend that we use the suspension authority in this type of situation. On the contrary, it is clear from the Congressional Record that this very situation, the 1971 "fare war" initiated by the student- and youth-fare filings, was in the forefront during the deliberations of Congress leading to enactment of Public Law 92-259. As the Senate Report stated, "In mid 1971, Sabena, the Belgian Airline, began offering students a $200 round-trip fare to Belgium from New York touching off the first phase of the fare war." Congressional Record, Senate, February 24, 1972, p. 2460.

[11] See Appendix B, filed as part of the original document.

[12] Concurring opinion filed as part of original document.

COMMISSION ON CIVIL RIGHTS

MAINE STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine State Advisory Committee (SAC) to this Commission will convene at 7:30 p.m. on December 11, 1973, at the Maine Teachers Association, 184 State Street, Augusta, Maine 04330.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Northeastern Regional Office of the Commission, Room 1639, 26 Federal Plaza, New York, New York 10007.

The purpose of this meeting shall be to make plans for the release of the Maine SAC report entitled "Federal Services and the Maine Indian."

This meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 4, 1973.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.73-26099 Filed 12-7-73;8:45 am]

RHODE ISLAND STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island State Advisory Committee to this Commission will convene at 4:30 p.m. on December 12, 1973, at the Central Congregational Church, 296 Angell Street, Providence, Rhode Island 02903.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Northeastern Regional Office of the Commission, Room 1639, 26 Federal Plaza, New York, New York 10007.

The purpose of this meeting shall be to discuss followup activities to the Committee's meetings on State and local employment problems in the State of Rhode Island.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., December 4, 1973.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.73-26098 Filed 12-7-73;8:45 am]

COMMISSION ON AMERICAN SHIPBUILDING

NOTICE OF DISSOLUTION

Pursuant to the requirements of Public Law 91-469 of October 21, 1970, the Commission will cease to exist on December 19, 1973. All remaining physical assets, including undistributed copies of the Commission's Report to the President and the Congress, will be transferred to the Maritime Administration.

Those wishing to receive copies of the Report or to inquire about any aspects of the Commission's work or background should contact:

Mr. Lamar D. Whitcher
Chief, Office of Administrative Services
Maritime Administration
U.S. Department of Commerce
Washington, D.C. 20230
Room 6716
Telephone: 202-967-2477

The Commission's financial accounts and remaining expenditure authority are being transferred to the General Services Administration. Information concerning financial aspects should be referred to:

Mr. Donald J. LeMay
Director, Agency Liaison Service
Office of Administrative Services
General Services Administration
Washington, D.C. 20405
Room 2002
Telephone: 202-343-4795

JOHN H. LANCASTER,
Executive Director.

[FR Doc.73-26085 Filed 12-7-73;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN HAITI

Entry or Withdrawal From Warehouse for Consumption

DECEMBER 5, 1973.

On November 13 and 23, 1973, the Governments of the United States and Haiti exchanged notes amending the comprehensive Bilateral Cotton Textile Agreement of November 3, 1971 concerning exports of cotton textiles and cotton textile products from Haiti to the United States. Among the provisions of the agreement, as amended, are those establishing specific limits on Categories 39, 51, 53, and 63 for the third agreement year which began on October 1, 1973.

Accordingly, there is published below a letter of December 5, 1973, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amounts of cotton textile products in the above categories produced or manufactured in Haiti which may be entered or withdrawn from warehouse for consumption in the United States during the twelve-month period beginning October 1, 1973 and extending through September 30, 1974, be limited to the designated levels. The letter published below and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, as amended, but are designed to assist only in the implementation of certain of its provisions.

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DECEMBER 5, 1973.

DEAR MR. COMMISSIONER: This directive amends but does not cancel the directive issued to you on September 28, 1973 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textiles and cotton textile products produced or manufactured in Haiti.

The first paragraph of the directive of September 28, 1973 is amended, effective as soon as possible, to read as follows:

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the Bilateral Cotton Textile Agreement of November 3, 1971 between the Governments of the United States and Haiti, and in accordance with procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective October 1, 1973 and for the twelve-month period extending through September 30, 1974, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 39, 51, 53, and 63 produced or manufactured in Haiti in excess of the following levels of restraint:

Category	*Twelve-Month Levels of Restraint*
39	dozen pairs... 220,500
51	dozens... 56,189
53	do... 20,687
63	pounds... 391,304

The actions taken with respect to the Government of Haiti and with respect to imports of cotton textiles and cotton textile products from Haiti, have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.73-26177 Filed 12-7-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

NEVADA AIR QUALITY IMPLEMENTATION PLAN

Notice of Public Hearing

Notice is hereby given that, in response to a request received from the Governor of the State of Nevada and under authority of section 110(f) of the Clean Air Act, a public hearing will be held on February 19, 1974 beginning at 9:30 a.m. local time for the purpose of determining whether the requirements of Article 4, Article 7 and Article 8 of the Air Quality Implementation Plan for the State of Nevada, as said articles apply to the copper smelter located at McGill, Nevada, owned and operated by the Nevada Mines Division of Kennecott Copper Corporation (hereinafter referred to as the Nevada Mines Smelter), should be postponed for a period not to exceed one year. The hearing will convene at Courtroom No. 2, Federal Building, 300 Booth Street, Reno, Nevada. The Civil Service Commission has designated Paul N. Pfeiffer as the Administrative Law Judge who will preside at the hearing. The hearing may continue beyond one day, and the Administrative Law Judge may reconvene the hearing at such time and place as he shall indicate by announcement at the hearing.

I. *Applicable regulations.* Article 4 of the Air Quality Implementation Plan for

the State of Nevada provides, in relevant part:

ARTICLE 4: EMISSIONS FROM STATIONARY SOURCES

4.1 Unless otherwise provided herein, no person shall cause, suffer, allow or permit the discharge into the atmosphere from any source any air contaminant for a period or periods aggregating more than three minutes in any one hour which is of an opacity equal to or greater than 20 percent.

4.2 These regulations shall not apply if the presence of uncombined water is the only reason for the failure of an emission to comply with these regulations. The burden of proof which establishes the application of this exemption shall be upon the person seeking to come within its provisions.

Article 8.1.4 of the Nevada implementation plan exempted existing copper smelters from Article 4 of the Plan. However, the Environmental Protection Agency has disapproved Article 8.1.4 (see 38 FR 10879, May 31, 1972).

Article 7 of the Air Quality Implementation Plan for the State of Nevada provides, in relevant part:

ARTICLE 7: PARTICULATE MATTER

7.2 *Industrial Sources:*

7.2.1 Sources not otherwise included in these regulations shall not cause, suffer, allow or permit particulate matter to be discharged from any single source into the atmosphere in excess of the allowable emission shown in Table 1. When the process weight falls between two values in the table the maximum weight discharged per hour shall be determined by interpolation.

TABLE 1

Process weight rate		Rate of emission
Pounds/hour	Tons/hour	(pounds/hour)
100	0.05	0.551
200	.10	.877
400	.20	1.400
600	.30	1.830
800	.40	2.220
1,000	.50	2.580
1,500	.75	3.380
2,000	1.00	4.100
2,500	1.25	4.760
3,000	1.50	5.380
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56
7,000	3.50	9.49
8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.0
12,000	6.00	13.6
14,000	8.00	16.5
16,000	9.00	17.9
18,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.0
200,000	100.00	51.2
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

7.2.2 When the process weight is less than 60,000 pounds per hour, the maximum allowable weight discharged per hour will be determined by the use of the following equation:

$$E = 4.10\ P^{0.67}$$

7.2.3 When the process weight exceeds 60,000 pounds per hour, the maximum allowable discharge per hour will be determined by the use of the following equation:

$$E = 55\ P^{0.11} - 40$$

E = Maximum rate of emission in pounds per hour
P = Process weight rate in tons per hour

7.2.4 For purposes of these regulations the sum of the process weight rate for a single source will be used to calculate allowable emission rates. Determination of whether or not two or more units are sufficiently similar to justify treatment as a single unit depends upon whether or not they can reasonably be replaced by a single piece of equipment that performs the same function. Two or more pieces of equipment or processes that handle different materials or produce dissimilar products will be treated separately in the application of these regulations.

Article 8 of the Air Quality Implementation Plan for the State of Nevada provides, in relevant part:

ARTICLE 8: SULFUR EMISSIONS

8.1 *Primary Non-Ferrous Smelters*

8.1.3 The maximum allowable weight discharged per hour for existing industry will be determined by use of the following equation:

Copper smelters $Y = 0.4X$

X = Total feed sulfur, lbs/hr
Y = Allowable sulfur emission, lbs/hr

8.1.5 For the purposes of these regulations, total feed sulfur shall be calculated as the aggregate sulfur content of all fuels and other feed materials whose products of combustion and gaseous by-products are emitted to the atmosphere. When furnaces, sinter machines, sinter boxes, roasters, converters, or other similar devices are used for converting ores, concentrates, residues, or slag to the metal or the oxide of the metal either wholly or in part, the combined sulfur input of all units shall be used to determine the allowable emission to the atmosphere.

A copper smelter is a stationary source within the meaning of Article 4 and is an industrial source "not otherwise included" in Article 7. The Nevada Mines smelter is a primary non-ferrous smelter and is an existing industry within the meaning of Article 8. Accordingly, the Nevada Mines smelter is subject to the requirements of Article 4, 7 and 8, as set forth above.

Article 4 and Article 7 have been approved for the attainment and maintenance of both primary and secondary national ambient air quality standards. The portion of Article 8 quoted above has been approved for the attainment and maintenance of primary national ambient air quality standards. Under the terms of the Clean Air Act, the Nevada Mines Division must establish compliance with the requirements of Articles 4, 7 and 8 of the Nevada Plan no later than the attainment dates specified for such Articles. For Articles 4 and 7, the attainment date for meeting the primary standard is July, 1975 and the attainment date for meeting the secondary standard is July, 1977. For Article 8, the attainment date for meeting the primary standard is July 27, 1975. It is with respect to these dates that the Governor of the State of Nevada has, on behalf of the Nevada Mines Division, requested a section 110(f) one-year postponement.

II. *Requirements of § 110(f) of the Clean Air Act (42 U.S.C. § 1857c-5(f)).* Under Section 110(f) of the Clean Air Act, the Administrator of the Environmental Protection Agency may not grant a postponement such as the one being requested by the Governor of the State of Nevada unless the Administrator determines that the four statutory requirements of sections 110(f)(1)(A)-(D) of the Clean Air Act have been met. Under section 110(f)(2) of the Clean Air Act, the Administrator's determination must be based on the record of a public hearing such as the one provided for by this notice. As applied to the Nevada Mines Division, the four requirements of sections 110(f)(1)(A)-(D) of the Clean Air Act are as follows:

(1) Good faith efforts have been made by the Nevada Mines Division to comply with the provisions of Articles 4, 7 and 8 by the dates noted in Part I of this notice.

(2) The Nevada Mines Division is unable to comply with the provisions of Articles 4, 7 and 8 by the dates noted in Part 1 of this notice because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time.

(3) During the pendency of any postponement which is granted, the Nevada Mines Division will employ (or has already employed) any available operating procedures and interim control measures capable of reducing the impact of its emissions on public health.

(4) The continued operation of the Nevada Mines Division during the period of time provided by the postponement is essential to the national security or to the public health or welfare of the community.

III. *Reasons for requested postponement.* The following is a brief summary of some of the reasons offered by the Governor of the State of Nevada as grounds for the postponement being requested. The statements contained in this summary are for informational purposes only and should not, in any way, be regarded as binding on any of the parties to the scheduled hearing.

The Governor of the State of Nevada has stated that additional time in which to meet the requirements of Articles 4, 7 and 8 at the Nevada Mines smelter located at McGill, Nevada is warranted because good faith efforts have been demonstrated by the commitment of expenditures of $2 million this year on the installation of control equipment, and by the completion of the major part of the preliminary engineering and design work on a sulfuric acid plant and associated equipment in anticipation of starting construction.

The Governor of the State of Nevada has stated that additional time in which to meet the requirements of Article 8 is warranted at the Nevada Mines smelter because essential components of the planned SO_2 control program equipment will be unavailable within the required time.

The Governor of the State of Nevada has stated that implementation of available alternative control measures, such as a new stack and implementation of an emission limitation program aimed at preventing the occurrence of high

ambient concentrations under adverse weather conditions, will significantly improve the ambient air quality near the smelter.

The Governor of the State of Nevada has further stated that the continued operation of the Nevada Mines smelter is essential to the welfare of the community.

IV. *Procedural rules and public participation.* The rules of procedure which will govern the conduct of the public hearing hereinabove described have been published in the August 15, 1973, FEDERAL REGISTER at page 22025 and have been amended in the October 2, 1973 FEDERAL REGISTER at page 27286. Copies of the rules may be obtained by writing to Ms. Lorraine Pearson, Regional Hearing Clerk, EPA Region IX, 100 California Street, San Francisco, California 94111.

Persons wishing to submit comments relating to the subject matter of the hearing may do so at any time prior to the commencement of the hearing by filing five copies of such comments with the Regional Hearing Clerk at the address stated above. All written comments filed pursuant to this notice will be available for public inspection at the Office of the Regional Hearing Clerk during regular business hours, 8 a.m.–4:30 p.m.

Interested persons wishing to be made a party to the hearing shall file a request to be made a party with the Regional Hearing Clerk at the above stated address. A copy of such request shall also be mailed to the Administrative Law Judge at the following address: Department of Commerce, Room 6708, 14th & E Streets, NW., Washington, D.C. 20230. The request shall be filed (i.e., postmarked) on or before January 9, 1974, and shall contain the following information:

(1) The name and address of the person making the request (the requestor);
(2) the interest of the requestor;
(3) the identity of all persons whom the requestor represents;
(4) a statement expressing with particularity the position of the requestor on the matters to be considered at the hearing.

All information accompanying any request to be made a party shall be available for public inspection at the Office of the Regional Hearing Clerk during normal business hours.

Persons who do not wish to be made a party to the hearing but who, nevertheless, wish to make an oral statement at the hearing may do so by submitting a request to the Regional Hearing Clerk at any time prior to the commencement of the hearing. Requests to make an oral statement will be routinely granted. Persons making such statements will be open to questions at the hearing.

Persons wishing additional information should direct all inquiries to the Regional Hearing Clerk at the address specified above or by calling Area Code 415–556–7450.

Dated: December 4, 1973.

ALAN G. KIRK II,
Acting Assistant Administrator for Enforcement and General Counsel.

[FR Doc.73-26117 Filed 12-7-73;8:45 am]

FEDERAL MARITIME COMMISSION

AMERICAN MAIL LINE, LTD. AND AMERICAN PRESIDEN LINES, LTD.

Denial of Petition for Rulemaking

American Mail Line, Ltd. (AML) and American President Lines, Ltd. (APL) have filed a petition for a general rulemaking proceeding looking to the resolution of problems raised by intermodalism and other absorption practices. The petitioners seek the promulgation of rules specifying "the circumstances under which a common carrier by water may by absorbing some or all of inland transportation charges or by equalizing rates on certain cargoes give preference or advantage or discriminate in a manner which is not undue or unreasonable or unjust within the meaning of sections 16 and 17 of the Shipping Act, 1916."

By notice published in the FEDERAL REGISTER, the Commission allowed replies.

At present, the Commission has pending before it some twelve proceedings which involve some problem of cargo diversion. This multiplicity of proceedings is the result of the "container revolution". As petitioners say:

> The container revolution has greatly intensified the difficulties of the equalization rule. It has in the first place increased the inland mobility of export and import cargo; cargo can and does move from or to any part of the continental United States through ports on any coast. At the same time, a rigorous restriction of port calls with supplemental road or rail distribution from or to the terminal ports has become an economic necessity for the containership operator. Additional port calls both magnify voyage expense and require largely increased terminal investment or expense. (Petition, p. 3.)

To the petitioners, any application to present-day container operations of equalization principles developed when only breakbulk ships were involved "would serve to deprive shippers of the full benefits of container shipment and intermodal transport, and at the same time erode the the economic foundation of containership operation." (Petition, p. 3) Accordingly, in its "grappling in many pending proceedings with the problem of applying the equalization rules to container operations" the Commission is faced with "a task of extraordinary difficulty" and a "dilemma". As petitioners urge:

1. If inland absorption is forbidden except for adjacent ports, the containership operation may become uneconomical and shippers would be deprived of many of the benefits of flexible intermodal transport.

2. If it is allowed without restriction, in the thought that shippers preference for direct service would by competitive force ensure service to any port where it was warranted, the conference system of rate making and the resulting stability of rates might be destroyed as other-coast conferences or carriers sought the traffic of the ports traditionally used.

3. Conference control of intermodal rates seems plainly desirable, but it is not immediately evident whether in the case of the minibridge the conference should be that of the "other-coast" ocean carrier or that of the "local conference" whose rates are at least the starting point for the minibridge rate.

4. Finally, the division in regulatory jurisdiction between the Commission and the ICC, by which this Commission can control only the ocean rates and practices of the intermodal movement, adds a pervasive limitation upon effective regulation.

As a result of all this, the petitioners think that the Commission should resolve the "issue" through rulemaking, not adhoc, adjudication. To petitioners the adjudicatory approach is unfair and probably unworkable. In the 12 cases pending before the Commission, there are an aggregate of 29 conferences, about 30 port authorities, port interest groups and labor groups, and 82 steamship lines parties to one proceeding or another. Since none can be sure which case or cases will be used as the controlling decision, no party can be sure he will be effectively heard unless he intervenes in every case. This may be beyond the financial resources of most parties and "beyond the physical capacity of any attorney or firm."

Accordingly, petitioners urge the Commission adopt rules covering permissible cargo diversion.

Replies to the petition were received—about equally balanced in number between those supporting and those opposing the petition.

Generally, those which support the petition do so only in general terms, relying almost wholly on the arguments made in the petition. Those opposing do so (1) on the ground that proceedings to which they are party should not be stayed pending completion of the rulemaking, and (2) on the ground that the differences in the factual issues presented in each of the 12 or so proceedings render general rules impossible of formulation.

We are greatly in sympathy with the petitioners' desire for a final solution to a very difficult and complex problem. But it is the very complexity of the problem that renders it impossible of any meaningful solution through rulemaking.

The Commission's jurisdiction over "cargo diversion" practices stems primarily from sections 15, 16 and 17 of the shipping Act dealing with discrimination, preference and prejudice. Section 8 of the Merchant Marine Act of 1920 is considered in section 15 approvals as representing part of the "public interest" within the meaning of that section. Also, it is possible that a given absorption could so reduce the rate in question as to make it "so low" as to be "detrimental to the commerce of the United States" under section 18(b)(5) of the Shipping Act, 1916.

Citations to precedents of the Commission and its predecessors could be almost endlessly multiplied to show that questions of discrimination and prejudice of preference are questions of fact; and there are no nicer questions of fact than those involved in cargo diversion cases, as the petitioners are well aware. What is lawful in one situation may very well be unlawful in another. For example, while a carrier calling direct at San Francisco may lawfully equalize as to Stockton, it may be unlawful for the same carrier to equalize as to Long

Beach. Stockton Port District v. Pacific Westbound Conference, 9 F.M.C. 12 (1965).

The essence of the administrative rulemaking is its "generality of applicability" and "the rulemaking proceeding is typically concerned with broad policy considerations rather than review of individual conduct." Pacific Coast European Conference v. F.M.C., 376 F.2d 785 (D.C. Cir. 1966); American Airlines, Inc. v. C.A.B., 359 F.2d 624, 629 (D.C. Cir. 1966).

To be valid any rule promulgated by the Commission dealing with cargo diversion would have to comply with the various requirements of the shipping legislation. Those standards are set forth, inter alia in sections 15, 16 and 17 of the Shipping Act, 1916, and section 8 of the Merchant Marine Act, 1920. Section 15 requires the Commission to disapprove any agreement "that it finds to be unjustly discriminatory or unfair as between * * * ports"; section 16 declares that it is unlawful to "give any undue or unreasonable preference or advantage to any particular * * * locality" or "to subject any particular locality * * * to any undue or unreasonable prejudice or disadvantage"; and section 17 prohibits any ocean carrier from collecting any "charge which is unjustly discriminatory between * * * ports." Similarly, section 8 of the Merchant Marine Act of 1920 states a general Congressional policy favoring improvement and development of ports.

These statutes by reason of their generality do not permit the issuance of a general rule applicable to each and every port and factual situation across the country. Instead, they require a case-by-case determination based on the specific facts presented to the Commission. The Supreme Court has recognized that issuance of a specific administrative rule is inappropriate where the statutory standards are vague and general. Denver Stockyard v. Livestock Association, 356 U.S. 282 (1958). In the Denver case, the Court concluded that where a Federal statute condemns a practice that is "unfair" or "unreasonable", an evidentiary hearing is normally necessary to determine whether the rule exceeds the bounds of the agency's authority under the statute. (356 U.S. at 287.)

Thus, the Commission feels that rulemaking is just not the appropriate road to take. This is not to say, however, that the Commission can do nothing to alleviate the problems. One of the difficulties with rulemaking is that any attempt to formulate precise rules will subject those rules to endless objections because they do not fit the particular facts of a given cargo diversion practice. On the other hand, if only broad general rules are adopted, they would amount to nothing more than a statement of general principles which would then await specific application in future proceedings. Another alternative suggests itself.

One of the prime reasons petitioners seek a rulemaking proceeding is their inability to present their views in each of the pending proceedings. This is necessary, say petitioners, because they have no way of knowing which case the Commission will use as as the vehicle for announcing the general principles or guidelines which will govern all of the other cases. The Commission will therefore select and designate cases which it will use to announce those general principles sought by petitioners. This will allow petitioners and other interested parties to avoid intervening in each and every case involving cargo diversion, and at the same time insure that their views will be taken into consideration in the construction of any general principles developed in the designated cases. The Commission is aware that other cases may be delayed pending the outcome of the designated cases, but this is no different than staying those cases pending completion of rulemaking. Additionally, the designated case method avoids the institution of yet another proceeding.

Accordingly, the Commission will use Docket No. 73-35, Intermodal Service of Containers and Barges at the Port of Philadelphia; Possible Violations of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, for the establishing of equalization or absorption principles, and Docket No. 73-38, Council of North Atlantic Shipping Associations, et al. v. American Mail Lines, Ltd., et al., for the establishment of minibridge principles.

Therefore it is ordered, That the petition is hereby denied.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.73-26130 Filed 12-7-73;8:45 am]

[Docket No. 73-77]

FAR EAST CONFERENCE

Order of Investigation of Movement of Non-ferrous Scrap Metal and Non-ferrous Virgin Metal

The Far East Conference (FEC), consisting of eighteen (18) participating carriers of which six (6) are American flag lines and five (5) are Japanese flag lines, operates under Commission-approved Agreement No. 17 in the trade from United States Atlantic and Gulf ports to ports in the Far East including ports in Japan, Philippine Islands, Hong Kong, Taiwan, Korea, China, Russia, Viet Nam, Cambodia and Laos.

The Commission is aware that many potential benefits may be derived from increased recycling of our national solid waste through encouragement and development of existing or new ways and means for disposing of such waste. It is alleged,[1] for example, that non-ferrous scrap metal competes directly with non-ferrous virgin metal in the foreign trades and is readily available for export from the United States at prices far lower than those charged for virgin metal. However, the Commission has reason to believe that the rates charged by members of FEC for transportation of certain recyclable non-ferrous scrap metal, i.e. scrap aluminum, scrap brass, scrap copper, scrap lead and scrap zinc, in the trade from U.S. Atlantic and Gulf ports to ports in the Far East may preclude or discourage these scrap metals from being competitive with their virgin counterparts.

Furthermore, the Commission has been advised by the National Association of Secondary Materials, Inc. (NASMI) that at least 95 percent of all exported scrap metal moves in containers. FEC publishes container load rates applicable to both non-ferrous scrap and non-ferrous virgin aluminum, brass, copper, lead and zinc; however, these rates are on a weight basis related to the density of the specific shipment, which rates may have no relation to the comparative costs of transporting a fully loaded container of the lower valued scrap metal and a fully loaded container of virgin metal. When the measurement of scrap metal exceeds 50 cubic feet per 2,000 pounds the rate is automatically increased 25 cents for each cubic foot over 50. On this basis a 40-foot container loaded to 44,000 pounds with, for example, scrap aluminum that measures 100 cubic feet per 2,000 pounds, would accrue charges of $1,144.00 when moving from the U.S. East or Gulf Coast to Japan, while the charges on a similar movement of virgin aluminum ingots would be $869.00. There are larger apparent disparities with respect to shipments moving to other areas served by the Conference, such as the Philippine Islands, Hong Kong, Taiwan, Korea, and South Vietnam. It is, therefore, questionable whether these rates have been established with proper regard to cost value and other ratemaking factors.

Furthermore, there is an apparent public interest in the ecological benefits related to the disposal of solid waste products in the export market. Therefore, pursuant to section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. 4331 (1972) (hereinafter NEPA) and the Council on Environmental Quality's Guidelines which require the preparation of a detailed environmental impact statement whenever an agency of the Federal Government undertakes major federal action significantly affecting the quality of the human environment, the Federal Maritime Commission has prepared a Draft Environmental Impact Statement concerning rates presently being charged by the FEC for the movement of non-ferrous scrap

[1] The National Association of Secondary Materials, Inc. (NASMI) has made several allegations through formal and informal communications with the Commission, which allegations, comprise the basis of this Order. The Commission's staff met with representatives of NASMI and the Far East Conference to attempt to bring about a settlement. Although the Far East Conference has reduced certain of its rates, it has not been satisfied the request of NASMI. Therefore, NASMI has urged that hearings be held to determine the lawfulness of the Far East Conference rates on certain secondary metals. For these reasons, NASMI is named petitioner herein.

and non-ferrous virgin metal. The Statement is attached to this Order of Investigation and will be made available to the public by publication of Notice thereof in the FEDERAL REGISTER pursuant to section 102(2)(c) of NEPA. The Commission invites the comments of all public and private groups and individuals.

Now, therefore, *It is ordered*, Pursuant to sections 22, 15, 16 First, 17 and 18(b)(5) of the Shipping Act, 1916, that an investigation be instituted to determine whether the provisions of the Far East Conference tariffs and/or actions of its member lines pursuant thereto, related to the movement of non-ferrous scrap metal and non-ferrous virgin metal from United States East and Gulf Coast ports to ports in the Far East: (1) Constitute unjust or unfair discrimination or unfair treatment as between carriers, shippers, or exporters or otherwise operate to the detriment of the commerce of the United States or are contrary to the public interest in violation of section 15 of the Act; (2) Make or give an undue or unreasonable advantage to any particular person, locality or description of traffic in any respect whatsoever, or subject any particular person, locality or description of traffic to any undue prejudice or disadvantage in any respect whatsoever in violation of Section 16, First of the Act; (3) Result in charging or collecting rates or charges which are unjustly discriminatory between shippers in violation of Section 17 of the Act; (4) Result in rates or charges so unreasonably high or low as to be detrimental to the commerce of the United States in violation of Section 18(b)(5) of the Act;

It is further ordered, That in the event the rates, practices, rules or regulations of the Far East Conference or actions of its member lines pursuant thereto as they relate to the aforesaid shipments are found to violate the provisions of the Shipping Act, 1916, the investigation shall determine what action would best ameliorate the condition;

It is further ordered, That the Far East Conference and its member lines, as set forth in Appendix "A" hereto, be named as Respondents in this proceeding and that the National Association of Secondary Materials, Inc. be named Petitioner;[1]

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and a place to be determined and announced by the Presiding Administrative Law Judge;

It is further ordered, That a copy of this Order and Notice of the availability of the attached Draft Environmental Impact Statement shall forthwith be served on the Respondents and Petitioner herein and shall be published in the FEDERAL REGISTER; and that all parties be duly served with notice of time and place of hearing(s).

[1] The Commission's Bureau of Hearing Counsel is a party pursuant to Rule 3(b), 46 CFR 502.42.

It is further ordered, That ten (10) copies of the Draft Environmental Impact Statement be submitted to the Environmental Protection Agency, five (5) copies be submitted to the Council on Environmental Quality, and ten (10) copies be submitted to the Department of Commerce, Office of Export Controls;

It is further ordered, That the Draft Environmental Impact Statement be made available for inspection at, and single copies may be obtained from the Office of the Secretary, Room 1124, 1405 I Street NW., Washington, D.C. 20573.

It is further ordered, That comments submitted by parties of record, and other interested persons, pertaining to the Draft Environmental Impact Statement be in the form of written testimony for consideration as probative evidence by the Presiding Administrative Law Judge;

It is further ordered, That all such commentators on the Draft Environmental Impact Statement make themselves available for cross-examination in accordance with the Commission's Rules of Practice and Procedure (46 C.F.R. 502 et seq.) as may be directed by the Presiding Administrative Law Judge;

It is further ordered, That any commentator, who does not make himself available for cross-examination, if so directed by the Presiding Administrative Law Judge, will have his comments removed from the record;

It is further ordered, That the Presiding Administrative Law Judge include, as a separate and distinct portion of his Initial Decision, findings of fact and conclusions of law pertaining to the issues raised by the Draft Environmental Impact Statement, which portion of said Initial Decision shall comprise the Final Impact Statement, subject to Commission review;

It is further ordered, That all persons having an interest in this proceeding, other than Respondent, Petitioner, and the Bureau of Hearing Counsel, including any party submitting comments on the Draft Environmental Impact Statement, and desiring to intervene, should notify the Secretary of the Commission promptly and file Petitions for Leave to Intervene in accordance with Rule 5(1) of the Commission's Rules of Practice and Procedure [46 C.F.R. 502.72]; and

It is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearings or prehearing conferences, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

APPENDIX "A"

Far East Conference
11 Broadway
New York, New York 10004

MEMBER LINES

American Export Lines, Inc.
26 Broadway
New York, New York 10004

American President Lines, Ltd.
International Building.
601 California Street
San Francisco, California 94108

Barber Lines, A/S
P.O. Box 1330
Vika, Oslo 1, Norway

Blue Sea Line—Joint Service
Blue Funnel Lines, Ltd.
India Buildings, Water Street
Liverpool L2 ORB, England

The Swedish East Asia Co., Ltd.
P.O. Box 2524
403 17 Gothenburg 2, Sweden

Japan Line, Ltd.
Kishimoto Building
2-18 Kaigan-Dori, Ikuta-ku
Kobe, Japan

Lykes Bros. Steamship Co., Inc.
P.O. Box 53068
New Orleans, Louisiana 70150

Maritime Company of the Philippines, Inc.
205 Juan Luna
Manila, Philippines

Mitsui-O.S.K. Lines, Ltd.
3-3, 5-chome
Akasaka Minato-ku
Tokyo, Japan

A. P. Moller-Maersk Line—Joint Service
Dampskibsselskabet Af 1912 Aktieselskab
Aktieselskabet Dampskibsselskabet Svendborg
A. P. Moller, 8 Kongens Nytorv
Copenhagen K. Denmark

Nippon Yusen Kaisha, Ltd.
3-2 Marunouchi 2 Chome, Chiyoda-ku
Tokyo, Japan (Postal Code 100)

Sea-Land Service, Inc.
P.O. Box 900
Edison, New Jersey 08816

United Philippine Lines, Inc.
United Philippine Lines Building
Santa Clara Street
Walled City
Manila, Philippines

United States Lines, Inc.
(American Pioneer Line)
1 Broadway
New York, New York 10004

Waterman Steamship Corporation
140 Broadway
New York, New York 10005

Yamashita-Shinnihon Steamship Co., Ltd
6th Floor, Palace-Side Building
No. 1, Takehira-cho, Chiyoda-ku,
Tokyo, Japan

Zim Israel Navigation Co., Ltd.
(Zim Container Service Division)
(Zim-American Israeli Shipping Co., Inc., General Agents)
207-209 Hameginim Avenue
Haifa, Israel

DRAFT ENVIRONMENTAL IMPACT STATEMENT

Pursuant to Section 102 of the National Environmental Policy Act of 1969, 46 U.S.C. 4331 (1972) (hereinafter NEPA) and the Council on Environmental Quality's Guidelines, which require the preparation of a detailed environmental impact statement whenever an agency of the Federal Government undertakes major federal action significantly affecting the quality of the human environment, the Federal Maritime Commission has prepared this draft environmental impact statement concerning rates being charged for the movement of certain non-ferrous scrap metals and non-ferrous virgin metals under tariffs filed by the Far East Conference (FEC).

1. THE NATURE OF THE PROCEEDING

The Commission has been advised by the National Association of Secondary Materials, Inc. (NASMI) that at least ninety-five (95) percent of all exported scrap metal via Far East Conference (FEC) vessels is shipped in containers. FEC publishes container load rates applicable to certain non-ferrous scrap and virgin metals; however, these rates are on a weight basis related to the density of the specific shipment, which rates may have no relation to the comparative costs of transporting a fully loaded container of the lower valued scrap metal and a fully loaded container of virgin metals. It is, therefore, questionable whether these rates have been established with proper regard to cost, value and other ratemaking factors.

By order of this date, the Commission has instituted an investigation to determine whether the provisions of the Far East Conference tariffs and/or actions of its member lines pursuant thereto, related to the movement of certain non-ferrous scrap metals and non-ferrous virgin metals from United States East and Gulf Coast ports to ports in the Far East: (1) Constitute unjust or unfair discrimination or unfair treatment as between carriers, shippers, or exporters or otherwise operate to the detriment of the commerce of the United States or are contrary to the public interest in violation of Section 15 of the Shipping Act, 1916; (2) Make or give an undue or unreasonable advantage to any particular person, locality or description of traffic in any respect whatsoever, or subject any particular person, locality or description of traffic to any undue prejudice or disadvantage whatsoever in violation of Section 16, First of the Shipping Act, 1916; (3) Result in charging or collecting rates or charges which are unjustly discriminatory between shippers in violation of Section 17 of the Shipping Act, 1916; or (4) Result in rates or charges so unreasonably high or low as to be detrimental to the commerce of the United States in violation of Section 18(b)(5) of the Shipping Act, 1916. In the event the rates, practices, rules or regulations of the Far East Conference or actions of its member lines pursuant thereto as they relate to the aforesaid shipments are found to violate the provisions of the Shipping Act, 1916, the investigation shall determine what action would best ameliorate the condition.

2. THE ENVIRONMENTAL IMPACT OF THE PRESENT RATE SCHEDULES

The rates here at issue may have a significant environmental impact. Exporters may be encouraged to ship virgin metal instead of scrap metal in situations where properly recycled scrap metal could serve the same purposes as the virgin metal. This could result in unnecessary mining of metal ore, which could have adverse environmental effects. Commercial development may be encouraged in the affected areas with consequential environmental costs. The already rapid depletion of natural resources may be intensified, and domestic solid waste management costs may be increased, thus continuing to be a significant drain on the financial resources of the economy.

If, as a result of this proceeding, the rates are equalized or established so that the rates on non-ferrous scrap metal are lower than those on non-ferrous virgin metal, exporters might be encouraged to ship scrap metal with concomitant benefits to the recycling process. This might tend to reduce the use of non-ferrous virgin metal, thereby lessening the decimation of our mineral resources and consequently enhancing the overall environment. In addition, domestic solid waste management costs may be reduced.

3. ADVERSE IMPACTS WHICH MAY NOT BE AVOIDED IF THE PRESENT RATE STRUCTURE IS MAINTAINED

If the final action taken in this proceeding were to maintain the present rate structure, the adverse environmental effects mentioned supra may not be avoided absent other regulations or directives limiting the extent to which the mineral resources may be decimated. As a result, the following goals set forth in Section 101(b) of NEPA might be sacrificed:

(1) preservation of our nation's resources for future generations;

(2) preservation of esthetically and culturally pleasing surroundings;

(3) achievement of the maximum attainable recycling of depletable resources.

However, if the rates are established at parity or the rates on scrap metal established at a lower level than on virgin metal, the adverse environmental effects which may be inherent in the present rate structure may be eliminated, and the recycling of materials may be encouraged with consequential environmental enhancement and reduction of solid waste management costs.

4. ALTERNATIVES TO THE PRESENT RATE SCHEDULES

Possible alternative actions which might be taken by the Conference on the basis of this proceeding are as follows: (1) lower the rates on scrap metal but still maintain them at a level higher than those on virgin metal; (2) equalize the rates on scrap metal and on virgin metal; (3) establish rates on scrap metals at a lower level than those applicable to their virgin counterpart.

5. THE RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF MAN'S ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

The short-term effects of allowing the aforementioned rates to remain as they presently stand may not be substantial; it is, in the long run, through the cumulative exportation of virgin metal instead of scrap metal, that the possible adverse environmental impacts may come about.

The persons who will pay the long-term environmental costs are those who enjoy our nation's natural beauty. In addition, consumers of metal may suffer financial costs, for as our mineral resources are depleted the cost of virgin metal will certainly increase. In the long run, it is quite possible that we all will suffer from continued decimation of our mineral resources unless strict controls are enacted and enforced.

On the other hand, an equalizing of the rates, or lowering of the scrap metal rates below those on virgin metal may enhance the quality of the environment in the long run. By protecting and preserving our nation's mineral resources now, systematic methods for use of the resources may be developed in order that both industry and the public may enjoy beneficial use of the resources for years to come. Equally important, our solid wastes, along with solid waste management costs, may be reduced.

6. IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS OF RESOURCES WHICH MAY BE INVOLVED IN THE PRESENT RATE SCHEDULE

If the aforementioned rates are maintained as they presently stand, the ensuing probability of continued export of virgin metal where scrap metal could be used instead may cause irreversible and irretrievable losses to the national mineral resources. Unlike other natural resources which may be replacable to a degree, it is far more difficult, if not impossible, to replace minerals. However, if the rates on scrap metal are equalized to, or set at a lower level than the rates on virgin metal, exporters may be discouraged from causing such irreversible or irretrievable drains on our mineral resources and may be encouraged instead to use recycled and recyclable materials.

Pursuant to Section 102(2)(c) of NEPA, the Commission is making this draft environmental impact statement available to the public by publication, in the FEDERAL REGISTER of Notice of the availability thereof. The Commission invites the comments of all public and private groups and individuals. A suggested form for such comments is for interested parties to include in their statements an explanation of their respective environmental positions, specifying their disagreements with, additions to, and comments on the issues raised by this draft statement. An original and fifteen (15) copies of such comments shall be submitted to the Commission, as well as five (5) copies to the Council on Environmental Quality, ten (10) copies to the Environmental Protection Agency, and ten (10) copies to the Department of Commerce, Office of Export Controls. Comments may be filed on or before January 4, 1974.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.73-26128 Filed 12-7-73;8:45 am]

[Docket No. 73-77]

FAR EAST CONFERENCE INVESTIGATION OF MOVEMENT OF NON-FERROUS SCRAP METAL AND NON-FERROUS VIRGIN METAL

Notice of Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, Public Law 91-190, the Federal Maritime Commission has prepared a draft environmental impact statement in the above-cited Commission proceeding. The Commission invites comments of all public and private groups and individuals. Comments may be filed on or before January 4, 1974.

The draft environmental statement is available for inspection at, and single copies may be obtained from, the Office of the Secretary, Room 1124, 1405 I Street, NW., Washington, D.C. 20573. Please refer to the docket number above.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.73-26129 Filed 12-7-73;8:45 am]

INTERNATIONAL COUNCIL CONTAINERSHIP OPERATORS

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street, NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by December 20, 1973. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement sould indicate that this has been done.

Notice of Agreement Filed by:
Mr. Emanuel Rouvelas, Suite 714, 1620 Eye Street NW., Washington, D.C. 20006.
and
John Mason, Esquire, Ragan & Mason, 900 17th Street NW., Washington, D.C. 20006.

Agreement No. 10099, among containership operators who provide common carrier liner service between ports, including U.S. ports, throughout the world, provides for the establishment of the International Council of Containership Operators to act as a forum for the open discussion of all areas of concern to the carrier members such as, but not limited to, environmental controls, intermodal regulations, technological developments, fuel and energy requirements, monetary and fiscal policies, port development and other governmental programs which affect maritime activities. If disucssion results in any proposals and/or agreements of concerted action, those proposals or agreements shall be subject to the right of each member carrier to independent action and to necessary approvals or requirements of Governments. Nothing in the agreement is to be construed as obligating any member to provide or exchange information with other carrier members or the Council. Any operator of containerships providing scheduled common carrier service in international commerce may become a party to the agreement. The parties will establish procedures for consulting with Governmental and inter-Governmental bodies, port authorities and other port interests, exporters and importers, for the purpose of considering the views and comments of those persons. The agreement shall have a term of eighteen (18) months from the date of any required approvals and shall be automatically extended for an additional eighteen (18) months, subject to any required approvals, unless terminated earlier by a majority of the parties thereto.

Dated: December 7, 1973.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY, *Secretary.*

[FR Doc.73-26255 Filed 12-7-73;10:33 am]

FEDERAL POWER COMMISSION

[Docket No. CP74-135]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

DECEMBER 3, 1973.

Take notice that on November 13, 1973, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP74-135 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell reduced contract demand quantities of natural gas resulting from revisions of service agreements with Columbia Gas of Ohio, Inc. (Columbia of Ohio), The Dayton Power & Light Company (Dayton), and Commonwealth Natural Gas Corporation (Commonwealth), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the existing Winter Contract Demand Quantities for Columbia of Ohio and Dayton do not accurately reflect their present requirements as said quantities are based on colder than normal weather conditions and that subsequently determined maximum monthly volumes based on normal weather conditions show such quantities to be excessive. Applicant states further that due to a reduction in Contract Demand by one of Commonwealth's wholesale customers Commonwealth requests a flow-through reduction in Contract Demand from Applicant.

Applicant requests authorization to render service under:

(1) a revised service agreement with Columbia of Ohio dated June 13, 1973, effectuating a reduction in Columbia of Ohio's Winter Contract Quantity from 53,816,400 Mcf to 48,924,000 Mcf under Rate Schedule WS in Zone 4, which Applicant states is permitted by Section 13 of the General Terms and Conditions of Applicant's FPC Gas Tariff, Original Volume No. 1;

(2) a revised service agreement with Dayton dated June 13, 1793, effectuating a reduction in its Winter Contract Quantity from 11,650,000 to 10,000,000 Mcf under Rate Schedule WS in Zone 4, which Applicant states is permitted by section 13 of the General Terms and Conditions of Applicant's FPC Gas Tariff, Original Volume No. 1;

(3) a revised service agreement with Commonwealth dated June 13, 1973, effectuating a reduction in its Contract Demand from 215,920 Mcf to 215,501 Mcf under Rate Schedule CDS in Zone 2, permitted by section 13 of the General Terms and Conditions of Applicant's FPC Gas Tariff, Original Volume No. 1.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 20, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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.73-26097 Filed 12-7-73;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST BANCORP OF N.H., INC.

Order Approving Acquisition of Bank

First Bancorp of N.H., Inc., Exeter, New Hampshire, 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 90 percent or more of the voting shares of the successor by merger to Laconia Peoples National Bank and Trust Company, Laconia, New Hampshire ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the act. The time for filing comments and views has expired and none has been received. The Board has considered the application in the light of the factors set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

Applicant presently has one subsidiary bank,[1] Exeter Banking Company, Exeter, New Hampshire and is in the State's ninth largest banking organization, with deposits of $31.8 million[2] representing 2.4 percent of total commercial bank deposits in the State. Acquisition of Bank (deposits of $21.8 million) would increase Applicant's share of commercial bank deposits in New Hampshire by 1.6 percent.

Bank ranks fifteenth in size among the State's commercial banks, and is the largest of five commercial banks with offices in Belknap County, which approximates the relevant market. Bank operates its four offices in Laconia, a city of 16,000 population, located in central New Hampshire.

Applicant's banking subsidiary operates in Rockingham County in the southeastern sector of New Hampshire. The banking market served by Applicant is entirely separate from the Laconia area served by Bank, and the offices of the two institutions are approximately 60 miles distant. Consequently, there is no significant competition existing between Applicant and Bank. Further, it appears unlikely that any meaningful competition would develop between Applicant and Bank in the future. New Hampshire's restrictive branch banking law prevents either organization from establishing de novo branches in the area served by the other. Because of the distances separating the institutions and their modest resources, the possibility of either organization entering the other's area by establishing a de novo bank is remote. Accordingly, approval of the proposed transaction will have no adverse competitive effects, and may in fact be procompetitive in view of the recent acquisition of the only other commercial bank in Laconia by the State's largest banking organization.[3] Moreover, there are four savings banks in the Belknap market with combined deposits of $85 million. These institutions, two of which are larger than Bank, have a significant competitive impact for time and savings deposits.

The financial and managerial resources of Applicant and Bank are satisfactory and lend some support toward approval. Future prospects of Applicant and Bank are considered satisfactory, and affiliation with a holding company should improve Bank's future prospects. Furthermore, the ability of Applicant and Bank to compete against all financial institutions—including commercial banks and mutual savings banks—should be enhanced by consummation of the proposal. Although there is no evidence to indicate that the banking needs of the communities involved are not being adequately served, the convenience and needs factor is consistent with approval of the application. It is the Board's judgment that the transaction 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 made (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 Boston pursuant to delegated authority.

By order of the Board of Governors,[4] effective December 3, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-26090 Filed 12-7-73;8:45 am]

[1] Applicant has filed contemporaneous applications to acquire The Merchants National Bank of Manchester, Manchester (deposits of $37.5 million) and Concord National Bank, Concord (deposits of $37.7 million).

[2] All banking data are as of June 30, 1973.

[3] See the Board's Order of February 1, 1973, approving the acquisition of The Lakeport National Bank of Laconia by Indian Head Banks Inc.

[4] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Sheehan, Bucher, and Holland. Absent and not voting: Governor Brimmer.

FIRST PENNSYLVANIA CORP.

Proposed Acquisition of Cowart Finance Center, Inc.

First Pennsylvania Corporation, Philadelphia, Pennsylvania, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission for the purchase of the notes receivable and fixed assets of Cowart Finance Center, Inc., Opelousas, Louisiana, by its wholly-owned subsidiary, Industrial Finance and Thrift Corporation, Philadelphia, Pennsylvania, through its wholly-owned subsidiary, Termplan Caddo, Inc., Philadelphia, Pennsylvania. Notice of the application was published on September 6, 1973, in the Daily News, a newspaper circulated in Opelousas, Louisiana.

Applicant states that the proposed subsidiary would engage in the consumer finance business and also sell credit life and disability insurance directly related to such consumer credit. Applicant further proposes to expand the insurance activities by adding the sale of property insurance to protect collateral in which Cowart Finance Center, Inc., has a security interest as a result of extension of consumer credit. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 26, 1973.

Board of Governors of the Federal Reserve System, December 4, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-26142 Filed 12-7-73;8:45 am]

FIRST TENNESSEE NATIONAL CORP.

Order Approving Acquisition of Banks

First Tennessee National Corporation, Memphis, Tennessee, a bank holding

company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares of the successors by merger to Mosheim Bank ("Mosheim Bank"), Mosheim, Tennessee; Sumner County Bank and Trust Company ("Sumner Bank"), Gallatin, Tennessee; and National Bank of Murfreesboro ("Murfreesboro Bank"), Murfreesboro, Tennessee. The banks into which Mosheim Bank, Sumner Bank, and Murfreesboro Bank ("Subject Banks") are to be merged have no significance except as a means to facilitate the acquisition of the voting shares of Subject Banks. Accordingly, the proposed acquisition of shares of the successor organizations is treated herein as the proposed acquisition of the shares of Subject Banks.

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

Applicant controls nine banks with aggregate deposits of $1.2 billion, representing about 11.5 per cent of the total deposits in commercial banks in Tennessee, and ranks as the largest banking organization in the State. (Banking data are as of June 30, 1973, adjusted to reflect holding company formations and acquisitions approved by the Board through October 31, 1973.) The acquisition of Subject Banks (combined total deposits of $33.6 million) would not result in a significant increase in the concentration of banking resources in Tennessee.

Mosheim Bank, the smallest of three banks in the relevant banking market (approximated by Greene County), controls about 10 per cent of total market deposits with the two larger banks having approximately 49 and 41 per cent respectively of deposits in the market. Applicant has two banking subsidiaries located about 25 miles from Mosheim Bank, but there is no significant existing competition between Mosheim Bank and these or any other of Applicant's banking subsidiaries. On the facts of record, particularly the distances involved and Tennessee's restrictive branching laws, there is little probability of substantial future competition developing between any of Applicant's banking subsidiaries and Mosheim Bank. There is little likelihood that Applicant would enter the Greene County market de novo. The Board concludes that the proposed acquisition of Mosheim Bank will not have any substantially adverse effects on future competition.

Sumner Bank, the smallest of seven banking organizations in its relevant banking market, which is approximated by Sumner County, controls about 9 percent of total deposits of commercial banks in the market. There is no existing substantial competition between Sumner Bank and any of Applicant's banking subsidiaries with the closest banking subsidiary located approximately 25 miles distant in another county. Nor is there a probability of substantial future competition developing between any of Applicant's banking subsidiaries and Sumner Bank on the record herein in light of the distances involved and Tennessee branching laws. Applicant is not a probable future entrant into the relevant banking market since the market is relatively unattractive as measured by the deposits and population per banking office ratios which are considerably lower than the corresponding ratios for the State. Based on the record, the Board considers that competitive considerations relating to this application are consistent with approval of the application.

The Murfreesboro Bank is the third largest of six banks located in its relevant banking market which is approximated by Rutherford County and controls about 14 percent of the total deposits in commercial banks in the market. The closest banking subsidiary of Applicant to Murfreesboro Bank is about 40 miles distant in another county, and there is no substantial existing competition between Murfreesboro Bank and any of Applicant's banking subsidiaries. On the facts herein, including the distances involved and Tennessee branching law, there is little probability of substantial competition developing between any of Applicant's banking subsidiaries and Murfreesboro Bank. Applicant is not likely to enter the Rutherford County banking market since the deposits and population per banking office ratios for the market are lower than the corresponding ratios for the State. Moreover, acquisition of Murfreesboro Bank by Applicant may enhance competition since Applicant's acquisition of Murfreesboro Bank may enable the latter to become a more vigorous competitor of the two dominant organizations in the market, which banks have almost 80 percent of deposits of the market. Based on the facts of record, the Board finds that competitive considerations of this application are consistent with its approval. Finally, based on the facts of record, including the distances involved and the Tennessee branching law, consummation of the acquisitions of Mosheim Bank, Sumner Bank, and Murfreesboro Bank would not eliminate substantial existing or future competition between the three banks.

The managerial and financial resources and future prospects of Applicant, its subsidiary banks, Mosheim Bank, Murfreesboro Bank, and Sumner Bank are all generally satisfactory. Applicant's acquisition of Sumner Bank is expected to result in added capital for the bank and will provide for management succession for the Sumner Bank. Applicant's acquisition of Mosheim Bank and Murfreesboro Bank is also expected to result in additional capital for those banks. These considerations weigh in support of approval of the applications. Considerations relating to the convenience and needs of the communities to be served are consistent with approval of the applications. It is the Board's judgment that consummation of the proposed acquisitions would be in the public interest and that the applications should be approved.

Applicant controls two nonbanking subsidiaries, Norlen Life Insurance Company, Phoenix, Arizona, and Investors Mortgage Service, Inc., Memphis, Tennessee, which were acquired on October 21, 1969, and on January 17, 1969, respectively. Norlen reinsures underwriters of credit life insurance while Investors acts as a mortgage broker and real estate developer through two wholly-owned subsidiaries. In approving this application, the Board finds that the combination of additional subsidiary banks with Applicant's existing nonbanking subsidiaries is unlikely to have adverse effects on the public interest at the present time. However, Applicant's banking and nonbanking activities remain subject to Board review, and the Board retains the authority to require Applicant to modify or terminate its nonbanking activities or holdings if the Board at any time determines that the combination of Applicant's banking and nonbanking activities is likely to have adverse effects on the public interest.

On the basis of the record, the applications are approved for the reasons summarized above. The transactions shall not be executed (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 St. Louis pursuant to delegated authority.

By order of the Board of Governors,[1] effective November 29, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-26087 Filed 12-7-73;8:45 am]

PHILADELPHIA NATIONAL CORP.

Order Denying Acquisition of Hartzler Mortgage Co.

Philadelphia National Corporation, Philadelphia, Pennsylvania, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire all of the voting shares of Hartzler Mortgage Company, Columbus, Ohio ("Hartzler"), a company that engages in the activities of originating, purchasing, selling and servicing real estate mortgage loans. Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(1) and (3)).

[1] Voting for this action: Chairman Burns and Governors Mitchell, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Governor Daane.

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (38 Federal Register 22188). The time for filing comments and views has expired, and none has been timely received.

Applicant's sole banking subsidiary, Philadelphia National Bank ("Bank"), is the fourth largest bank in Pennsylvania and among the 25 largest in the nation. It has total deposits of about $2 billion representing 5.3 percent of total domestic deposits in commercial banks in the State.[1] Applicant engages in the mortgage banking business through a direct subsidiary, Colonial Associates, Inc., and through two indirect subsidiaries, Colonial Mortgage Service Company and Colonial Mortgage Service Company of California, both of which are present subsidiaries of Bank.[2] In terms of volume of mortgages serviced, the two affiliated Colonial Mortgage Service Companies ("Colonial") are, combined, the sixth largest mortgage banking companies in the nation with a portfolio of $1.5 billion. The acquisition of Hartzler and its affiliation with Colonial would advance Colonial to fifth in the national ranking of mortgage banking companies.

Hartzler engages in the origination of FHA/VA guaranteed mortgage loans on single-family residences and in the servicing of mortgages from its headquarters in Columbus and a branch office in Mansfield, 65 miles to the north. In 1972, Hartzler originated approximately $12.2 million in mortgage loans and as of December, 1972, was servicing a mortgage loan portfolio of $93.4 million. Hartzler's loan originations of $4.7 million in the Columbus market[3] in 1972 represented 1 percent of total originations in 1–4 family residential loans in that area. Hartzler's market share in 1972 of residential loan originations in the Mansfield market was somewhat larger,[4] representing 8.4 percent of all 1–4 family residential loans for that area.

Colonial is Applicant's only direct or indirect subsidiary which is in a position to compete with Hartzler in either the Columbus or Mansfield markets. Colonial has an office in Columbus and originated $12 million in mortgage loans, or 2 per cent of the total mortgage originations in the Columbus market in 1972. However, Colonial originates only construction and commercial loans while Hartzler deals exclusively in the separate product market of residential loans. The proposed transaction, therefore, would not eliminate any direct competition between the two institutions.

There are fifteen mortgage companies (including Colonial) with offices in the Columbus market. Hartzler ranked eleventh among these companies in 1972 in terms of its volume of mortgage loan originations. Nine of these fifteen mortgage companies rank among the top 100 mortgage firms in the nation. All nine of these firms are subsidiaries of a larger holding company or corporation or are awaiting regulatory agency approval to become so affiliated. This proposed acquisition would eliminate one of the largest of the few independent mortgage banking companies that remain in the Columbus market. In addition, the presence of such large established mortgage banking firms, several of which are headquartered in Ohio or the neighbor State of Indiana, has limited the attractiveness of the Columbus market for de novo entry. Removal of a remaining independent mortgage banker by a significant competitor presently in the market may further restrict the ability of an outside firm to enter the market by raising the entry barriers even higher.

Applicant currently has the capability and interest to commence the origination of residential mortgage loans in the Columbus and Mansfield markets. Its interest in the Columbus market is manifested through the presense of its subsidiary, Colonial, which originated almost $12 million in mortgage loans in that market in 1972. Thus, Colonial provides an adequate base from which Applicant may expand into the separate product market of residential loans. Colonial already has an established office, personnel and contacts in the market and a demonstrated capability for further expansion.

At present, Colonial is the sixth largest banking firm in the nation, based upon a mortgage servicing volume of $1.5 billion. It seems likely that Colonial will continue to compete aggressively to maintain its position as one of the nation's leading mortgage banking organizations. It is the Board's judgment that Colonial is likely to expand its mortgage activities de novo in the Columbus market to include residential mortgage lending. The Board concludes, therefore, that consummation of the proposed transaction is likely to eliminate potential competition in both the Columbus and Mansfield markets. The Board has reasons to believe that Hartzler has the opportunity to affiliate with another corporation or holding company and that such affiliation would not produce the anticompetitive effects stemming from the present proposal.

Applicant claims that the proposed transaction would result in greater availability of loans to the public, improved services, operating efficiencies, and a continuation of good management. While the acquisition of a management company by a bank holding company could have the effect of increasing loans to the public and increasing the efficiency of the mortgage firm, it appears that such increased efficiency, if it came from a bank holding company not now competing or likely to compete in the market, would have a substantially more desirable impact on the public interest. The Board concludes that such public benefits as would be derived from the proposed acquisition do not outweigh the probable adverse effects on potential competition.

Based upon the foregoing and other considerations reflected in the record, the Board concludes that the public interest factors the Board is required to consider under section 4(c)(8) do not outweigh possible adverse effects and that the request should be denied. Accordingly, the application is hereby denied.

By order of the Board of Governors,[5] effective November 29, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-26088 Filed 12-7-73;8:45 am]

[1] All banking data are as of June 30, 1973, adjusted to reflect acquisitions approved through September 1, 1973.

[2] Bank acquired the Colonial Mortgage Service Companies in 1968, and Applicant has applied to the Board under section 4(c)(8) of the Act to transfer them from Bank to Applicant's direct control.

[3] The Columbus market includes Franklin County plus contiguous townships in surrounding counties.

[4] The Mansfield market includes Richland County and adjacent townships to the east.

[5] Voting for this action: Chairman Burns and Governors Mitchell, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Governor Daane.

SOUTHERN BANCORPORATION, INC.

Acquisition of Bank

Southern Bancorporation, Inc., Greenville, South Carolina, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 10 percent of the voting shares of Bank of North Charleston, North Charleston, South Carolina, a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 28, 1973.

Board of Governors of the Federal Reserve System, November 30, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-26089 Filed 12-7-73;8:45 am]

"TRUTH IN SAVINGS"

A subcommittee of the Senate Commitee on Banking, Housing and Urban Affairs in June held hearings on proposed "Truth in Savings" legislation (S. 1052). The legislation would require financial institutions to disclose the "annual percentage rate" and other terms applicable to their savings plans. The testimony received at the hearing generally supported the concept of full and uniform disclosure as a means of assisting consumers to understand their accounts better and to enable them to shop among competing plans. However,

concern was expressed that the multiplicity of methods of computing interest, which may have a significant effect upon the actual dollars earned depending upon activity patterns, makes it impossible to devise a single annual rate that would provide an accurate basis for comparing different savings account plans. Although the annual rate may reflect differences in compounding periods (continuous, daily, monthly, etc.), it would not be affected by the balances to which the rate is applied (e.g., low balance, first-in-first-out, last-in-first-out, day-of-deposit to day-of-withdrawal), grace periods for deposits and withdrawals, requirements for minimum balances and end of period balances, service charges for withdrawals and other factors. Several of these variables have a substantial effect on yield, depending upon the pattern of activity of an individual's savings account transactions. For example, a study has shown that a given set of savings account transactions over a six month period could result in interest payments ranging from about $30 to over $75 using a six percent annual rate in each case but varying the other elements of the calculation.

As a result of these concerns, the Board of Governors of the Federal Reserve System has been requested by members of the Senate Committee to study the "feasibility and desirability of requiring uniform methods of interest rate computation on savings accounts." A requirement for uniform methods would make the interest rate the only variable, and would simplify disclosures require under any possible Truth in Savings legislation. In connection with that study the Board desires to receive public comment on the following questions:

1. If a single method of interest rate computation were required on savings accounts, what would be the advantages and disadvantages—including competitive effects—to consumers and to financial institutions?

2. Assuming that a single method were required, which method is the most appropriate? Please indicate preferences and the reasons for your preference with respect to frequency of compounding and crediting, method of calculating the balance on which interest is computed, such as low balance, LIFO, FIFO or day-of-deposit to day-of-withdrawal, and other terms.

3. What are the advantages and disadvantages—including cost and competitive considerations—of permitting two or more methods of computation rather than a single method?

Comments on any of these questions and any other relevant comments or observations should be forwarded to the Secretary of the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, by January 31, 1974.

Board of Governors of the Federal Reserve System, November 27, 1973.

[SEAL] CHESTER FELDBERG,
Secretary.

[FR Doc.73-26091 Filed 12-7-73;8:45 am]

INTERNATIONAL BOUNDARY AND WATER COMMISSION—UNITED STATES AND MEXICO

ENVIRONMENTAL IMPACT STATEMENTS

Operational Procedures

Pursuant to the Guidelines of the Council on Environmental Quality (CEQ) appearing as 40 CFR Part 1500 published in the FEDERAL REGISTER of August 1, 1973 (38 FR 20549), the FEDERAL REGISTER of November 20, 1973 (38 FR 32010) published the proposed Guidelines of the United States section, International Boundary and Water Commission, for preparation of Environmental Impact Statements required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), January 1, 1970 (Pub. Law 91-190, 83 Stat. 853). These proposed Guidelines were developed in consultation with CEQ.

Before taking action to issue the proposed Guidelines in final form the United States Section will consider comments and suggestions of all interested parties received in writing by January 24, 1973.

Comments should be sent to Frank P. Fullerton, Special Legal Assistant, United States Section, International Boundary and Water Commission, P.O. Box 1859, El Paso, Texas 79950.

Issued at El Paso, Texas on November 27, 1973.

FRANK P. FULLERTON,
Special Legal Assistant.

[FR Doc.73-26083 Filed 12-7-73;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (73-90)]

AD HOC SUBCOMMITTEE FOR REVIEW OF INVESTIGATIONS ON THE SECOND AND THIRD HIGH ENERGY ASTRONOMY OBSERVATORY MISSIONS

Notice of Meeting

The NASA Ad Hoc Subcommittee of the Space Science and Applications Steering Committee for the Review of the Investigations on the Second and Third High Energy Astronomy Observatory (HEAO) Missions will meet in Washington, D.C. on 17 and 18 December 1973. The meeting will be held in Federal Office Building No. 6, 400 Maryland Avenue, SW., Washington, D.C., Room number 6004. Seating for approximately 30 persons is available. The meeting will be concerned with the validation of investigations under consideration for the scanning gamma-ray and cosmic ray mission of the HEAO program. Presentations will be made by the five research groups competing for flight assignment on HEAO-C, after which the Subcommittee will meet in Executive session to carry out its review of HEAO-C investigations and establishment of priorities for the HEAO-C mission (Closed). Discussions may also involve proprietary data.

The agenda for the meeting is as follows:

17 DECEMBER

9:00 a.m.	Introduction and guidance to subcommittee Introductions and function of the subcommittee—Chairman and Office of Space Science.
10:00 a.m.	Capabilities of the HEAO Spacecraft System—HEAO Project Office.
11:00 a.m.	Presentation by the HEAO-C Investigators: Fichtel and Hofstadter, Jacobson, Meyer, Koch and Peters, Israel, Waddington and Stone. Presentations will be accompanied by discussion with the subcommittee.
5:00 p.m.	Review of HEAO-C investigations and establishment of priorities for the HEAO-C mission (closed).
5:30 p.m.	Adjourn.

18 DECEMBER

9:00 a.m.	Continuation of review of HEAO-C investigations and establishment of priorities for the HEAO-C mission (closed). Adjournment when business completed.

The Chairman is Dr. Albert G. Opp, NASA Headquarters, Washington, D.C., 20546. The Executive Secretary is Mr. Carroll C. Dailey, NASA Marshall Space Flight Center, Huntsville, Alabama, 35812. There are approximately eight other members of the Subcommittee. Questions may be directed to Dr. Opp, telephone (202) 755-8493.

DAVID WILLIAMSON, Jr.,
Acting Associate Administrator, National Aeronautics and Space Administration

DECEMBER 4, 1973.

[FR Doc.73-26080 Filed 12-7-73;8:45 am]

NATIONAL ENDOWMENT FOR THE HUMANITIES

FELLOWSHIPS PANEL

Notice of Meeting

DECEMBER 4, 1973.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463) notice is hereby given that a meeting of the Fellowships Panel will meet at Washington, D.C. on December 13, 18, 19, 20, and 21, 1973.

The purpose of the meeting is to review Younger Humanist Fellowship applications submitted to the National Endowment for the Humanities for Individual Fellowship grants.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's delegation of authority to close advisory committee meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that

it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer Mr. John W. Jordan, 806 15th Street, NW., Washington, D.C. 20506, or call area code 202-382-2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.73-26141 Filed 12-7-73;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ARCHITECTURE ADVISORY PANEL

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a closed meeting of the Architecture Advisory Panel to the National Endowment for the Arts will be held at 9:30 a.m. on December 14, 1973 in the 11th floor Conference Room, Shoreham Building, 806 15th Street NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of January 10, 1973, this meeting which involves matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b)(4), (5), and (6), will not be open to the public.

Further information with reference to this meeting can be obtained from Mrs. Luna Diamond, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 382-5871.

JOYCE FREELAND,
Acting Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.73-26081 Filed 12-7-73;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 1024]

CONNECTICUT

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of August 1973, because of the effects of a certain disaster, damage resulted to business property located in the State of Connecticut;

Whereas, the Small Business Administration has investigated and received reports of other investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended:

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of Section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Pawcatuck, Connecticut, suffered damage or destruction resulting from a fire on August 31, 1973.

Applications will be processed under the provisions of Public Law 93-24.

Office: Small Business Administration
District Office
450 Main Street
Hartford, Connecticut 06103

2. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to February 4, 1974.

Dated: November 30, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-26093 Filed 12-7-73;8:45 am]

[Declaration of Disaster Loan Area 1025]

INDIANA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of November 1973, because of the effects of a certain disaster, damage resulted to business property located in the State of Indiana;

Whereas, the Small Business Administration has investigated and received reports of other investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended:

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Indianapolis, Indiana, suffered damage or destruction resulting from a fire on November 5, 1973.

Applications will be processed under the provisions of Public Law 93-24.

Office: Small Business Administration
District Office
36 South Pennsylvania Street
Indianapolis, Indiana 46204

2. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to February 4, 1974.

Dated: November 30, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-26092 Filed 12-7-73;8:45 am]

COST OF LIVING COUNCIL

FOOD INDUSTRY WAGE AND SALARY COMMITTEE

Notice of Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given that the Food Industry Wage and Salary Committee, established under the authority of section 212(f) of the Economic Stabilization Act, as amended, section 4(a)(iv) of Executive Order 11695, and Cost of Living Council Order No. 14, will meet on December 12 and December 13, 1973. The meetings will be open to the public on a first-come, first-served basis at 2:00 p.m. and 9:00 a.m. respectively, in Conference Room 8202, 2025 M Street, N.W., Washington, D.C.

The agendas will consist of a discussion of policy questions involving food industry wage matters and, if circumstances permit, of food industry wage cases pending before the Cost of Living Council.

The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

Issued in Washington, D.C., on December 7, 1973.

HENRY H. PERRITT, Jr.,
Executive Secretary, Cost of Living Council.

[FR Doc.73-26261 Filed 12-7-73;10:48 am]

HEALTH INDUSTRY ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Health Industry Advisory Committee, created by section 6(b) of Executive Order 11695, will meet on December 17, 1973, at the Cost of Living Council offices, 2000 M Street, N.W., Washington, D.C.

The meeting, which will be held from 10:00 a.m. to 4:00 p.m. in the second floor auditorium, will be open to the public. The Committee will review and discuss summaries of comments received on the proposed Phase IV health regulations, and proposed revisions in those regulations prior to final issuance. The Committee will also discuss the administrative role of state health control programs. In addition, the Committee will be asked to consider the cost containment factors of various National Health Insurance proposals.

The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Only members of the Committee, and its staff, may question the witnesses. Due to space limitations, it is possible that there will not be enough seating. For that reason, persons will be admitted on a first-come-first-served basis.

While no unscheduled oral presentations will be entertained, anyone may

submit a written statement by mailing it to Robert Saner, 2000 M Street NW., Washington, D.C. 20508. Any statement received three or more days prior to the meeting will be provided to the Committee before the meeting. Any statement over three pages in length should be submitted with twenty copies.

Issued in Washington, D.C. on December 7, 1973.

HENRY H. PERRITT, Jr.,
Executive Secretary,
Cost of Living Council.

[FR Doc.73-26260 Filed 12-7-73;10:48 am]

HEALTH INDUSTRY WAGE AND SALARY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given that the Health Industry Wage and Salary Committee, established under the authority of section 212(f) of the Economic Stabilization Act, as amended, section 4(a)(iv) of Executive Order 11695, and Cost of Living Council Order No. 14, will meet on December 17, 1973. The meeting will be open to the public on a first-come, first-served basis at 10:00 a.m. in Conference Room 8202, 2025 M Street, N.W., Washington, D.C.

The agenda will consist of a discussion of health industry wage cases currently pending before the Cost of Living Council.

The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

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

HENRY H. PERRITT, Jr.,
Executive Secretary,
Cost of Living Council.

[FR Doc.73-26259 Filed 12-7-73;10:48 am]

DEPARTMENT OF LABOR

Office of the Secretary

DON GUSTIN SHOE CO., INC.

Notice of Certification of Eligibility of Workers To Apply for Adjustment Assistance

Under date of October 29, 1973, the U.S. Tariff Commission made a report of the results of its investigation (TEA-W-208) under section 301(c)(2) of the Trade Expansion Act of 1962 (76 Stat. 884) in response to a petition for determination of eligibility to apply for adjustment assistance on behalf of the workers and former workers of the Don Gustin Shoe Co., Inc., Paterson, N.J. In this report, the Commission found that articles like or directly competitive with footwear for women (of the types provided for in items 700.43, 700.45, and 700.55 of the Tariff Schedules of the United States) produced by Don Gustin Shoe Co., Inc., are as a result in major part of concessions granted under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

Upon receipt of the Tariff Commission's affirmative finding, the Department, through the Director of the Office of Foreign Economic Policy, Bureau of International Labor Affairs, instituted an investigation.

Following this, the Acting Director made a recommendation to me relating to the matter of certification (*Notice of Delegation of Authority and Notice of Investigation*, 34 FR 18342; 37 FR 2472; 38 FR 30797; 29 CFR Part 90). In the recommendation he noted that concession-generated imports like or directly competitive with footwear for women produced by Don Gustin Shoe Co., Inc. increased substantially. In an effort to compete with imports, the company undertook measures to maintain production and profitability, including: (1) Organization of longer production runs, (2) acceptance of below cost orders to reduce overhead costs, (3) maintenance of inventories on a trial basis in an attempt to improve service to customers, and (4) the continuous introduction of new styles to stay abreast with changing fashions. Despite these efforts annual production continued to decline.

In 1972 Patinos, Inc., the parent company of Gustin Shoe, began importing footwear similar to that being produced at Gustin. These imports increased fourfold from the first half to the second half of 1972 and continued increasing in 1973.

Reductions in employment levels directly related to import competition began in July 1972 and continued until the plant closed in December 1972. All workers at Gustin Shoe were involved in work related to the production of women's footwear. After due consideration, I make the following certification:

All salaried, hourly, and piecework employees of the Don Gustin Shoe Co., Inc., Paterson, N.J. who became unemployed or underemployed after July 16, 1972 and before December 31, 1972 be certified as eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

Signed at Washington, D.C. this 4th day of December 1973.

JOEL SEGALL,
Deputy Under Secretary,
International Affairs.

[FR Doc.73-26100 Filed 12-7-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 404]

ASSIGNMENT OF HEARINGS

DECEMBER 5, 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 77972 Sub 19, Merchants Truck Line, Inc., now assigned January 14, 1974, at Memphis, Tenn., will be held in Room 914 Federal Office Bldg., 167 N. Main Street.

MC 138712, New Sigma Car Corp., d.b.a. Allied Limousine Service, now assigned January 21, 1974, and MC 128383 Sub 28, Pinto Trucking Service, Inc., now assigned January 23, 1974, at New York, New York, will be held in Court Room 206, 26 Federal Plaza.

MC 128638 Sub-3, Central Grain Haulers, Inc., now assigned January 14, 1974, at Louisville, Ky., will be held in Room 273 Federal Office Bldg., 600 Federal Place.

MC 116915 Sub 1, Eck Miller Transportation Corp., now assigned January 16, 1974, at Louisville, Ky., will be held in Room 273 Federal Office Bldg., 600 Federal Place.

MC 13893 Sub 14, J. W. Ward Transfer, Inc., now assigned January 21, 1974, at Louisville, Ky., will be held in Room 273 Federal Office Bldg., 600 Federal Place.

MC 138947, C. P. Transpo, Inc., now assigned January 15, 1974, MC-F-11928, Dearborn's Motor Express, Inc.—Purchase—Mitchell & Smith Express, Inc., MC 30508 Sub 3, Dearborn's Motor Express, Inc., now assigned January 17, 1974, MC 126102 Sub 18, Anderson Motor Lines, Inc., now assigned January 21, 1974, MC 57315 Sub 22, Tri-State Transport, Inc., Extension-Imported Meat, MC 96986 Sub 3, Feldman's Express, Inc., Conversion of Certificate of Registration, and MC 136971, Proctor Trans, Inc., Common Carrier Application, now assigned January 23, 1974, at Boston, Mass., will be held on the 5th Floor, 150 Causeway Street.

MC 119792 Sub 36, Chicago, Southern Transportation Co., Inc., now being now assigned February 4, 1974, at St. Paul, Minn., in a hearing room to be later designated.

W-81 Sub 3, McAllister Lighterage Line, Inc., W-457 Sub 6, McAllister Brothers, Inc., now being assigned hearing, February 4, 1974, at New York, New York, in a hearing room to be later designated.

MC-129529 Sub 5, Thruway Messenger Service, Inc., now being assigned hearing on February 6, 1974, at New York, N.Y., in a hearing room to be later designated.

MC-135738 Sub 2, Donald DeGraff, DBA Ace Limousine Service, now being assigned hearing February 4, 1974 (1 Week), at Newark, New Jersey, in a hearing room to be later designated.

MC 118848 Sub 16, Domenico Bus Service, Inc., now being assigned hearing February 11, 1974 (3 days), at Newark, N.J., in a hearing room to be later designated.

MC-F-11704, Mohawk Motor, Inc.—Purchase (Portion)—Michigan Express, Inc. and MC-F-11707, Indianhead Truck Line, Inc.—Purchase (Portion)—Michigan Express, Inc., now assigned December 10, 1973, at Detroit, Mich., is cancelled.

MC-130194, Canterbury Trails, Inc., now assigned January 14, 1974, will be held in Room B-2231, 26 Federal Plaza, New York, N.Y.

MC-129664, Sub 1, Comet Messenger and Delivery Service, Inc., now assigned January 16, 1974, will be held in Room B-2231, 26 Federal Plaza, New York, N.Y.

MC 124692 Sub 114, Sammons Trucking, now being assigned hearing February 25, 1974 (2 days), at San Francisco, Calif., in a hearing room to be later designated.

MC 111375 Sub 69, Pirkle Refrigerated Freight Lines, Inc., now being assigned hearing February 27, 1974, (3 days), at San Francisco, Calif., in a hearing room to be later designated.

MC 138185, F. Robert McDonald, d.b.a. Auto Delivery Service, now being assigned hearing March 4, 1974 (2 days), at San Francisco, Calif., in a hearing room to be later designated.

MC-F-11874, Matlack, Inc.—Control—CF Tank Lines, Inc., now being assigned hearing March 6, 1974 (3 days), at San Francisco, Calif., in a hearing room to be later designated.

MC-F-11940, System 99—Control and Lease—Trans Western Express, Inc., MC 98327 Sub 7, System 99, FD 27445, System 99—Notes, now being assigned hearing March 11, 1974 (1 week), at Portland, Oregon, in a hearing room to be later designated.

MC 120981 Sub 16, Bestway Express, Inc., now being assigned hearing February 19, 1974 (2 weeks), at Baton Rouge, La., in a hearing room to be later designated.

MC-F-11626, Eastern Freight Ways, Inc.—Investigation of Control—Associated Transport, Inc., and MC-F-11632, Eastern Freight Ways, Inc.—Control and Merger—Associated Transport, Inc., now being assigned pre-hearing conference on January 14, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-135306 Sub 2, Dan's Transit, Inc., now assigned January 21, 1974 will be held in room E-2222, 26 Federal Plaza, New York, N.Y.

MC-119619 Sub 59, Distributors Service Co., now assigned January 14, 1974, at Chicago, Ill., is postponed indefinitely.

MC-F-11923, Crouse Cartage Company—Purchase—Circle M. Truck Line MC-123389 Sub 16, Crouse Cartage Company, now assigned January 28, 1974, will be held in Room 609, Federal Bldg., 911 Walnut Street, Kansas City, Mo.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-26154 Filed 12-7-73;8:45 am]

[Notice No. 404]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before December 31, 1973. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74682. By order of November 30, 1973, the Motor Carrier Board approved the transfer to State Moving & Storage, Inc., Fayetteville, N.C., of a portion of the operating rights in Certificate No. MC-74443, issued August 28, 1953 to Warren Bros., Inc., Raleigh, N.C., authorizing the transportation of household goods between Raleigh, N.C., and points in North Carolina within 50 miles thereof, on the one hand, and, on the other, points in Virginia, South Carolina, and Georgia. Vaughan S. Winborne, 1108 Capital Club Bldg., Raleigh, N.C. 27601, attorney for applicants.

No. MC-FC-74737. By order of December 3, 1973, the Motor Carrier Board approved the transfer to Rugby Vans, Inc., Brooklyn, N.Y., of Certificate No. MC-48967 issued to Max E. Jensen, Doing Business As Ace Van Lines, Brooklyn, N.Y., authorizing the transportation of: Household Goods, between New York, N.Y., on the one hand, and, on the other, points in New York, Connecticut, New Jersey, and Pennsylvania. Arthur J. Piken, attorney, One Lefrak City Plaza, Flushing, N.Y. 11368.

No. MC-FC-74817. By order of November 30, 1973, the Motor Carrier Board approved the transfer to Kenneth L. Haugen, Doing Business As Minot-Bottineau Trucking Service, 1111 S.W. 1st St., Minot, N. Dak. 58701 of Certificate of Registration No. MC-97386 (Sub-No. 2) issued to E. O. Kavli (above trade name), Box 51, Bottineau, N. Dak. 58318 evidencing a right to engage in interstate or foreign commerce between points in North Dakota.

No. MC-FC-74831. By order of November 30, 1973, the Motor Carrier Board approved the transfer to Mercury Van Lines, Inc., Silver Spring, Md., of the operating rights in Certificates No. MC-103341, MC-103341 (Sub-No. 5) and MC-103341 (Sub-No. 8) issued August 27, 1957, October 11, 1957 and August 4, 1970 respectively to Youngblood Van & Storage Co., Inc., Columbus, Ga., authorizing the transportation of various commodities from, to, and between points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia. Thomas R. Kingsley, 1819 H St. NW., Washington, D.C. 20006, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-26155 Filed 12-7-73;8:45 am]

[Notice No. 166]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 4, 1973.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR part 1131), published in the Federal Register, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the Federal Register publication, within 15 calendar days after the date of notice of the filing of the application is published in the Federal Register. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 263 (Sub-No. 211 TA), filed November 26, 1973. Applicant: GARRETT FREIGHTLINES, INC., 2055 Garrett Way, P.O. Box 4048, Pocatello, Idaho 83201. Applicant's representative: Wayne Green (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fabricated stuctural iron and steel*, from the plant site and warehouse facilities of Fought and Co. at Pocatello, Idaho, to the Allied Chemical plant near Green River, Wyo., the Jim Bridger Steam Electric Power Project near Point of the Rocks, Wyo., and the Dave Johnson Steam Plant near Glenrock, Wyo., for 180 days.

NOTE.—Applicant does not intend to tack authority or interline with any other carrier.

SUPPORTING SHIPPER: Fought & Company, P.O. Box 4520, Pocatello, Idaho 83201. SEND PROTESTS TO: C. W. Campbell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 550 West Fort Street, Box 7, Boise, Idaho 83724.

No. MC 19945 (Sub-No. 41 TA), filed November 21, 1973. Applicant: BEHNKEN TRUCK SERVICE, INC., Illinois Route 13, New Athens, Ill. 62264. Applicant's representative: Ernest A. Brooks, II, 1301 Ambassador Building, St. Louis, Mo. 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and dry fertilizer materials*, from Burlington River Terminal, Burlington, Iowa, to points in Illinois, for 180 days. SUPPORTING SHIPPERS: J. J. Stefanec, Manager of Transportation Legislation, Agrico Chemical Company, P.O. Box 3166, Tulsa, Okla. 74101; Robert V. Hulder, Assistant Traffic Manager, FS Services, Inc., 1701 Towanda, Bloomington, Ill. 61701; and Burlington River Terminal, Inc., A. G. Stevenson, President, 500 Cash Street, Burlington, Iowa 52601. SEND PROTESTS TO: Harold C. Jolliff, District Supervisor, In-

terstate Commerce Commission, Bureau of Operations, Leland Office Building, 527 East Capitol Avenue, Room 414, Springfield, Ill. 62701.

No. MC 57239 (Sub-No. 23 TA), filed November 20, 1973. Applicant: RENNER'S EXPRESS, INC., 1350 South West Street, P.O. Box 882, Indianapolis, Ind. 46206. Applicant's representative: Rudy Yessin, 314 Wilkinson Street, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Nashville, Tenn., and the plant site of the Dollar General Store at or near Scottsville, Ky., via U.S. Highway 31E, for 180 days.

NOTE.—Tacking will occur at all common points—MC 57239. Applicant will tack.

SUPPORTING SHIPPER: Dollar General Corporation, Scottsville, Ky. SEND PROTESTS TO: District Supervisor James W. Habermehl, Interstate Commerce Commission, Bureau of Operations, 802 Century Bldg., 36 S. Penn. Street, Indianapolis, Ind. 46204.

No. MC 107002 (Sub-No. 444 TA), filed November 26, 1973. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, U.S. Highway 80 West, Jackson, Miss. 39205. Applicant's representative: John J. Borth (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fuel oil*, in bulk, in tank vehicles, from Moundville, Ala., to points in Arkansas, Georgia, Illinois, Indiana, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin, for 180 days. SUPPORTING SHIPPER: Vulcan Materials Company, P.O. Box 7497, Birmingham, Ala. 35223. SEND PROTESTS TO: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 212, 145 East Amite Bldg., Jackson, Miss. 39201.

No. MC 112801 (Sub-No. 149 TA), filed November 26, 1973. Applicant: TRANSPORT SERVICE CO., Two Salt Creek Lane, Hinsdale, Ill. 60521. Applicant's representative: Gene Smith (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Industrial heating and residual fuel oil*, in bulk, in tank vehicles, from Indianapolis, Ind., and Danville, Ill., to Crete, Nebr., for 180 days. SUPPORTING SHIPPER: Attn: Gerald E. Stilt, Lauhoff Grain Company, 323 E. North Street, Danville, Ill. 61832. SEND PROTESTS TO: District Supervisor William J. Gray, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 138643 (Sub-No. 3 TA), filed November 26, 1973. Applicant: MAKOVSKY BROTHERS, INC., Spring Mill Road, Whitehall, Pa. 18052. Applicant's representative: James W. Patterson, 2107 The Fidelity Building, Philadelphia, Pa. 19109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement clinkers*, in bulk, in dump vehicles, from Greenport, N.Y., to the plant of Hercules Cement Company, Division of American Cement Corporation, Stockertown, Pa., for 180 days. SUPPORTING SHIPPERS: Robert H. McKinley, Manager of Distribution, Hercules Cement Company, 1770 Bathgate Road, Bethlehem, Pa. 18018. SEND PROTESTS TO: F. W. Doyle, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Arch Street, William J. Green, Jr., Federal Bldg., Room 3238, Philadelphia, Pa. 19106.

No. MC 139207 (Sub-No. 1 TA), filed November 26, 1973. Applicant: HAROLD F. McNABB AND J. D. WADSWORTH, JR., doing business as McNABB WADSWORTH TRUCKING COMPANY, 1410 Lynn Garden Drive, Kingsport, Tenn. 37665. Applicant's representative: William P. Sullivan, 1819 H Street NW., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass and glass products*, from Kingsport and Greenland, Tenn., to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, for 180 days. SUPPORTING SHIPPER: ASG Industries, Inc., P.O. Box 929, Kingsport, Tenn. 37662. SEND PROTESTS TO: Joe J. Tate, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 803 1808 West End Building, Nashville, Tenn. 37203.

No. MC 139289 TA, filed November 26, 1973. Applicant: HOLLOWAY BROTHERS TRUCKING COMPANY, Route 1, Box 105, Bessemer City, N.C. 28016. Applicant's representative: Bart William Shuster, 112 North Myers Street, Charlotte, N.C. 28202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ground lithium ore waste*, in bulk, in dump vehicles, from Bessemer City, N.C., to Pacolet, S.C., for 180 days. SUPPORTING SHIPPER: Lithium Corporation of America, P.O. Box 795, Bessemer City, N.C. 28016. SEND PROTESTS TO: Terrell Price, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 800 Briar Creek Road-CC516, Charlotte, N.C. 28205.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-26156 Filed 12-7-73;8:45 am]

PIPELINE ADVISORY COMMITTEE ON VALUATION

Notice of Public Meeting

DECEMBER 5, 1973.

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Pipeline Advisory Committee on Valuation. The meeting will convene on Tuesday, January 8, 1974 at 9 a.m. in Conference Room A, at the rear of the Departmental Auditorium on Constitution Avenue, between 12th and 14th Streets NW., Washington, D.C. 20423.

The purpose of the meeting is to consult on data needed for development of cost indices for use in determining 1973 pipeline valuations. The meeting will be open to the public. Any member of the public may file a written statement with the Committee, before or within one week following the meeting.

The names of the members of the Committee, agenda, minutes of the meeting, and any other information pertaining to the meeting may be obtained from Mr. John A. Grady, Director, Bureau of Accounts, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-26153 Filed 12-7-73;8:45 am]

[Service Order No. 1112]

RAILROAD OPERATING REGULATIONS FOR FREIGHT CAR MOVEMENTS

Upon consideration of the petition filed by the Illinois Central Gulf Railroad Company on November 18, 1973, requesting modification of Service Order No. 1112.

It appearing, that the relief sought by that it cannot place or forward cars within 24 hours at Chicago, Illinois; Memphis, Tennessee; and East St. Louis, Illinois, as required by Service Order No. 1112; that said order should be modified so as to allow petitioner 72 hours to perform such operations at the aforementioned points; that the petition fails to specify why operational changes cannot be made to enable it to secure a high degree of compliance with the order; that the petition offers no reason why the Illinois Central Gulf Railroad Company should have any greater difficulty in switching, classifying, interchanging, transferring, and forwarding cars in these areas than other railroads; that no other railroad has either requested nor been granted any additional time beyond the 24-hour period specified in Service Order No. 1112, in which to accomplish placement or forwarding of cars; and that the petition states no errors of fact or law warranting the relief sought, and for good cause appearing;

It is ordered, That the petition be, and it is hereby, denied.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-26152 Filed 12-7-73;8:45 am]

CUMULATIVE LIST OF PARTS AFFECTED—DECEMBER

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR Page

EXECUTIVE ORDERS:

10480 (Suspended in part by E.O. 11748) 33575
11726 (Superseded in part by E.O. 11748) 33575
11748 33575

5 CFR

213 ..... 33487, 33577, 33757, 33758

PROPOSED RULES:

731 33315

6 CFR

150 ..... 33487, 33577, 33758, 33976
152 33581
155 ..... 33488, 33489
Rulings 33489, 33582

7 CFR

250 33965
811 33759
871 33273
873 33582
905 33761
907 ..... 33761, 33965
910 33762
926 33762
959 33763
1030 33455
1464 33276
1872 33763
1873 33586

PROPOSED RULES:

30 33979
818 33400
909 33400
928 ..... 33400, 33491
1701 ..... 33774, 33983

9 CFR

76 33455
94 33763
97 33763
113 33764
201 33965

PROPOSED RULES:

317 33308
381 33308

10 CFR

30 33969
31 33969
40 33970
70 33970
150 33970

12 CFR

204 33456
544 33456
563 33457
563c 33457

PROPOSED RULES:

563b 34060
563c 34060

13 CFR

111 33588

14 CFR Page

39 ..... 33391, 33764, 33765, 33971
71 ..... 33277, 33391–33394, 33464, 33588, 33765, 33766, 33972
73 33394
75 ..... 33394, 33766
93 33972
95 33589
97 33589
385 33972

PROPOSED RULES:

71 ..... 33404, 33501, 33603, 33774, 33994
73 33994

15 CFR

6 33482
376 33590
377 33592
1000 33486

16 CFR

13 ..... 33277, 33279
425 33766
429 33766
1508 33593
1700 33280

PROPOSED RULES:

1 33618
1508 33405

17 CFR

210 ..... 33282, 33973

PROPOSED RULES:

230 33779

18 CFR

2 33766
157 33766

19 CFR

1 33284
153 33593

PROPOSED RULES:

6 33979

20 CFR

410 33464

21 CFR

1 ..... 33284, 33465
2 33593
135d 33767
149c 33767
1401 33744

PROPOSED RULES:

1 33492
102 33984
130 33774
1000 33313
1040 34083
1301 33774

22 CFR

PROPOSED RULES:

41 33603

23 CFR

1 33465

24 CFR Page

1914 ..... 33465, 33466, 33767, 33768
1915 33467

25 CFR

PROPOSED RULES:

60 33401
153 33402

26 CFR

1 ..... 33290, 33395, 33973
601 33300

PROPOSED RULES:

1 33490
31 33490
301 33490

27 CFR

5 33470
70 33767

28 CFR

0 33471

29 CFR

1910 33397
1926 33397

PROPOSED RULES:

1910 33983
1926 33983

30 CFR

75 33397

32A CFR

Ch. VI:

BDC Notice 3 33472

33 CFR

62 33472
66 33473
74 33472
110 ..... 33473, 33474, 33973
117 33593

34 CFR

200 33769
251 33770

36 CFR

212 33474

38 CFR

21 33303
36 33771

40 CFR

52 ..... 33368, 33556, 33702, 33973
80 33734
166 33303
180 ..... 33398, 33973, 33974

PROPOSED RULES:

52 ..... 33563, 33775, 33777
180 ..... 33604, 33997
406 33438
409 33846
418 33852
425 33860

FEDERAL REGISTER PAGES AND DATES—DECEMBER

33267–33383	Dec. 3
33385–33445	4
33447–33567	5
33569–33749	6
33751–33958	7
33959–34091	10

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FEDERAL HOME LOAN BANK BOARD

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FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Conversions of Insured Institutions From Mutual to Stock Form

FEDERAL HOME LOAN BANK BOARD

[12 CFR Parts 563b, 563c]

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 73-1769]

Conversions of Insured Institutions From Mutual to Stock Form

NOVEMBER 28, 1973.

The third unnumbered paragraph of section 5(i) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464 (i)), among other things, authorizes Federal mutual savings and loan associations to convert to the stock form upon an equitable basis and subject to the approval by regulations or otherwise of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation (the "Corporation" or "FSLIC"). Under Title IV of the National Housing Act, as amended (12 U.S.C. 1724 *et seq.*), the Board, as operating head of the FSLIC, has authority to regulate any such conversion involving a State-chartered association whose accounts are insured by the Corporation.

Since December 5, 1963, the Board has maintained a moratorium on conversions of all FSLIC-insured institutions, both federally chartered and State-chartered, from the mutual to the stock form. This moratorium was imposed primarily because of abuses arising from earlier conversions and because of the absence of sufficient information and knowledge on how conversions can occur in a safe and fair manner and without undue injury to the stability of the financial structure of the savings and loan industry.

During the time that such moratorium has been in effect, the Board has engaged three detailed studies of this difficult subject (the so-called "Scott Report", "Hester Report", and "Friend Report"). In order to gain further information and experience, the Board in February 1972 approved a test conversion involving Citizens Federal Savings and Loan Association of San Francisco, California. In an additional effort to obtain information and experience in this area, the Board in July 1972 called for study applications. Five such applications were received prior to the Boards Resolution No. 72-1112 of September 22, 1972, which stated that the Board would not accept further study applications pursuant to its July announcement.

The Board's administrative moratorium had the effect of rendering inoperative the two provisions of the Board's regulations relating to conversions of mutual institutions to the stock form of organization. Section 546.5 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR 546.5) concerned such conversions of Federal associations, and § 563.22-1 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.22-1) contained substantially similar provisions concerning such conversions of State-chartered mutual insured institutions. The Board had long held the view that §§ 545.6 and 563.22-1 were totally inadequate to govern mutual-to-stock conversions and that they prescribed standards for such conversions which, if generally followed, would produce inequitable results. Accordingly, and on the basis of the information and experience referred to above, in September 1972, the Board directed the preparation of a proposal for completely new conversion regulations and determined that the administrative moratorium is terminated effective upon the final adoption of the new conversion regulations.

On January 3, 1973, the Board, in Resolution No. 73-25 and Resolution No. 73-26, proposed to revoke §§ 545.6 and 563.22-1, respectively, and to add a new Part 563b and a new § 571.8 to the Rules and Regulations for Insurance of Accounts, to govern mutual-to-stock conversions by both federally chartered and State-chartered insured institutions. Notice of such proposed rulemaking was duly published in the FEDERAL REGISTER of January 11, 1973 (38 FR 1334), with an invitation for interested persons to submit written comments by March 12, 1973. On March 12 and 13, 1973, public hearings were held on the proposal. On March 8, 1973, the Board briefly extended the comment period and announced that the Board intended, after considering the comments received during the comment period and the views presented at the public hearings, to issue revised proposed conversion regulations at a future date.

On August 16, 1973, the President signed into law Public Law 93-100, section 4 of which added a new subsection (j) to section 402 of the National Housing Act, as amended (12 U.S.C. 1725). New subsection (j) provides as follows:

(j)(1) Except as provided in paragraph (2), until June 30, 1974, the Corporation shall not approve, under regulations adopted pursuant to this title or section 5 of the Home Owners' Loan Act of 1933, by order or otherwise, a conversion from the mutual to the stock form of organization involving or to involve an insured institution, including approval of any application for such conversion pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the Corporation to approve conversions in supervisory cases. The Corporation may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

(2) After December 31, 1973, the Corporation may approve any study application filed prior to May 22, 1973, pursuant to regulations in effect and adopted pursuant to this title or section 5 of the Home Owners' Loan Act of 1933.

In general terms, section 402(j) imposes two statutory moratoria on mutual-to-stock conversions involving or to involve any institution whose accounts are insured by the FSLIC (with the exception of supervisory cases). The one moratorium extends through December 31, 1973, and applies to certain study applications. The other moratorium extends until June 30, 1974, and applies to all other mutual-to-stock conversions within the Board's jurisdiction. Section 402 (j) explicitly recognizes the Board's jurisdiction, as operating head of the FSLIC, over all mutual-to-stock conversions involving or to involve any insured institution.

On August 27, 1973, by Resolution No. 73-1243 and Resolution No. 73-1244, the Board revised §§ 546.5 and 563.22-1, respectively, to implement the provisions of said section 402(j) imposing the two statutory moratoria. In the preamble to these temporary regulations, the Board stated in general terms its future plans with respect to further revisions of, and final adoption of, proposed Part 563b, indicating that it intended to publish revised proposed conversion regulations in mid-November with a comment period ending December 31, 1973. Since publication of the proposal has been somewhat delayed, the Board's tentative schedule has been revised so that the comment period on this proposal will extend until January 31, 1974. Accordingly, final conversion regulations are not expected to be published until late February 1974.

The Board hereby proposes to amend the Rules and Regulations for Insurance of Accounts (12 CFR Chapter V, Subchapter D) by adding thereto a new Part 563b, governing conversions from mutual to stock form by both federally chartered and State-chartered insured institutions, to read as set forth below. It is intended that this proposal supersede the Board's proposals of January 3, 1973, and the Board hereby determines not to adopt the amendments proposed by Resolution No. 73-25 and Resolution No. 73-26, with one exception. The provisions of § 563b.7 (proposed in Resolution No. 73-26), governing the form and content of financial statements, have been adopted as § 563c.1 of a new Part 563c, by a companion Board action made on the same date as this present proposal. It should be noted that the Board does not now propose any amendment of the implementing regulations contained in §§ 546.5 and 563.22-1, and that the Board no longer proposes to adopt a new statement of policy, § 571.8, relating to maintenance of records for conversions.

Proposed Part 563b contains nine sections, which are arranged in somewhat different order than in the January 3 proposals.

Section 563b.1 governs the applicability of the provisions of Part 563b and of any forms prescribed thereunder. In addition, paragraph (c) thereof would provide a mechanism for waiver of requirements contained in Part 563b in the event of conflict with applicable State law. It should be noted that such a provision was not contained in the January 3 proposals.

Section 563b.2 contains the definitions applicable to the provisions of Part 563b and the forms prescribed thereunder. It should be noted that § 563b.2 contains several new definitions not contained in the January 3 proposals.

§ 563b.3 (prior § 563b.5), captioned "General principles for conversions", has been substantially revised to reflect the requirement that a converting association sell its capital stock at the estimated pro forma market value of such stock,

with eligible accountholders having priority rights to subscribe for the purchase of such stock. This section contains the Board's findings with respect to the equitability of the proposed conversion regulations, concluding that no method of conversion can be considered equitable unless the so-called "windfall" distribution is virtually eliminated and that certain methods of conversion other than that contained in the proposal do not virtually eliminate such "windfall" distribution. The Board is of the view that the substantial revisions which the Board believes were required to be made in this section in order for plans of conversion to be equitable are an indication both of the extreme difficulty and importance of the matter of determining a proper method of handling mutual-to-stock conversions and of the critical necessity to the safety and soundness of thrift and other financial institutions of the imposition and maintenance of the Board's administrative moratorium. The Board also wishes to note that, should inequities develop in the conduct of conversions after the final adoption of the proposals made hereby and as they may be revised on the basis of public comment, the Board may be required to reimpose and maintain an administrative moratorium pending consideration of actions to eliminate such inequities. While the Board believes that the proposals made hereby, if adopted, would properly control shifting of funds, the Board continues to be concerned about inequities that may result from disproportionate benefits among particular classes or groups of accountholders, and will be especially alert to such inequities during the consideration of the public comments and following final adoption. In addition, the Board continues to be concerned about the acquisition of ownership or control of savings and loan associations, particulary converted insured institutions, by banks, bank holding companies, other companies and subsidiaries thereof engaged in business activities unrelated to the operation of savings and loan associations. The Board regards as essential the enactment of legislation designed to appropriately control such acquisition and will actively pursue such legislation.

Section 563b.3 specifies the provisions that are required in a plan of conversion, including provisions governing the purchase and sale of capital stock and the establishment of a liquidation account to be maintained for the benefit of eligible accountholders in the event of a complete liquidation subsequent to conversion. This section also contains a number of optional provisions, chiefly relating to subscription for purchase of stock, which may be included in the plan of conversion.

Section 563b.4 deals with such procedural matters as publication of notice that an application for preliminary approval of conversion has been filed, contents of public statements, and confidentiality of information contained in an application.

Section 563b.5 (prior § 563b.6) concerns proxies, proxy solicitation, and the use of the proxy statement prepared in accordance with Form PS. This section and Form PS are based on Regulation 14A, Schedule 14A, and Form 10 of the Securities and Exchange Commission (17 CFR 240.14a–1 to .14a–12, 240.14a–101, and 249.210, respectively). It is the intent of the Board that this section and Form PS operate to give association members the information needed for intelligent voting on the plan of conversion and to provide information which can be incorporated into offering circulars to enable eligible accountholders and others to make informed investment decisions with respect to the purchase of the converted institution's capital stock. It is also contemplated that the information generated by Form PS will enable the converted institution to meet the registration requirements of § 12(g) of the Securities Exchange Act of 1934 without substantial additional expense.

Section 563b.6 (prior § 563b.8) deals with the required vote of the members of the association, notice of the meeting, and application to the Corporation for final approval of the conversion. This section would now require a majority of the total outstanding votes of the members, rather than the two-thirds vote specified under the prior proposal.

Section 563b.7 (prior § 563b.9) governs the pricing of the converting institution's capital stock, the use of the offering circular and disclosure of price information, and requirements as to the order form for subscriptions to purchase capital stock. A primary requirement of this section is that the prices be set only after thorough and independent appraisal.

Section 563b.8 (prior § 563b.3) sets forth the general sequence of processing applications for conversion and provides for numerous administrative requirements such as number of copies, place of filing, format for filing, amendments, and incorporation by reference. Section 563b.8 is modeled on Regulation C of the Securities and Exchange Commission (17 CFR 230.400–494) and is designed in part to insure that the filings under Part 563b can be used by insured institutions without substantial additional expense to meet the formal filing requirements of the Commission. Prior § 563b.10, relating to post-conversion reports, has been incorporated into this section.

Section 563b.9 is a new provision, not included in the prior proposal, containing special rules for a conversion incident to a holding company acquisition or a merger.

Included with this proposal are four forms to be used in connection with conversions. Form PA is the prescribed form of Application for Preliminary Approval of Conversion; Form PS is the form for the required Proxy Statement; Form OC is the form for the required Offering Circular; and Form FA is the prescribed form of Application for Final Approval of Conversion. Because of their integral and significant relationship to the operation of Part 563b, they are published for comment in the same manner as the proposed regulations.

Section 563b.8(1)(5) of proposed Part 563b would provide that § 563c.1 of the Rules and Regulations for Insurance of Accounts (12 CFR 563c.1) governs the certification, form and content of financial statements to be included in the proxy statement and offering circular. In this connection, the Board considers it advisable to amend said § 563c.1 by revising paragraph (a) thereof to provide that the requirements of that section shall be applicable to financial statements prepared pursuant to § 563b.8(1)(5).

In addition, the Board considers it advisable to add two new provisions to paragraph (p) of said § 563c.1, relating to information to be disclosed in financial statements in connection with a conversion. The first provision would require a converting institution to give a brief description of the plan of conversion and the financial statement implications thereof. The second provision would require a converted institution to provide information regarding the liquidation account to be maintained for the benefit of eligible preconversion accountholders.

Accordingly, the Board proposes to amend said § 563c.1 by revising paragraph (a) thereof and by adding to paragraph (p) thereof new subparagraphs (13) and (14) and redesignating subsequent paragraphs appropriately, as set forth below.

Interested persons are invited to submit written data, views, and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue NW., Washington, D.C. 20552, by January 31, 1974, as to whether these proposals should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the General Regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

1. It is proposed to amend § 563c.1 by revising paragraph (a) thereof and by adding to paragraph (p) thereof new subparagraphs (13) and (14), immediately after subparagraph (12), and redesignating present subparagraphs (13) and (14) as subparagraphs (15) and (16), to read as follows:

§ 563c.1 Form and content of financial statements.

(a) *Application of this section.* (1) This section states the requirements as to the form and content of financial statements to be furnished by an insured institution with the following:

(i) Any proxy statement or offering circular required to be used in connection with a conversion under the provisions of Part 563b of this subchapter; and

(ii) Any offering circular or private placement memorandum required to be used in connection with an issuance of subordinated debt securities under the provisions of § 563.8–1 of this subchapter.

(2) The term "financial statements" shall be deemed to include all notes to the statements and related schedules.

* * * * *

(p) *General notes to financial statements.* * * *

(13) *Plan of conversion.* If the financial statements are to be furnished with a proxy statement or offering circular in connection with a conversion, a brief description of the plan of conversion and the financial statement implications thereof, including any subsequent dividend restrictions, shall be given. Such description may incorporate by reference any material contained in the proxy statement or offering circular.

(14) *Preconversion accountholders' net worth.* An institution that is required to maintain financial records for a liquidation account to be paid out to eligible preconversion accountholders in the event of complete liquidation shall state in a note to the stockholders' equity section of its statement of financial condition (i) the balance of the account; (ii) the purpose and general character of the account; (iii) the accounting method or principle used to adjust the account; and (iv) a summary of the adjustments made in the account since its inception.

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2. It is proposed to add a new Part 563b to read as follows:

Sec.
563b.1 Scope of part.
563b.2 Definitions.
563b.3 General principles for conversion.
563b.4 Notice of filing; public statements; confidentiality.
563b.5 Solicitation of proxies; proxy statement.
563b.6 Vote by members; application for final approval.
563b.7 Pricing and sale of securities.
563b.8 Procedural requirements.
563b.9 Conversion involving holding company acquisitions or mergers.

AUTHORITY: Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 563b.1 Scope of part.

(a) *General.* The provisions of this part shall govern conversion of Federally-chartered mutual insured institutions and State-chartered mutual insured institutions to State-chartered stock insured institutions. No such mutual insured institution shall convert to the stock form of organization without the prior written approval of the Corporation pursuant to the provisions of this part.

(b) *Provisions of prescribed forms.* Any provision in a form prescribed under this part and covering the same subject matter as any provision of this part shall have the same force and effect as if it were a provision of this part.

(c) *Conflicts with State law.* (1) In the event an applicant finds that compliance with any provision of this part would be in conflict with applicable State law, the applicant may file with the Corporation a written request for waiver of compliance with such provision. Such request may be incorporated in the application for preliminary approval of conversion; otherwise, the applicant shall file four copies of such request.

(2) In making any such request, the applicant shall:

(i) Specify the provision or provisions of this part with respect to which the applicant desires waiver;

(ii) Furnish an opinion of counsel demonstrating that applicable State law is in conflict with the specified provision or provisions of this part; and

(iii) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its accountholders or other insured institutions or be contrary to the public interest.

§ 563b.2 Definitions.

(a) As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(1) *Affiliate.* An "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) *Amount.* The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(3) *Applicant.* An "applicant" is an insured institution which has applied to convert pursuant to this part.

(4) *Associate.* The term "associate", when used to indicate a relationship with any person, means (i) any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (ii) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the applicant or any of its parents or subsidiaries.

(5) *Association members.* The term "association members" refers to persons who, pursuant to the charter or bylaws of the applicant, are eligible to vote at the applicant's meeting at which conversion will be voted upon.

(6) *Board.* The term "Board" refers to the Federal Home Loan Bank Board.

(7) *Capital stock.* The term "capital stock" includes permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.

(8) *Charter.* The term "charter" includes articles of incorporation, articles of association, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(9) *Control.* The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(10) *Corporation.* The term "Corporation" refers to the Federal Savings and Loan Insurance Corporation.

(11) *Dealer.* The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(12) *Director.* The term "director" means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(13) *Eligibility record date.* The term "eligibility record date" means the record date for determining eligible account holders of a converting institution.

(14) *Eligible account holder.* The term "eligible account holder" means any person holding a savings account in a converting institution on the eligibility record date.

(15) *Employee.* The term "employee" does not include a director or officer.

(16) *"Entitlement shares" and "additional entitlement shares".* The term "entitlement shares" refers to the shares of capital stock which an eligible account holder is entitled to purchase on the basis of qualifying deposits as determined in accordance with § 563b.3(c). The term "additional entitlement shares" refers to the up to four additional shares of capital stock which an eligible account holder may be entitled to purchase under § 563b.3(d)(3).

(17) *Equity security.* The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such security; or any such warrant or right.

(18) *Insured institution.* The term "insured institution" has the same meaning as in § 561.1 of this subchapter.

(19) *Material.* The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant, or matters as to which an average prudent association member ought reasonably to be informed in voting upon the plan of conversion of the applicant.

(20) *Member.* The term "member" means any person qualifying as a mem-

ber of an insured institution pursuant to its charter or bylaws.

(21) *Offer.* The term "offer", "offer to sell", or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(22) *Officer.* The term "officer" means the chairman of the board, president, vice-president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(23) *Person.* The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(24) *Proxy.* The term "proxy" includes every form of authorization by which a person is, or may be deemed to be, designated to act for an association member in the exercise of his voting rights in the affairs of an insured institution. Such an authorization may take the form of failure to dissent or object.

(25) *Purchase.* The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(26) *Sale.* The terms "sale" and "sell" include every contract to sell or otherwise dispose of a security or interest in a security for value.

(27) *Savings account.* The term "savings account" has the same meaning as in § 561.11 of this subchapter and includes certificates of deposit.

(28) *Security.* The term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

(29) *Solicitation; solicit.* The terms "solicitation" and "solicit" refer to (i) any request for a proxy whether or not accompanied by or included in a form of proxy; (ii) any request to execute, not execute, or revoke a proxy; or (iii) the furnishing of a form of proxy or other communication to association members under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. The terms do not apply, however, to the furnishing of a form of proxy to an association member upon the unsolicited request of such association member, the performance of acts required by § 563b.5 (f), or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

(30) *Subscription offering.* The term "subscription offering" refers to the offering of nontransferable rights to purchase shares of capital stock to eligible account holders as required by § 563b.3 (c) (2). The term includes the shares offered for purchase by eligible account holders, other account holders, borrowing members, directors, officers and employees as permitted by § 563b.3(d) (3), (4) and (5).

(31) *Subsidiary.* A "subsidiary" of a specified person is an affiliate controlled by such person, directly or indirectly through one or more intermediaries.

(32) *Supervisory Agent.* The term "Supervisory Agent" means (i) the President of the Bank of the Federal Home Loan Bank district in which the applicant has its principal office, or (ii) any other person who is specifically designated as an agent by the Corporation to act in its behalf in the administration of this part.

(33) *Underwriter.* The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which he is the underwriter.

(b) Terms defined in other parts of this subchapter, when used in this part, shall have the meanings given in such definitions, to the extent such definitions are not inconsistent with the definitions contained in this part, unless the context otherwise requires.

§ 563b.3 General principles for conversions.

(a) *Findings of Federal Home Loan Bank Board.* (1) The regulations contained in this part are promulgated to provide rules by which mutual insured institutions may convert to the stock form of organization on an equitable basis. In determining the equity of conversion standards and procedures, the Board, both directly and as operating head of the Corporation, finds that it is necessary to consider the effects of various standards and procedures that might be adopted, not only on an individual applicant but also on the entire system of insured institutions. Indeed, the Board believes that it has a public responsibility also to consider the effects on financial institutions which are not thrift institutions and on thrift institutions which are not subject to the Board's regulatory jurisdiction. If a particular method of conversion would unacceptably threaten the financial stability of such institutions, or a substantial portion of them, the Board cannot consider such method of conversion to be on an equitable basis. Further, if a particular method of conversion would tend to force individual mutual insured institutions to convert to the stock form irrespective of whether such institutions or the communities they serve would be benefited thereby, the Board cannot consider such a method of conversion to be on an equitable basis.

(2) The Board has determined that a method of conversion which provides a so-called "windfall" distribution to the account holders of a converting mutual insured institution would create strong incentives for significant shifts of savings funds among insured institutions and other financial institutions and that such shifts of savings funds would unacceptably threaten the financial stability of such institutions. The Board has also determined that a method of conversion which provides a so-called "windfall" distribution would tend to force individual mutual insured institutions to convert to the stock form irrespective of whether such institutions or the communities they serve would be benefited thereby. The Board therefore finds that no method of conversion can be considered equitable unless such "windfall" distribution is virtually eliminated. The Board further finds that such "windfall" distribution is not virtually eliminated by methods of conversion under which the control of such distribution is intended to be effected by systems of averaging or weighting deposits, by restricting transferability of the capital stock of converted insured institutions, by placing such stock in escrow or trust, by delayed distribution of such stock or its equivalent in cash by placing such stock in escrow or trust, by delayed distribution of such stock or its equivalent in cash, or by segregating the net worth accounts of converted insured institutions and proportionally allocating the future income of such institutions to such accounts, or by any of the foregoing methods taken in combination. The Board also finds that, in order for conversion regulations to be effective against the undesirable results of such "windfall" distributions, such regulations must be as uniformly applicable as possible to mutual insured institutions on a national scale.

(3) The regulations contained in this part, while providing the account holder with rights to a share in the equity of the converting mutual insured institution in the event of a subsequent complete liquidation, are designed virtually to eliminate the "windfall" aspect of conversion and the resulting disruptive effect on the economy. Accordingly, the Board finds that these regulations provide a means by which mutual insured institutions may convert to stock form on an equitable basis.

(b) *General requirements.* No application for preliminary approval of conversion shall be approved by the Corporation if—

(1) The plan of conversion adopted by the applicant's board of directors is not in accordance with the provisions of this section;

(2) The conversion would result in any reduction of the Federal insurance reserve or would cause the applicant to

fail to meet any net worth requirement of § 563b.13 of this subchapter;

(3) The conversion may result in a taxable reorganization of the applicant under the Internal Revenue Code of 1954, as amended; or

(4) The converted institution would not have its accounts insured by the Corporation.

(c) *Required provisions in plan of conversion.* The plan of conversion shall:

(1) Provide that the converting insured institution shall issue and sell shares of its capital stock at a total price equal to the estimated pro forma market value of such shares in the converted insured institution, based on an independent valuation, as provided in § 563b.7, less any discount permitted under the plan pursuant to paragraph (d) of this section.

(2) Provide that each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase his entitlement shares at a subscription price per share equal to the price determined in accordance with § 563b.7, less any discount permitted under the plan pursuant to paragraph (d) of this section.

(3) Provide that all entitlement shares not purchased upon exercise of such subscription rights shall be sold to eligible account holders and others at the price determined in accordance with § 563b.7, less any discount permitted under the plan pursuant to paragraph (d) of this section; and specify the underwriting or other marketing arrangements to be made to assure the sale of all unsubscribed entitlement shares.

(4) Provide that each savings account holder of the converting insured institution shall receive, without payment, a withdrawable savings account or accounts in the converted insured institution equal in withdrawable amount to the withdrawal value of such account holder's savings account or accounts in the converting insured institution.

(5) Provide that a portion of the net worth of the converted insured institution shall be reserved on its books as a liquidation account for the benefit of eligible account holders in the event of a subsequent complete liquidation of the converted insured institution, in accordance with the provisions of paragraph (f) of this section.

(6) Provide for an eligibility record date, which shall be not less than 90 days prior to the date of adoption of the plan by the converting insured institution's board of directors.

(7) Provide that the holders of the capital stock of the converted insured institution shall have exclusive voting rights, unless State law requires savings account holders and/or borrowers of the converted insured institution to have voting rights, in which case the charter of the converted insured institution shall (i) limit such voting rights to the minimum required by State law, and (ii) provide for the management of the converted insured institution to solicit proxies from such savings account holders and/or borrowers in the same manner as it solicits proxies from its shareholders.

(8) Provide that the plan of conversion adopted by the applicant's board of directors may be substantively amended by such board of directors as a result of comments from regulatory authorities or otherwise prior to the meeting of members to vote on the plan; and that the conversion may be terminated by such board of directors at any time prior to final approval by the Corporation and at any time thereafter with the concurrence of the Corporation.

(9) Contain no provision which the Corporation shall determine to be inequitable or detrimental to the applicant, its savings account holders or other insured institutions or to be contrary to the public interest.

(d) *Optional provisions in plan of conversion.* The plan of conversion may provide any or all of the following:

(1) That each eligible account holder exercising subscription rights to purchase entitlement shares and additional entitlement shares shall be required to purchase up to a minimum of 25 shares to the extent such shares are available (but the aggregate price for any minimum share purchase shall not exceed $500).

(2) That eligible account holders exercising subscription rights to purchase their entitlement shares shall receive a discount of not more than 10 percent of the price fixed in accordance with § 536b.7, subject to a restriction that such shares shall not be sold or otherwise transferred for a period of not less than six months following the date of purchase, except in the event of death of the shareholder.

(3) That each eligible account holder shall also receive, without payment, nontransferable subscription rights to purchase his additional entitlement shares to the extent that such shares are available out of the unsubscribed entitlement shares, subject to the following conditions:

(i) The number of additional entitlement shares for each such account holder shall not exceed four shares for each entitlement share which such account holder is entitled to purchase or such number of shares so that his total subscription (including entitlement shares) would equal 100 shares;

(ii) The purchase price (after any discount) for additional entitlement shares shall not be less than the purchase price for entitlement shares under subdivision (2) of this paragraph; and

(iii) If additional entitlement shares are to be purchased at a discount, such shares shall be subject to the restriction that such shares shall not be sold or otherwise transferred for a period of not less than six months following the date of purchase, except in the event of death of the shareholder.

(4) That eligible account holders, other savings account holders and borrowing members of the converting insured institution, as part of the subscription offering, shall be entitled to purchase all remaining unsubscribed entitlement shares not purchased by eligible account holders under subdivision (3) of this paragraph, at the price per share fixed in accordance with § 563b.7 without any discount; that the converting insured institution shall allocate such shares on an equitable basis, such as by relating such allocation to the qualifying or other deposits of account holders, or by allocating the same number of shares to each borrowing member or the number of shares based on loan balance; and that any such allocation may be subject to a reasonable limitation on the amount of shares which may be purchased by any person.

(5) That directors, officers, and employees of the converting insured institution, as part of the subscription offering, shall be entitled to purchase any remaining unsubscribed entitlement shares not purchased by eligible account holders, other account holders and borrowing members under paragraph (d) (3) and (4) of this section subject to the following conditions:

(i) The number of such shares shall not exceed 20 percent of the total number of entitlement shares in the case of a converting insured institution with total assets of less than $50 million or 10 percent in the case of a converting insured institution with total assets of $500 million or more; in the case of a converting insured institution with total assets of $50 million or more but less than $500 million, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, 15 percent in the case of a converting insured institution with total assets of approximately $275 million).

(ii) The purchase price for such shares (after any discount) shall not be less than the purchase price under paragraph (d) (2) or (3) of this section;

(iii) All shares purchased by directors and officers at a discount under this subparagraph (5) or under paragraph (d) (2) or (3) of this section and all shares purchased by employees at a discount under this subparagraph (5) shall be subject to the restriction that such shares shall not be sold or otherwise transferred for a period of not less than two years following the date of purchase, except in the event of death of the shareholder; and

(iv) The shares shall be allocated among directors, officers and other employees on an equitable basis such as by giving weight to period of service, compensation and position, subject to a reasonable limitation on the amount of shares which may be purchased by any person.

(6) That management employment contracts may be authorized and a qualified stock option plan may be adopted at the meeting at which the plan of conversion is voted upon by the members of the converting institution.

(7) That the converting insured institution shall issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity se-

curities, in which event any reference in the provisions of this part to capital stock shall apply to such units of equity securities unless the context otherwise requires.

(e) *Determination of purchase rights.* (1) The number of entitlement shares which an eligible account holder shall have a right to purchase under paragraph (c)(2) of this section shall be determined by multiplying the total number of shares of capital stock in the converted insured institution to be issued by a fraction of which the numerator is the amount of the qualifying deposit in each savings account held by the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting insured institution.

(2) Any fractional share resulting from the computation described in paragraph (e)(1) of this section shall be rounded up to the next whole share.

(3) Unless otherwise provided in the plan of conversion, for the purposes of this paragraph and paragraph (f) of this section, the amount of the qualifying deposit of an eligible account holder shall be the total of the deposit balances in the eligible account holder's savings accounts in the converting institution as of the close of business on the eligibility record date. However, the plan of conversion may provide that any one or more of the following optional provisions shall apply in determining the amount of the qualifying deposit:

(i) Any savings accounts with total deposit balances of less than 100 (or any lesser amount) shall not constitute a qualifying deposit.

(ii) The amount of the qualifying deposit shall be the average of the total of the deposit balances in the eligible account holder's savings accounts as of the close of business on the eligibility record date and not more than four of the previous quarterly earnings distribution dates.

(iii) If the total of the deposit balances in the eligible account holder's savings accounts as of the close of business on the date of adoption of the plan of conversion by the institution's board of directors is less than the total of the deposit balances on the eligibility record date (or the average of the total of the deposit balances determined in accordance with subdivision (ii) of this subparagraph), the amount of the qualifying deposit shall be the total of the deposit balances (if any) as of the close of business on the date of adoption of the plan.

(4) As used in this paragraph and in paragraph (f) of this section, the term "savings account" includes a predecessor or successor account of a given savings account which is held only in the same right and capacity and on the same terms and conditions as the given savings account. However, the plan of conversion may provide for lesser requirements for consideration as a predecessor or successor account.

(f) *Liquidation account.* (1) Each converted insured institution shall, as of the date of conversion, establish a liquidation account by reserving on its books a portion of its net worth in an amount equal to the amount of net worth of the converting insured institution as of the latest practicable date prior to conversion. For the purposes of this subparagraph, the insured institution may use the net worth figure set forth in its latest balance sheet contained in the proxy statement.

(2) The liquidation account shall be maintained by the converted insured institution for the benefit of eligible account holders who maintain their savings accounts in such institution, and no losses shall be charged against such liquidation account unless all other net worth accounts have first been exhausted. Each such eligible account holder shall, with respect to each savings account held, have a related inchoate interest in a portion of the liquidation account balance.

(3) In the event of a complete liquidation of the converted insured institution (and only in such event), each eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted liquidation account balance related to each savings account then held, before any liquidation distribution may be made with respect to capital stock. No merger, consolidation, purchase of bulk assets with assumption of savings accounts and other liabilities, or similar transaction, in which the converted institution is not the surviving institution, is considered to be a complete liquidation for this purpose.

(4) The initial liquidation account balance related to a savings account held by an eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposit in the related savings account and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting insured institution. Such initial related liquidation account balance shall not be increased, and it shall be subject to downward adjustment as provided in paragraph (f)(5) of this section.

(5) If the deposit balance in any savings account of an eligible account holder at the close of business on any annual closing date subsequent to the eligibility record date is less than the lesser of (i) the deposit balance in such account at the close of business on any other annual closing date subsequent to the eligibility record date or (ii) the amount of the qualifying deposit in such account, the related liquidation account balance shall be adjusted by reducing such liquidation account balance in an amount proportionate to the reduction in such deposit balance. In the event of such a downward adjustment, the related liquidation account balance, shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related savings account. If any such savings account is closed, the related liquidation account balance shall be reduced to zero.

(g) *Restrictions on repurchase of stock and payment of dividends.* Any approval of a conversion by the Corporation under this part shall be subject to the following conditions:

(1) No converted insured institution shall repurchase any of its capital stock from any director, officer, former director or officer, or associate thereof, except in the case of an offer to repurchase on a pro rata basis made to all shareholders of such institution.

(2) No converted insured institution shall declare or pay a cash dividend on, or repurchase, any of its capital stock if the effect thereof would cause the net worth of the converted institution to be reduced below (i) the amount required for the liquidation account or (ii) the net worth requirements contained in § 563.13(b) of this subchapter.

(3) Without the prior approval of the Corporation, no converted insured institution shall, for a period of 10 years after the date of its conversion, declare or pay a cash dividend on its capital stock in an amount in excess of the greater of:

(i) The net earnings of such institution for the current fiscal year; or

(ii) The average of the net earnings of such institution for the current fiscal year and not more than two of the immediately preceding fiscal years.

(h) *Manipulative and deceptive devices.* In the offer, sale or purchase of securities issued incident to its conversion, no insured institution, or any director, officer or employee thereof, shall (1) employ any device, scheme, or artifice to defraud, or (2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

§ 563b.4 Notice of filing; public statements; confidentiality.

(a) *Information prior to preliminary approval of plan of conversion.* (1) An insured institution which is considering converting pursuant to this part and its directors, officers and employees shall maintain such consideration in confidence to the extent consistent with the need to prepare information for filing an application for preliminary approval. If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant.

(2) Promptly after the adoption of a plan of conversion by its board of directors, the insured institution shall (i) notify its members of such action by publishing a statement in a newspaper

having general circulation in each community in which an office of the insured institution is located and/or by mailing a letter to each of its members and (ii) have copies of the adopted plan of conversion available for inspection by its members at each office of the insured institution. The insured institution may also issue a press release with respect to such action. Copies of the proposed statement, letter and press release are not required to be filed with the Corporation, but may be submitted for comment to the Office of General Counsel. Copies of the definitive statement, letter and press release shall be filed with the Corporation as part of the application for preliminary approval.

(3) The statement, letter and press release, unless otherwise authorized by the Corporation shall contain only (but need not contain all of) the following:

(i) A statement that the board of directors has adopted a proposed plan to convert the insured institution from a Federal (or State, as the case may be) mutual association to a State-chartered stock association;

(ii) A statement that the proposed plan of conversion must be approved by at least a majority of the votes eligible to be cast by association members at a meeting at which the plan will be submitted for their approval;

(iii) A statement that existing proxies held with respect to voting rights in the insured institution will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion;

(iv) A statement that a proxy statement setting forth more detailed information with respect to the proposed plan of conversion will be sent to association members prior to the meeting of members;

(v) A statement that the proposed plan of conversion is subject to approval by the Federal Home Loan Bank Board and by the appropriate State regulatory authority or authorities (naming such an authority or authorities) before such plan can become effective;

(vi) A statement that the proposed plan of conversion is contingent upon obtaining favorable tax rulings from the Internal Revenue Service or an appropriate tax opinion;

(vii) A statement that there is no assurance that the approval of the Federal Home Loan Bank Board or the approval of the appropriate State authority or authorities will be obtained, and also no assurance that the favorable tax rulings or tax opinion will be received;

(viii) The proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

(ix) A brief description of the proposed plan of conversion;

(x) The par value (if any) and approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion;

(xi) A brief statement as to the extent to which directors, officers and employees will participate in the conversion;

(xii) A statement that savings account holders will continue to hold accounts in the converted insured institution identical as to dollar amount, rate of return and general terms, and that their accounts will continue to be insured by the Federal Savings and Loan Insurance Corporation;

(xiii) A statement that the insured institution will continue to be a member of the Federal Home Loan Bank System;

(xiv) A statement that borrowers' loans will be unaffected by conversion, and that the amount, rate, maturity, security and other conditions will remain contractually fixed as they existed prior to conversion;

(xv) A statement that the normal business of the insured institution in accepting savings and making loans will continue without interruption; that the converted insured institution will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

(xvi) A statement that the proposed plan of conversion may be substantively amended by the board of directors as a result of comments from the regulatory authorities or otherwise prior to the meeting, and that the proposed plan may also be terminated by the board of directors; and

(xvii) A statement that questions of members will be answered in the proxy material to be sent after the regulatory approvals of the proposed plan of conversion have been obtained and that any questions at this time may be answered by telephoning or writing to the insured institution.

(4) Such statement, letter and press release shall not in any manner solicit proxies, include financial statements, or describe the benefits of conversion or the value of the capital stock of the insured institution upon conversion. In replying to inquiries, the insured institution should limit its answers to the matters listed in paragraph (a)(3) of this section.

(b) *Notice of filing.* (1) Upon determination that an application for preliminary approval is properly executed and is not materially incomplete, the Corporation will advise the applicant, in writing, to publish a notice of the filing of such application. Promptly after receipt of such advice, the applicant shall publish a notice of such filing in a newspaper printed in the English language and having general circulation in each community in which an office of the applicant is located, as follows:

NOTICE OF FILING OF APPLICATION FOR PRELIMINARY APPROVAL TO CONVERT TO A STOCK SAVINGS AND LOAN ASSOCIATION

Notice is hereby given that, pursuant to Part 563b of the Rules and Regulations for Insurance of Accounts _____

_____

(fill in name of applicant)

has filed an application with the Federal Savings and Loan Insurance Corporation for preliminary approval to convert to the stock form of organization. Copies of the application have been delivered to the Office of the Secretary of said Corporation, 101 Indiana Avenue, NW., Washington, D.C. 20552 and to the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of _____

_____, _____, _____

(Street address) (City) (State)

_____

(Zip code)

Written comments from any member of the applicant will be considered by the Corporation if filed within ten business days after the date of this publication. Three copies of such comments should be sent to the aforementioned Office of the Secretary with one copy to said Office of the Supervisory Agent. The proposed plan of conversion and any comments thereon will be available for inspection by any member of the applicant at said Office of the Secretary and at said Office of the Supervisory Agent. A copy of the plan may also be inspected at each office of the applicant.

If a signficant number of the applicant's members speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of such notice shall also be published in such newspaper.

(2) Promptly after publication of the notice or notices prescribed in paragraph (6)(1) of this section, the applicant shall file four copies thereof with the Corporation accompanied by an affidavit of publication from each publisher.

(c) *Confidential information.* Should the applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or a part of any exhibit included in any application under this part, such information pertaining to such item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which such information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this part shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the Corporation determines to withhold from public availability under 5 U.S.C. 552 and part 505 of this chapter. The Corporation will withhold the public availability of preliminary copies of proxy soliciting materials without the necessity of their being bound and labeled as "confidential". The applicant will be advised of any decision by the Corporation to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, to the extent it deems necessary the Corporation may comment on such confidential submissions in any public statement in connection with its decision on the application without prior notice to the applicant.

§ 563b.5 Solicitation of proxies; proxy statement.

(a) *Solicitations to which rules apply.* This section applies to every solicitation of a proxy from an association member of an insured institution for the meeting at which a conversion plan will be voted upon, except the following:

(1) Any solicitation made otherwise than on behalf of the management of the insured institution where the total number of persons solicited is not more than 50;

(2) Any solicitation through the medium of a newspaper advertisement which informs association members, following preliminary approval of the plan of conversion, of a source from which they may obtain copies of a proxy statement, form of proxy, or any other soliciting material and does no more than (i) name the insured institution, (ii) state the reason for the advertisement, (iii) identify the proposal or proposals to be acted upon by association members, and (iv) urge the member to vote at the meeting.

(b) *Use of proxy soliciting material to be authorized.* No proxy soliciting material required to be filed with the Corporation prior to use shall be furnished to association members or otherwise released for distribution until the use of such material has been authorized in writing by the Corporation.

(c) *Information to be furnished association members.* No solicitation subject to this section shall be made unless each person solicited is concurrently furnished, or has previously been furnished, a written proxy statement the use of which has been authorized by the Corporation.

(d) *Requirements as to proxy.* (1) The form of proxy (i) shall indicate in bold face type whether the proxy is solicited on behalf of the management, (ii) shall provide specifically designated blank spaces for dating and signing the proxy, (iii) shall identify clearly and impartially each matter or group of releated matters intended to be acted upon, (iv) shall be clearly labeled "Revocable Proxy" in bold face type (at least as large as 18 point), (v) shall describe any charter or State law requirement restricting or conditioning voting by proxy, (vi) shall contain an acknowledgement by the person giving the proxy that he has received a proxy statement prior to signing the form of proxy, (vii) shall contain the date, time and place of meeting, if practicable, and (viii) shall provide by a box or otherwise, a means whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter referred to therein as intended to be acted upon, and (ix) shall indicate in bold face type how the proxy shall be voted on each such matter to which no choice is so specified.

(2) No proxy subject to this section shall confer authority to vote at any meeting other than the meeting (or any adjournment thereof) to vote on conversion. A proxy may be deemed to confer authority to vote with respect to matters incident to the conduct of such meeting. If the plan of conversion is considered at an annual meeting, existing proxies may be voted with respect to matters not related to the plan of conversion.

(3) The proxy statement or form of proxy shall provide that the votes represented by the proxy will be voted; that, where the person solicited specifies by means of a ballot provided pursuant to subparagraph (1)(viii) above a choice with respect to any matter to be acted upon, the votes will be voted in accordance with the specifications so made; and that if no choice is so specified, the votes will be cast as indicated in bold face type on the form of proxy.

(e) *Material required to be filed.* (1) Applicants shall file preliminary copies of such proxy materials as are required by the form for applying for preliminary approval to convert under this part.

(2) Ten preliminary copies of any additional soliciting material subject to this section including soliciting material in the form of press releases, and radio or television scripts, to be used or furnished to association members subsequent to furnishing the proxy statement, shall be filed with the Corporation at least five business days prior to the date on which the Corporation is requested to authorize the use of such material. Speeches may, but need not be, filed with the Corporation prior to use.

(3) Twenty-five copies of the proxy statement and ten copies of the form of proxy and all other soliciting material, in the form in which such material is furnished to association members, shall be filed with or mailed for filing to the Corporation not later than the date such material is first sent or given to association members. All materials filed pursuant to this subparagraph (3) shall be accompanied by a statement of the date on which copies of such materials are to be released to association members.

(4) If the solicitation is to be made in whole or in part by personal solicitation, ten preliminary copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is to be furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the Corporation at least five business days prior to the date on which the Corporation is requested to authorize the use of such material.

(5) All preliminary copies of material filed pursuant to paragraph (e)(1), (2) and (4) of this section shall be clearly marked on the cover page "Preliminary Copy." Such preliminary copies shall be for the information of the Corporation only and shall not be deemed available for public inspection except that such material may be disclosed to any department or agency of the United States Government or appropriate State Government and the Corporation may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Corporation.

(6) Unless requested by the Corporation, copies of replies to inquiries from members of the insured institution and copies of communications which do not more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this paragraph (e).

(7) Where any proxy statement, form of proxy or other material filed pursuant to this paragraph (e) is amended or revised, four copies of such amended or revised material filed with the Corporation shall be marked to indicate clearly and precisely the changes effected therein subsequent to the last prior filing.

(f) *Mailing communications for association members.* If the management of the applicant has adopted a plan of conversion, the applicant shall perform such of the following acts as may be duly requested in writing with respect to a matter to be considered at the meeting to vote on the plan of conversion by any association member who will defray the reasonable expenses to be incurred by the applicant in the performance of the act or acts requested.

(1) The applicant shall mail or otherwise furnish to such association member the following information as promptly as practicable after the receipt of such request:

(i) A statement of the approximate number of association members who have been or are to be solicited on behalf of the management, or any group of such holders which the association member shall designate.

(ii) An estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to such association members.

(2) (i) Copies of any proxy statement, form of proxy or other communication furnished by the association member and as approved by the Corporation shall be mailed by the applicant to such of the association members specified in paragraph (F)(1)(i) of this section as the association member shall designate.

(ii) Any such material which is furnished by the association member shall be mailed with reasonable promptness by the applicant after receipt of the material to be mailed, envelopes or other containers therefor and postage or payment for postage.

(iii) Neither the management nor the applicant shall be responsible for such proxy statement, form of proxy or other communication.

(g) *False or misleading statements.* (1) No solicitation of a proxy by the applicant, its management, or any other person for the meeting to vote on conversion shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or mis-

leading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for such meeting which has become false or misleading.

(2) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Corporation and authorized for use shall not be deemed a finding by the Corporation that such material is accurate or complete or not false or misleading, or that the Corporation has passed upon the merits of or approved any proposal contained therein. No representation contrary to the foregoing shall be made by any person.

(3) If a solicitation by management violates any provision of this section, the Corporation may require remedial measures including:

(i) Correction of any such violation by means of a retraction and new solicitation;

(ii) Rescheduling of the meeting for a vote on the conversion;

(iii) Withholding final approval of the conversion; and

(iv) Any other actions the Corporation may deem appropriate in the circumstances in order to ensure a fair vote.

(h) *Prohibition of certain solicitations.* No person soliciting a proxy from an association member for the meeting to vote on conversion shall solicit:

(1) Any undated or post-dated proxy; or

(2) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the association members; or

(3) Any proxy which is not revocable at will by the association member giving it; or

(4) Any proxy which is part of any other document or instrument (such as an account card).

§ 563b.6 Vote by members; application for final approval.

(a) *Vote at special meeting.* Following Corporation approval of an application for preliminary approval, the plan shall be submitted to a special meeting of members, unless State law requires that the plan be considered at an annual meeting of members.

(b) *Determining members eligible to vote.* The record date for determining those members eligible to vote at the meeting called to consider a plan of conversion shall be not more than 50 nor less than 20 days prior to the date of such meeting, unless State law requires a different voting record date.

(c) *Notice to members.* Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the Corporation which notice shall be given not more than 45 nor less than 20 days prior to the date of the meeting to each association member and each eligible account holder, postage prepaid, at his last address as shown on the books of the applicant, unless State law requires a different notice period.

(d) *Required vote.* The plan shall be approved by a vote of at least a majority of the total outstanding votes of the association members, unless State law requires a higher percentage, in which case the higher percentage shall be used. Voting may be in person or by proxy.

(e) *Application for final approval.* (1) Upon approval by the association members of the plan of conversion in accordance with the vote required by paragraph (d) of this section, the applicant shall submit to the Corporation an application for final approval of the plan of conversion on the appropriate form prescribed by the Corporation, as soon as practicable after the meeting.

(2) No plan of conversion under this part shall be implemented following approval of the plan by the members, unless an application for final approval shall have been approved by the Corporation.

(3) Approval by the Corporation of the application for final approval terminates the Federal charter of an applicant effective upon the issuance to it of a stock charter under the laws of the State in which the home office of the applicant is located. Such Federal charter shall promptly be surrendered to the Board for cancellation.

(4) Every applicant under this part shall promptly file with the Corporation a copy of the stock charter issued to it. The savings accounts of the converted insured institution shall be insured to the same extent and in the same manner as the savings accounts of the converting insured institution. The certificate of insurance of the converting insured institution shall promptly be surrendered to the Corporation for cancellation, and the Corporation shall promptly issue a new certificate of insurance to the converted insured institution.

§ 563b.7 Pricing and sale of securities.

(a) *General.* No sale or distribution of securities of the applicant pursuant to the plan of conversion may be made prior to final approval of the plan pursuant to § 563b.6. No offer to sell such securities may be made prior to preliminary approval of the plan of conversion by the Corporation. This paragraph shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with the applicant.

(b) *Distribution of offering materials.* The proxy statement authorized for use by the Corporation, or any preliminary offering circular for the subscription offering which has been filed with the Corporation, may be distributed to eligible account holders not entitled to vote on the plan of conversion and to others in connection with the subscription offering at the same time as or after such proxy statement is mailed to association members pursuant to § 563b.6(c). Any preliminary offering circular for the public or other offering of unsubscribed shares, which has been filed with the Corporation, may be distributed in connection with such offering at the same time as or after such proxy statement is mailed to association members pursuant to § 563b.6(c). No final offering circular for the subscription offering or final offering circular for the public or other offering shall be distributed unless the use thereof has been authorized by the Corporation.

(c) *Estimated price information in proxy statements and preliminary offering circulars.* With respect to the capital stock of the applicant to be sold under the plan of conversion, the proxy statement and any preliminary offering circular for the subscription offering shall set forth (1) an estimated subscription price or prices or subscription price range or ranges and (2) an estimated public or other offering price or price range. The proxy statement and any such preliminary offering circular shall separately indicate any different estimated subscription prices or price ranges that may be available to different classes of persons under the terms of the plan of conversion relating to discounts. Whenever a price range is used, the maximum of such price range should normally be no more than 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no more than 15 percent below such average.

(d) *Price information in offering circulars and order forms.* (1) In the application for final approval, the applicant shall fix a maximum subscription price or prices and a maximum public offering or other price to be stated in the offering circular for the subscription offering. The maximum public or other offering price should normally be no more than $50 per share and should normally be not less than $10 per share.

(2) The maximum subscription price or prices shall be stated in the order forms, and shall be the amount to be paid when the order forms described in paragraph (h) of this section are returned. If the actual public or other offering price is less than the maximum public or other offering price stated in the offering circular for the subscription offering, the subscription offering price or prices shall be correspondingly reduced to maintain the specified discount and the difference shall be refunded to those who have paid the maximum subscription price or prices. However, if the actual subscription price is more than 25 percent less than the maximum subscription price, previously returned order forms shall not be binding and a resolicitation through new order forms shall be required.

(e) *Prohibited representations.* The Corporation will review the price information required under paragraphs (c) and (d) of this section in determining whether to give preliminary and final approval to plans of conversion. No representations may be made in any manner that such price information has been approved by the Corporation or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the Federal Home Loan Bank Board or the Corpora-

tion or that the Board or the Corporation has passed upon the accuracy or adequacy of any offering circular covering such shares.

(f) *Underwriting expenses.* Underwriting discounts and commissions shall not exceed an amount or percentage per share acceptable to the Corporation. No underwriting discounts or commissions shall be allowed or paid with respect to shares of capital stock sold in the subscription offering.

(g) *Pricing materials.* (1) In considering the pricing information required under paragraph (c) and (d) of this section, the Corporation will apply the following guidelines to the materials in support of such price ranges and prices:

(i) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the Corporation;

(ii) The materials shall contain data which are sufficient to support the conclusions reached therein;

(iii) The materials shall contain a complete and detailed description of the appraisal methodology employed; and

(iv) To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock associations, the materials must demonstrate the appropriate comparability of the form and substance of such outstanding capital stock and the appropriate comparability of such existing stock associations in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

(2) In addition to the information required in paragraph (g)(1) of this section, the applicant shall submit information demonstrating to the satisfaction of the Corporation the independence and expertise of any person preparing materials under this paragraph. However, a person will not be considered as lacking independence for the reason that such person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with such appraisal.

(h) *Order forms for purchase of capital stock.* (1) Upon approval by the Corporation of the application for final approval, the applicant shall distribute order forms for the purchase of shares of capital stock in the subscription offering to all eligible account holders and other persons who may subscribe for such shares under the plan of conversion.

(2) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering and a set of detailed instructions explaining how to properly complete such order forms.

(3) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear and intelligible a manner as possible, the actions which are required or available to him with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

(i) Indicate the number of entitlement shares and the number of additional entitlement shares for purchase by the eligible account holder, and indicate separately other subscription rights which are available to eligible account holders and to other persons who may subscribe for capital stock under the plan of conversion. If there are several different types of subscription rights under the plan of conversion so that their inclusion on a single order form would cause it to be too complex, the applicant may wish, and the Corporation may require, the distribution of different order forms to different classes of persons who may subscribe;

(ii) Indicate the period of time within which the subscription rights must be exercised, which period of time shall not be less than 20 days following the date of the mailing of the order form;

(iii) State the maximum subscription price or prices per share of capital stock;

(iv) Indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(v) Provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder or other person wishes to purchase;

(vi) Indicate that payment may be made by cash if delivered in person or by check or by withdrawal from an account holder's passbook savings account or certificate of deposit without penalty. If payment is to be made by such withdrawal, a box to check should be provided;

(vii) Provide specifically designated blank spaces for dating and signing the order form;

(viii) Contain an acknowledgement by the eligible account holder or other person signing the order form that he has received the final offering circular for the subscription offering prior to so signing; and

(ix) Indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights will become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or places to which the order forms are to be returned and when the applicant will consider order forms received, such as by date and time of actual receipt in the applicant's offices or by date and time of postmark.

(4) The order form may provide that it may not be modified without the applicant's consent after its receipt by the applicant. If payment is to be made by withdrawal from a passbook savings account or certificate of deposit, the applicant may, but need not, cause such withdrawal to be made upon receipt of the order form. If such withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the amount withdrawn as if such amount had remained in the account from which it was withdrawn until such closing date.

(i) *Withdrawal from certificate accounts.* Notwithstanding any regulatory provision regarding penalties for early withdrawal from certificate accounts and minimum qualifying balances for such accounts, the applicant may allow payment for capital stock during the subscription period by withdrawal from a certificate account without the assessment of such penalties or causing the rate of return on the remaining balance in such account to be paid at less than the rate applicable to such account prior to such withdrawal, except that such certificate account may not be renewed at a certificate rate unless a minimum qualifying balance is restored at the time of such renewal.

(j) *Direct payment of discount.* If (1) a small number of eligible account holders under the applicant's plan of conversion reside in a State; (2) the offer of subscription rights to such account holders would require the applicant, under the laws of such State, to register as a broker or dealer or to satisfy other qualification standards; (3) such registration or the satisfaction of such standards would be impracticable for reasons of cost or otherwise; and (4) the applicant's plan of conversion provides for a discount to such eligible account holders on their entitlement shares, the applicant may sell the subscription rights to such entitlement shares and remit the amount of the discount to such eligible account holders. If the applicant acts in accordance with the foregoing sentence, the applicant may not offer any other subscription rights to such eligible account holders.

(k) *Period for completion of sale.* The sale of all shares of capital stock of the converted insured institution to be made under the plan of conversion, including any sale by a public or other offering, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period.

§ 563b.8 Procedural requirements.

(a) (1) *Preliminary approval.* An applicant that desires to convert in accordance with this part shall file ten copies of an application for preliminary approval on forms prescribed by the Corporation. Copies of such forms may be obtained from any Federal Home Loan Bank or the Office of the Secretary of the Board.

(2) *Approval of members.* The plan of conversion shall not be submitted to a vote of the members in accordance with section 563b.6, until the Corporation has given preliminary approval of the plan of conversion.

(3) *Final approval.* After approval by association members of a plan of conversion, an applicant that desires to convert shall file ten copies of an application for final approval in accordance with section 563b.6 on forms prescribed by the Corporation. Copies of such forms may be obtained from any Federal Home Loan Bank or the Office of the Secretary of the Board.

(b) *Return of improperly executed or materially incomplete filings.* Any application for preliminary approval that is

improperly executed, or that does not contain copies of a (i) plan of conversion, (ii) preliminary proxy statement with signed financial statements, (iii) preliminary form of proxy, and (iv) preliminary offering circular for use in the subscription offering, shall not be accepted for filing and shall be returned to the applicant. Any application for preliminary approval containing a materially incomplete plan of conversion, proxy statement or form of proxy may be returned by the Corporation to the applicant.

(c) *Number of copies; place of filing; binding; signatures.* (1) Whenever a requirement is made under this part for the filing of four copies of any document with the Corporation, one copy shall be filed with the Supervisory Agent and three copies with the Office of the Secretary of the Board. Whenever a requirement is made under this part for the filing of ten or more copies of any document with the Corporation, three copies shall be filed with the Supervisory Agent and the remaining copies with such Office of the Secretary of the Board. Whenever a requirement is made under this part that a document to be filed be manually signed, one manually signed copy shall be filed with the Supervisory Agent and another with such Office of the Secretary. Each of the copies filed under this part shall be bound, in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

(2) At least two copies of every application and every amendment thereto filed shall be manually signed by (i) a duly authorized representative of the applicant on its behalf, (ii) its principal executive officer, (iii) its principal financial officer, (iv) its principal accounting officer, and (v) at least two-thirds of its directors.

(3) If any name is signed to an application or any amendment thereto pursuant to a power of attorney, four copies of such power of attorney, including two manually signed, shall be filed with the application.

(4) (i) Except as provided in subdivision (ii) below, the filing of any application or amendment thereto under this part shall constitute a representation of the applicant by its duly authorized representative, the applicant's principal executive officer, the applicant's principal financial officer, and the applicant's principal accounting officer, and each member of the applicant's board of directors (whether or not such director has signed the application or any amendment thereto) severally that (A) he has read such application or amendment, (B) in the opinion of each such person, he has made such examination and investigation as is necessary to enable him to express an informed opinion that such application or amendment complies to the best of his knowledge and belief with the applicable requirements of this part and forms prescribed thereunder, and (C) each such person holds such informed opinion.

(ii) The representations specified in paragraph (c) (4) (i) of this section shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if, and only to the extent that, such director files with the Corporation within 10 business days after the filing of such application or amendment a statement describing those portions of such filing as to which he does not so represent.

(d) *Requirements as to paper and printing.* (1) Applications shall be filed on good quality, unglazed, white paper approximately 8½ by 13 or 8½ by 11 inches in size, insofar as practicable. However, tables, charts, maps and financial statements may be on larger paper if folded to such sizes, and the plan of conversion, proxy statement and offering circular may be on smaller paper if the applicant so desires.

(2) Applications and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed or typewritten. However, applications or any portion thereof may be prepared by any similar process which, in the opinion of the Corporation, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(e) *Method of preparation.* Every application shall furnish information in item-and-answer form in response to the items of the appropriate form, and shall include the captions of the form, but omit the text of all items and instructions. Every proxy statement and offering circular shall present information as provided in paragraph (e) (1) of this section in response to the items of the appropriate form in lieu of furnishing the information in item-and-answer form, and shall omit the captions and text of all items and instructions. Every preliminary application shall include a cross reference sheet showing the location in the proxy statement and offering circular of the response to the items of the appropriate form. If any such item is inapplicable, or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross reference sheet.

(f) *Interpretation of requirements.* (1) Unless the context indicates otherwise, the forms require information only as to the applicant.

(2) Whenever words relate to the future, they have reference solely to present intention.

(3) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

(g) *Additional information.* In addition to the information expressly required to be included in any application under this part, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(h) *Information unknown or not reasonably available.* Information required need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

(1) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(2) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

(i) *Incorporation of certain information by reference.* (1) Where an item in an application calls for information not required to be included in the proxy statement or offering circular, matter contained in any part of the application, including exhibits, may be incorporated by reference in answer, or partial answer, to such item. No information may be incorporated by reference in a proxy statement or offering circular, unless the document containing such information is attached thereto or is summarized or outlined as provided in paragraph (j). However, an offering circular may incorporate by reference the information contained in a proxy statement previously delivered, without need of summary or outline.

(2) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the application where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(j) *Summaries or outlines of documents.* Where a summary or outline of the provisions of any document is required, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(k) *Legibility of materials.* The body of all printed plans of conversion, proxy statements, and offering circulars, including all notes to financial statements and other tabular data included therein,

shall be in roman type at least as large and as legible as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other tabular data, including tabular data in notes, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(l) *Presentation of information.* (1) The information required in a proxy statement or offering circular need not follow the order of the items or other requirements in the appropriate form. Such information shall not, however, be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Where an item requires information to be given in tabular form it shall be given in substantially the tabular form specified in the item.

(2) All information contained in a plan of conversion, proxy statement or offering circular shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in any form under this part shall be divided into reasonably short paragraphs or sections.

(3) Every proxy statement and offering circular shall include in the forepart thereof a reasonably detailed table of contents showing the subject matter of its various sections or subdivisions and the page number on which each such section or subdivision begins

(4) All information required to be included in a proxy statement or offering circular shall be clearly understandable without the necessity of referring to the particular form or to the regulations under this part. Except as to financial statements and information required in tabular form, the information set forth in a proxy statement or offering circular may be expressed in condensed or summarized form.

(5) Financial statements are to be set forth in comparative form, and shall include the notes thereto and the accountants' certificate or certificates. Section 563c.1 governs the certification, form and content of such financial statements including the basis of consolidation.

(m) *Application of amendments to regulations and forms.* (1) The form and contents of any filing under this part made after February, 1974 [date of final adoption of this part] need conform only to the applicable regulations and forms in effect, and contain the information including financial statements specified therein, at the time the filing is made, notwithstanding subsequent amendments to such regulations, except as otherwise provided in any such amendment or in paragraph (m)(2) of this section.

(2) Whenever the Corporation prohibits by order or otherwise the use of any filing under this part, the form and contents of any filing used thereafter shall conform to the requirements of such order and the applicable regulations and forms in effect at the time such prohibition ceases to be effective.

(n) *Consents of experts.* (1) If any accountant, attorney, investment banker, appraiser, or other persons whose professions give authority to a statement made in any application under this part is named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of such person shall be filed with the application. If any portion of a report of an expert is quoted or summarized as such in any filing under this part, the written consent of the expert shall expressly state that the expert consents to such quotation or summarization.

(2) All written consents filed pursuant to this paragraph (n) shall be dated and signed manually. A list of such consents shall be filed with the application. Where the consent of the expert is contained in his report, a reference shall be made in the list to the report containing such consent.

(o) *Consents of persons about to become directors.* If any person who has not signed an application is named in the proxy statement or offering circular as about to become a director, the written consent of such person shall be filed with the appropriate form.

(p) *Date of filing.* The date on which any documents are actually received by the Office of the Secretary of the Board shall be the date of filing thereof.

(q) *Amendments.* All amendments to any application under this part shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall conform to all pertinent regulations applicable to the type of application which they amend.

(r) *Pre-filing conferences with applicants.* (1) The staff of the Board and the Supervisory Agent will be available for conferences with prospective applicants or their representatives in advance of filing an application to convert. These conferences may be held for the purpose of discussing generally the problems confronting an applicant in effecting conversion or to resolve specific problems of an unusual nature.

(2) Pre-filing review of an application may be refused by the staff of the Board and the Supervisory Agent if such review would delay the examination and processing of material which has already been filed or would favor certain applicants at the expense of others. In any conference under this paragraph (r), the staff of the Board and the Supervisory Agent will not undertake to prepare material for filing but will limit itself to indicating the kind of information required, leaving the actual drafting to the applicant and its representatives.

(s) *Post-conversion reports.* The applicant shall file such post-conversion reports concerning its conversion as the Corporation may require.

§ 563b.9 Conversions involving holding company acquisitions or mergers.

(a) *Acquisition by newly organized holding company.* A mutual insured institution may convert to the stock form as part of a transaction in which a holding company is organized to acquire upon issuance all the capital stock of the converted insured institution. In such transaction the eligible account holders shall receive, without payment, nontransferable rights from the holding company to purchase all its capital stock in lieu of all the capital stock of the converted insured institution under § 563b.3(c)(2), and the shares of capital stock of the holding company not so purchased shall be offered and sold as provided in § 563b.3 (c)(3) and (d) with respect to a direct conversion. The total price at which such shares shall be sold shall equal the estimated pro forma value of such shares, based on an independent valuation, as provided in § 563b.7, less any discount under the plan of conversion permitted by § 563b.3(d). The converting insured institution shall receive all net proceeds from the sale of all the capital stock of the holding company. Unless clearly inapplicable, all requirements relating to a direct conversion shall apply to a conversion in which a holding company is so organized.

(b) *Acquisition involving an existing holding company.* A mutual insured institution may convert to the stock form as part of a transaction in which an existing holding company acquires upon issuance all the capital stock of the converting insured institution. In such transaction the eligible account holders shall receive, without payment, nontransferable rights from the holding company to purchase its securities in lieu of all the capital stock of the converted insured institution under § 563b.3(c)(2), and the securities of the holding company not so purchased shall be offered and sold as provided in § 563b.3 (c)(3) and (d) with respect to a direct conversion. The total price at which the securities of the holding company shall be sold shall equal the estimated pro forma market value of all the capital stock of the converted insured institution, based on an independent valuation, as provided in § 563b.7, less any discount under the plan of conversion permitted by § 563b.3(d). The converting insured institution shall receive all net proceeds from such sale of the securities of the holding company. Unless clearly inapplicable, all requirements relating to a direct conversion shall apply to a conversion in which an existing holding company so acquires all the capital stock of the converted insured institution.

(c) *Merger involving issuance of holding company securities.* A mutual insured institution may convert to the stock form by merging into an existing stock insured institution subsidiary of a holding company as part of a transaction in which securities of the holding company are issued. In such transaction the eligible account holders of the converting insured

institution shall receive, without payment, nontransferable rights from the holding company to purchase its securities in lieu of all the capital stock of the converted insured institution under § 563b.3(c)(2), and the securities of the holding company not so purchased shall be offered and sold as provided in § 563b.-3(c)(3) and (d) with respect to a direct conversion. The total price at which the securities of the holding company shall be sold shall equal the estimated pro forma market value of all the capital stock of the converted insured institution, based on an independent valuation, as provided in § 563b.7, less any discount under the plan of conversion permitted by § 563b.3(d). Such stock insured institution, as the surviving insured institution, shall receive all net proceeds from such sale of the securities of the holding company. Unless clearly inapplicable, all requirements relating to a direct conversion shall apply to a conversion by such a merger in which securities of a holding company are so issued.

(d) *Merger into an existing stock insured institution.* A mutual insured institution may convert to the stock form by merging into an existing stock insured institution as part of a transaction in which securities of the existing stock insured institution are issued. In such transaction the eligible account holders of the converting insured institution shall receive, without payment, nontransferable rights from such stock insured institution to purchase its securities in lieu of all the capital stock of the converted insured institution under § 563b.3(c)(2), and the securities of such stock insured institution not so purchased shall be offered and sold as provided in § 563b.3(c)(3) and (d) with respect to a direct conversion. The total price at which the securities of such stock insured institution shall be sold shall equal the estimated pro forma market value of all the capital stock of the converted insured institution, based on an independent valuation, as provided in § 563b.7, less any discount under the plan of conversion permitted by § 563b.3(d). Such stock insured institution, as the surviving insured institution, shall receive all net proceeds from the sale of its securities. Unless clearly inapplicable, all requirements relating to a direct conversion shall apply to a conversion by such a merger in which securities of an existing stock insured institution are so issued.

(e) *Other applicable law.* (1) The transactions permitted by this section must also be authorized under State law.

(2) The issuance of securities of a newly organized savings and loan holding company under paragraph (a) of this section or of an existing savings and loan holding company under paragraphs (b) or (c) of this section requires registration under the Securities Act of 1933, as amended, and under the securities laws of certain States. If the capital stock of the savings and loan holding company or of the existing stock insured institution is registered under the Securities Exchange Act of 1934, as amended, any proxy material of such holding company or stock institution will need to be filed with the Securities and Exchange Commission. An applicant converting as part of a transaction covered by this section shall advise the Corporation as to compliance with all applicable Federal and State securities law requirements.

(f) *Other holding company and merger requirements.* An application by a savings and loan holding company to acquire a converting insured institution or a merger application involving a converting insured institution must also be processed and approved by the Corporation as if a conversion were not involved except that information contained in the application for approval of conversion may be incorporated by reference in such other applications.

(g) The term "direct conversion" used in this section refers to a conversion of a mutual insured institution to the stock form in a transaction not involving a holding company acquisition or a merger.

3. In connection with proposed new Part 563b, it is proposed to adopt and employ the following new forms:

FORM PA

[Facing Sheet]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

101 Indiana Avenue, N.W.
Washington, D.C. 20552

Application for Preliminary Approval of Conversion

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

Date of Application

GENERAL INSTRUCTIONS

A. RULE AS TO USE OF FORM PA

Form PA shall be used by any insured institution seeking Federal Home Loan Bank Board or Federal Savings and Loan Insurance Corporation preliminary approval of conversion from the mutual to the stock form of organization pursuant to Part 563b of the Rules and Regulations for Insurance of Accounts.

B. APPLICATION OF RULES AND REGULATIONS

Attention is directed to Insurance Regulation § 563b.8. That section contains general requirements regarding preparation and filing of this Form. The definitions in Insurance Regulation § 563b.2 also should be noted.

Item 1. *Form of Application.* Set forth an application for preliminary approval of the plan of conversion in the following form with the names and titles of the officers and directors signing the application indicated below their signatures:

The undersigned hereby makes application for preliminary approval to convert into a stock association, and submits herewith a statement of its proposed plan of conversion and other information and exhibits as required by Part 563b of the Rules and Regulations for Insurance of Accounts of the Federal Savings and Loan Insurance Corporation.

In submitting this application the applicant understands and agrees that, if further examinations or appraisals, or both, are required by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, they will be conducted by, or as approved by, the Board or the Corporation at the expense of the applicant; and applicant will pay the costs thereof as computed by the Board or the Corporation.

This application has been approved by at least two-thirds of the board of directors of the applicant. In accordance with § 563b.8(c)(4) of the Rules and Regulations for Insurance of Accounts, by the filing of this application, the applicant by its duly authorized representative, the undersigned officers and each member of the applicant's board of directors severally represent, except to the extent otherwise provided in said section, (1) that each such person has read this application; (2) that in the opinion of each such person, he has made such examination and investigation as is necessary to enable him to express an informed opinion that this application complies to the best of his knowledge and belief with the applicable requirements of Part 563b of the Rules and Regulations for Insurance of Accounts and forms thereunder; and (3) that each such person holds such informed opinion.

ATTEST:

Applicant

By ---

(Duly Authorized Representative)

(Principal Executive Officer)

(Principal Financial Officer)

(Principal Accounting Officer)

(Director)

(Director)

(Director)

(Director)

(Director)

(Signatures of at least two-thirds of the Board of Directors)

Item 2. *Plan of Conversion.* Furnish the complete formal written plan adopted by the board of directors for conversion of the applicant to the stock form of organization. The terms of the plan submitted pursuant to this Item will be a basis for the Corporation's approval and the plan as approved will be distributed as an attachment to the proxy statement and the offering circular.

Item 3. *Proxy Statement and Offering Circular.* Furnish preliminary copies of the proxy statement and offering circular. The proxy statement and offering circular should be prepared in accordance with Forms PS and OC, respectively.

Item 4. *Form of Proxy.* Furnish preliminary copies of the form of proxy to be distributed to association members by the management.

Item 5. *Sequence and Timing of the Plan.* Set forth the expected chronological order of the events connected with the plan of conversion beginning with the filing of this application through completion of the sale of all the capital stock under the plan. Indicate the expected timing of any requisite approvals by State authorities. Indicate the proposed timing of all aspects of the subscription offering. If there will be an underwritten public or other offering of the applicant's securities as part of the plan of conversion, indicate the proposed timing of all aspects of such offering. For purposes of completing this item, the applicant should allow a minimum of 30 business days after filing of this application for receipt of comments from the Corporation's staff and a minimum of ten business days after filing substantive amendments in response to such comments for preliminary approval of the conversion by the Corporation.

Item 6. *Record Date and Averaging.* If the applicant's plan of conversion contains an eligibility record date substantially earlier than 90 days prior to the date of adoption of the plan of conversion by the board of directors, state the reason for the selection of such earlier date. If the plan of conversion provides for a system of averaging to determine the amount of qualifying deposits, state the reasons for the selection of such system.

Item 7. *Savings Account Balances of Personnel.* For each director and officer of the applicant whose total account balances, including the balances of each associate of the foregoing persons, were more than $20,000 as of the eligibility record date and which balances had increased by more than 25 percent during the six months' period prior to the eligibility record date, set forth in tabular form his total account balances as of (a) the eligibility record date and (b) each of the four earnings distribution dates of the applicant immediately preceding the eligibility record date.

Item 8. *Management Syndicate.* If the directors and officers of the applicant propose to form a group or syndicate for the purpose of purchasing the unsubscribed shares under the plan of conversion in lieu of a public offering of such shares, give a detailed description of any financing arrangements to be employed by such group or syndicate.

Item 9. *Expenses Incident to the Conversion.* Provide in substantially the tabular form indicated below the estimated expense of the conversion to the applicant.

Legal	$
Postage and Mailing	
Printing	
Escrow or Agent Fees	
Underwriting Fees	
Appraisal Fees	
Transfer Agent Fees	
Auditing and Accounting	
Proxy Solicitation Fees	
Advertising	
Other Expenses	
Total	

Instructions. 1. The applicant may exclude costs represented by salaries and wages of regular employees and officers, if a statement to that effect is made.

The cost of solicitation by specially engaged employees or paid solicitors under paragraph (b) of Item 3 of Form PS shall be stated under "Proxy Solicitation Fees" in this Item.

2. If the applicant has any category of expense exceeding $10,000 which is not specified in this Item, such expense shall be itemized rather than including it under the category "Other Expenses".

3. If the solicitation is conducted other than by management of the applicant, the information required in this Item shall be provided with respect to the cost of such solicitation.

Item 10. *Indemnification of Directors and Officers.* State the general effect of any charter provisions, bylaw, contract, arrangement, statute, or regulation to be in effect after conversion under which any director or officer of the applicant will be insured or indemnified in any manner against any liability which he may incur in his capacity as such.

EXHIBITS

The following exhibits shall be attached to this Form.

Exhibit 1. *Resolution of Board of Directors.* Set forth a certified copy or copies of a resolution or resolutions of the board of directors (1) adopting the plan of conversion filed with this application; (2) authorizing the filing of this application; and (3) applying for continued insurance of accounts by the Federal Savings and Loan Insurance Corporation and continued membership in the appropriate Federal Home Loan Bank. The action adopting the plan of conversion and authorizing the filing of this application must be approved by two-thirds of the board of directors.

Exhibit 2. *Copies of Documents, Contracts and Agreements.* Furnish the following documents, contracts and agreements: (a) Proposed capital stock certificates to be issued; (b) proposed order forms with respect to the subscription rights; (c) proposed charter and bylaws of the applicant to take effect upon conversion; (d) any proposed qualified stock option plan and form of qualified stock option agreement; (e) any proposed management employment contracts; (f) any contract described in response to Item 6(e) of Form PS; (g) contracts or agreements with paid solicitors described in response to Item 3(b) of Form PS; (h) any material loan agreements relating to borrowings by the applicant other than from a Federal Home Loan Bank and other than subordinated debt securities approved by the Corporation; (i) proposed underwriting contracts and agreements among underwriters; (j) any contracts or agreements among the members of a management group or syndicate regarding the purchase of unsubscribed shares; and (k) any documents referred to in the answer to Item 10. Documents, contracts and agreements which are furnished in proposed form under this exhibit shall be furnished in final form prior to final approval by the Corporation, except for the documents required by paragraph (i) which shall be furnished in substantially final form.

Exhibit 3. *Opinion of Counsel.* Furnish an opinion of counsel for the applicant regarding each of the following matters: (a) The legal sufficiency of the applicant's proposed capital stock certificates and order forms, (b) State law requirements applicable to the plan of conversion including citations to applicable State law and whether such requirements will be fulfilled by the plan, (c) the legal sufficiency of the applicant's proposed charter and bylaws, (d) the type and extent of each class of voting rights in the applicant after conversion, including any requirement of State law that savings account holders or borrowers have voting rights in the converted insured institution, and (e) the legality and Federal income tax effect to the applicant of any proposed qualified stock option plan described in response to Item 12 of Form PS.

Exhibit 4. *Federal and State Tax Opinions and Rulings.* (a) Furnish an opinion of the applicant's tax advisor or an Internal Revenue ruling as to the Federal income tax consequences of the plan of conversion to the applicant and to eligible account holders.

Instruction. The Corporation recommends that each applicant obtain a ruling from the Internal Revenue Service regarding the Federal income tax consequences of the plan of conversion. The Corporation may require that such a ruling be obtained if the applicant's plan of conversion is not substantially similar to plans of conversion which have received favorable rulings. The Corporation may also require that such a ruling be obtained if the applicant's plan of conversion contains novel provisions or there is otherwise a question as to the Federal income tax consequences of the plan.

(b) Furnish an opinion of the applicant's tax advisor or a ruling from the appropriate state taxing authority as to any tax consequences of the plan of conversion under the laws of the State in which the applicant will be chartered upon conversion. Such opinion should relate to the applicant and to eligible account holders.

Exhibit 5. *Appraisal Materials.* Furnish the materials required by § 563b.7 regarding appraisal of the applicant.

Exhibit 6. *Notice to Members Prior to Filing.* Furnish the notice to the applicant's members required by § 563b.4(a)(2).

Exhibit 7. *Other Materials.* (a) If information required by an appropriate form is not given for the reasons specified in § 563b.8(h), furnish the statement required for each such Commission by § 563b.8(h)(2).

(b) Furnish all consents required to be filed by § 563b.8(n) and (o).

(c) If applicable, furnish the statement required by the Instruction to Item 5(e) of Form PS regarding events which occurred within the last ten years to directors of the applicant.

(d) If information required by Item 15(h) of Form PS relating to historical financial information is omitted, furnish the statement required by Item 15(h)(1) of Form PS.

(e) Furnish any powers of attorney employed pursuant to § 563.8(c)(3).

(f) Furnish the cross reference sheet referred to in § 563b.8(e).

FORM PS

[Facing Sheet]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Washington, D.C. 20552

Proxy Statement

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

Proxy Statement Form

Index to Items

FORM PS

INFORMATION REQUIRED IN CONVERSION PROXY STATEMENT

NOTE: Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

Item 1. Notice of Meeting. The cover page of the proxy statement shall give notice of the meeting of the association members called by the board of directors to act upon the conversion. The cover page shall include the date, time, and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for association members entitled to vote at the meeting, the date of the statement, and the full address, zip code and telephone number of the applicant.

Item 2. Revocability of Proxy. State that the person giving the proxy has the power to revoke it before the proxy is exercised at the meeting. If the right of revocation is subject to compliance with any formal procedure, briefly describe such procedure. Briefly describe any charter or State law requirement otherwise restricting voting by proxy. State that the proxy is solicited for that meeting, and any adjournment thereof, and will not be used for any other meeting. (See also § 563b.5(d)(3)).

Item 3. Persons Making the Solicitation. (a) State whether the solicitation is made by the management of the applicant. Give the name of any director of the applicant who has informed the management in writing that he intends to oppose any action intended to be taken by the management and indicate the action which he intends to oppose.

(b) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state the material features of any contract or arrangement for such solicitation and identify the parties.

(c) If the solicitation is made otherwise than by the management of the applicant, so state and give the names of the persons by whom and on whose behalf it is made. Any such solicitation normally need not respond to Items 5 through 17, but must include such information as to make such solicitations comply with section 563b.5(g)(1).

Item 4. Voting Rights and Vote Required for Approval. (a) Describe briefly the voting rights of each class of association members. State the approximate total number of votes entitled to be cast at the meeting, and the approximate number of votes to which each class is entitled.

(b) As part of the description give the date of record for association members entitled to vote at the meeting.

(c) As to each matter which will be submitted to a vote of association members, state the vote required for its approval.

Item 5. Directors and Executive Officers. (a) List the names and ages of all directors of the applicant, indicate all positions and offices held with the applicant by each such person, state his term of office as director and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as a director.

(b) List the names and ages of all executive officers of the applicant and indicate all positions and offices held with the applicant by each such person.

Instruction. The term "executive officer" means the president, vice-president, secretary, treasurer, controller, principal accounting officer, any officer in charge of a principal lending or savings function and any other officer or person who performs similar policy making functions for the applicant.

(c) State the nature of any family relationship between any director or executive officer and any other director or executive officer.

Instruction. The term "family relationship" means any relationship, by blood, marriage or adoption, not more remote than first cousin.

(d) Give a brief account of the business experience during the past five years of each director and each executive officer, including his principal occupations and employments during that period and the name and principal business of any corporation or other organization in which such occupations and employments were carried on.

(e) Describe any of the following events which occurred during the past 10 years and which are material to an evaluation of the ability and integrity of any director of the applicant:

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of, such person, or any partnership in which he was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within 2 years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is the subject of a criminal proceeding which is presently pending (excluding proceedings for traffic violations and other minor offenses); or

(3) Such person was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining him from acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank or insurance company, or removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of an insured institution, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, or was the subject of any order of a Federal or State authority barring or suspending, for more than 60 days, the right of such person to be engaged in any such activity, which order has not been reversed or suspended.

Instruction. If any event specified in paragraph (e) has occurred but information in regard thereto is omitted on the ground that it is not material, the applicant shall furnish, as supplemental information and not as a part of the statement the reasons for the omission of information in regard thereto.

(f) State whether control of the applicant has been exercised through the use of proxies and the nature of such control.

Item 6. Remuneration and Other Transactions with Management and Others. (See the Note at the beginning of this Form.) (a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the applicant and its subsidiaries during the applicant's last fiscal year to the following persons for services in all capacities:

(1) Each director of the applicant whose aggregate direct remuneration exceeded $30,000, and each of the three highest paid officers of the applicant whose aggregate direct remuneration exceeded that amount, naming each such director and officer.

(2) All directors and officers of the applicant as a group, stating the number of persons in the group without naming them.

(A)	(B)	(C)
Name of individual or number of persons in group	Capacities in which remuneration was received	Aggregate direct remuneration

Instructions. (1) The information is to be given on an accrual basis if practicable. The tables required by this paragraph (a) and paragraph (b) below may be combined if the applicant so desires.

(2) Do not include remuneration paid to a partnership to which any director or officer was a partner, but see paragraph (e) below.

(b) Furnish the following information in substantially the tabular form indicated as to all annuity, pension or retirement benefits proposed to be paid to the following persons in the event of retirement at their normal retirement dates pursuant to any existing plan provided or contributed to by the applicant or any of its subsidiaries:

(1) Each director or officer named in answer to paragraph (a)(1), naming each such person.

(2) All directors and officers of the applicant who are eligible for such benefits, as a group, stating the number of persons in the group without naming them.

(A)	(B)	(C)
Name of individual or number of persons in group	Amount set aside or accrued during applicant's last fiscal year	Estimated annual benefits upon retirement

Instructions. (1) The term "plan" in this paragraph and in paragraph (c) includes all plans, contracts, authorizations or arrangements, whether or not set forth in any formal document.

(2) Column (B) need not be answered with respect to payments computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified number of years of service. In such case, Columns (A) and (C) need not be answered with respect to directors and officers as a group.

(3) The information called for by Column (C) may be given in the form of a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

(4) In the case of any plan (other than those specified in Instruction (2) where the amount set aside each year depends upon the amount of earnings of the applicant or its subsidiaries for such year or a prior year, or

where it is otherwise impracticable to state the estimated benefits upon retirement, there shall be set forth, in lieu of the information called for by Column (C), the aggregate amount set aside or accrued to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

(c) Describe briefly all remuneration payments (other than payments reported in (a) or (b) of this Item) proposed to be made in the future, directly or indirectly, by the applicant or any of its subsidiaries pursuant to any existing plan or arrangement to (i) each director or officer named in answer to paragraph (a)(1), naming each such person, and (ii) all directors and officers of the applicant as a group without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If, it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments shall be stated, together with an explanation of the basis for future payments.

(d) State as to each of the following persons who was indebted to the applicant or its subsidiaries at any time during the last three years, (i) the largest aggregate amount of indebtedness outstanding at any time during such period; (ii) the nature of the indebtedness and of the transaction in which it was incurred, (iii) the amount thereof outstanding as of the latest practicable date, and (iv) the annual percentage rate paid or charged thereon (as computed under 12 CFR Part 226):

(1) Each director or officer of the applicant; and

(2) Each associate of any such director or officer.

Instructions. (1) Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

(2) This paragraph does not apply to amounts due a person for ordinary travel and expense advances and similar transactions.

(3) If the loans to such persons (a) are secured by a first lien on a single-family dwelling owned and occupied by a director or officer of the applicant at the time of making the loan and such loan at such time did not exceed the amount then specified in section 5(c) of the Home Owners' Loan Act of 1933, as amended, with respect to single-family dwellings if applicable or (b) are fully secured by a savings account, and if the lender is the applicant, such disclosure may consist of a statement, if such is the case, that the loans to such persons (i) were made in the ordinary course of business, (ii) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (iii) did not involve more than normal risk of collectibility or present other unfavorable features.

(4) Computation of the annual percentage rate under paragraph (d)(iv) is to be done as though 12 CFR Part 226 was applicable to the transaction.

(e) Describe briefly any transactions during or since the applicant's last three fiscal years or any presently proposed transactions, to which the applicant or any of its subsidiaries or any borrower from the applicant or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the applicant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the applicant;

(2) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any subsidiary of the applicant.

Instructions. 1. No information need be given in response to this Item 6(e) as to any remuneration or other transaction reported in response to Item 6(a), (b), (c), or (d), or as to any transaction with respect to which information may be omitted pursuant to instructions relating to such Items.

2. No information need be given in answer to this Item 6(e) as to any transaction where—

(a) The transaction involves services as a bank depository of funds, transfer agent, registrar, or similar services;

(b) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $30,000, or $5,000 in the case of transactions giving rise to expenses of the type indicated in Item 9 of Form PA; or

(c) The interest of the specified person arises solely from the ownership of savings accounts of the applicant and the specified person receives no extra or special benefit not shared on a pro rata basis by all savings account holders as a class.

3. It should be noted that this Item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the applicant or its subsidiaries or with any borrower from the applicant or any of its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 6(e) where—

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) and (2) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in subparagraphs (1) and (2) above had an interest of less than ten percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the applicant or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the applicant, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

6. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering paragraph (e) of this Item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this Item.

(f) Describe briefly any transactions during or since the applicant's last three fiscal years or any presently proposed transactions, to which any pension, retirement or similar plan provided by the applicant or any of its subsidiaries, was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the applicant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the applicant;

(2) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any subsidiary of the applicant; or

(3) The applicant or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4, and 5 to Item 6(e) shall apply to this Item 6(f).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this Item 6(f) any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to this paragraph (f) with respect to—

(a) Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(b) Payment of remuneration for services not in excess of 5 percent of the aggregate remuneration received by the specified person during the applicant's last fiscal year from the applicant and its subsidiaries; or

(c) Any interest of the applicant or any of its subsidiaries which arises solely from its general interest in the success of the plan.

Item 7. Business of the Applicant.—(a) *Organization.* State the year in which the applicant was organized and whether its present charter was issued by the State or Federal government: Describe briefly any previous conversion of the applicant.

(b) *Selected Statement of Financial Condition and Other Items.* As of the end of each of the periods covered by the statements of operations required by Item 15(b)(1) and as of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form the amounts of the following items: (1) total assets, (2) real estate loans outstanding, (3) savings accounts, (4) advances from the Federal Home Loan Bank, (5) other borrowed money, if material, (6) net worth and (7) number of offices indicating any which are less than full service. The applicant may use other substantially similar captions, and may include other items such as number of real estate loans outstanding and number of savings accounts.

(c) *Mergers and Acquisitions.* Indicate in tabular form, any mergers, bulk purchase of assets and similar acquisitions which have occurred in the periods covered by statements of operations required by Item 15(b). With respect to each such acquisition, give names of the association involved, its location, its total assets immediately prior to such acquisition, the number of offices ac-

quired, the method of accounting for such acquisition, and any excess of cost over the net assets acquired (goodwill) included in the latest statement of financial condition. The information provided in this section should be referenced to any appropriate notes to the financial statements required by Item 15.

(d) *Lending Activities.* (1) Describe briefly applicable regulations (both State and Federal) on the lending activities of the applicant including any applicable state usury laws or any other Federal or state laws affecting mortgage loan interest rates. Describe the applicant's general policy concerning loan to value ratios. Describe briefly the applicant's customary methods of obtaining loan originations such as the use of loan consultants and approval of security properties and use of a loan committee, if any. Describe briefly the applicant's policies as to requiring title insurance and fire and casualty insurance on security properties.

(2) As of the end of the periods covered by the statements of operations required by Item 15(b)(1) and as of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form the amount and percentage of the loan portfolio of the applicant (i) by type of loan and (ii) by type of security.

Instructions. 1. For the classification required by subparagraph (2)(i), separate types of loans into real estate loans and loans for other purposes. Also, separate real estate loans into conventional loans and FHA–VA loans, and conventional loans shall be separated into loans for construction, loans on existing property and loans refinanced.

2. For the classification required by subparagraph (2)(ii), type of security shall be separated into residential and other types. Residential loans shall be separated into single-family dwellings, two-to-four family dwellings, and other dwelling units. Also, indicate any material classification of other loans such as mobile home loans, home improvement loans, home equipping loans, passbook loans, commercial or industrial loans, and undeveloped land loans.

(3) For each of the periods covered by the statements of operations required by Item 15(b), set forth in tabular form the amount for each period of (i) loans originated, (ii) loans purchased, (iii) loans sold, and (iv) total net loan activity. Also describe briefly the applicant's total activity as of the date of the latest statement of financial condition required by Item 15(a), and briefly indicate the applicant's general future intentions with respect to activities in secondary mortgage markets including transactions with the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or mortgage bankers. If significant, indicate loan service fee income as a percentage of gross income for the year ended as of the latest statement of financial condition required by Item 15(a).

Instructions. 1. For the classification required by subparagraph (3)(i), loans originated shall be separated into real estate loans, loans for other purposes, and total loans originated. Real estate loans shall be further separated into conventional loans and FHA–VA loans, and conventional loans shall be separated into loans for construction, loans on existing property, and loans refinanced.

2. For the classification required by subparagraph (3)(ii), loans purchased shall be separated into real estate loans, loans for other purposes, and total loans purchased. Real estate loans shall be further separated into conventional loans and FHA–VA loans.

3. For the classification required by subparagraph (3)(iii), loans sold shall be separated into whole loans, participation loans, and total loans sold.

4. For the classification required by subparagraph (3)(iv), total net loan activity shall be equal to total loans originated plus total loans purchased minus total loans sold.

(4) As to the lending area of the applicant, describe briefly (i) the lending area restrictions applicable to the applicant, (ii) the areas in which the applicant normally lends, and (iii) any material loan concentration areas of the applicant. Such descriptions may include a map illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the applicant's loan concentrations are located, if practicable.

(5) Describe briefly the general long term nature of investment in mortgage loans and the consequent effect upon the earnings spread of savings and loan associations. State the normal maturity of loans made by the applicant on the security of single-family dwellings and furnish an estimate as to the average length of time such loans are outstanding.

(6) As of the end of each of the periods covered by the statements of operations required by Item 15(b)(1) and as of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form, excluding origination fees, discounts and premiums on real estate loans originated, the following: (i) weighted average of return on loans orginated and purchased during each period, (ii) weighted average rate of return on loans held at the end of each period, (iii) weighted average interest cost of savings at the end of each period, (iv) weighted average interest cost of Federal Home Loan Bank advances and other borrowings during the period, (v) total weighted average interest cost of savings and borrowings for the period (the total of (iii) and (iv)), and (v) the gross margin ((ii) minus (v)).

Instruction. As an example of the calculation of the weighted average rate, the following method should be used to calculate the weighted average interest rate on savings:

1. Determine the percentage of total savings represented by each type of savings instrument.

2. Multiply these percentages by the contractual interest rate the applicant is committed to pay on such instruments.

3. The resulting percentages are then totalled, giving the weighted rate.

(7) As of the end of each of the periods covered by the statements of operations required by Item 15(b)(1) and as of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form loan origination fees charged to borrowers expressed as a percentage of the total amount of loans originated.

(8) Describe briefly the applicant's method of loan origination fee and discount amortization and the total of such balances deferred by the applicant as of the date of the latest statement of financial condition required by Item 15(a). Describe briefly the normally volatile nature of loan fee income.

(9) Describe briefly the regulatory classifications of scheduled items and the applicant's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operations required by Item 15(b)(1) and as of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form the amounts and categories (slow loans, real estate owned, loans to facilitate, and others) of scheduled items and the ratio of such scheduled items to specified assets and to total assets. Where real estate owned is a significant portion of scheduled items, include a brief description of the major properties included therein and a statement as to the applicant's probable loss, if any, upon disposition of such properties.

(e) *Savings Activities.* (1) As of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form the amounts and percentages of savings accounts by categories of interest rate. As to certificates of deposit, indicate the term and minimum balances required for each. As of the date of the latest statement of financial condition required by Item 15(a), set forth in tabular form the amounts of such certificates maturing by quarter during the three years following such date and the total maturing thereafter, the percentage of such amounts to total savings.

(2) Describe the applicant's methods of computing and paying interest for both passbook savings accounts and certificates of deposit. State that the maximum rate of interest which the applicant may pay is established by the Board. State that in the event of liquidation of the applicant after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to shareholders. Also, indicate the percentage of total savings accounts which are from out-of-state sources, if such total is significant.

(f) *Insurance of Accounts.* (1) Describe briefly insurance of accounts and the general regulatory authority of the Corporation.

(2) Describe briefly the Federal insurance reserve requirements, the results of failure to meet those requirements, and the applicant's Federal insurance reserve account position in relation to those requirements. Also describe the annual insurance premium payment and prepayment requirements.

(g) *Federal Home Loan Bank System.* (1) Describe briefly the Federal Home Loan Bank System and state that the applicant is a member. Such description shall include (i) limitations on borrowings, (ii) recent loan policies of the applicant's Federal Home Loan Bank and current interest rates, and (iii) Federal Home Loan Bank stock purchase requirements and the applicant's position with respect to those requirements.

(2) Describe briefly applicable liquidity requirements under section 5A of the Federal Home Loan Bank Act, as amended, the regulations thereunder, and State law. State the applicant's position with respect to those requirements.

(h) *State Savings and Loan Association Law.* Describe briefly applicable provisions of State law which have a material effect on the business of the applicant.

(i) *Federal and State Taxation.* Describe briefly the Federal income tax laws applicable to the applicant including (1) permissible bad debt reserves, (2) the applicant's position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under Item 15(a), (3) future increases in the effective income tax rate, (4) the date through which the applicant's Federal income tax returns have been audited by the Internal Revenue Service, and (5) the tax effect to the applicant of the payment of cash dividends on capital stock of the applicant after conversion. Also describe briefly the State taxation of the applicant.

(j) *Competition.* Describe the material sources of competition for savings and loan associations generally and indicate to the extent practicable the applicant's position in its principal lending and savings markets.

(k) *Office and Other Material Properties.* (1) Furnish the location of the applicant's home office and each existing and approved branch office and other office facilities (such as mobile or satellite offices). State the total net book value of all such offices as of the date of the latest statement of financial condition required by Item 15(a). If any such

office is leased, state the expiration dates of such leases.

(2) Describe briefly undeveloped land owned by the applicant, including location, net book value, and prospective use and holding period. If the applicant or a subsidiary owns or leases electronic data processing equipment principally for its own use, describe briefly such equipment indicating net book value if owned or the principal lease terms if leased.

(l) *Employees.* State the number of persons employed fulltime by the applicant including executive officers listed under Item 5. State whether employees are represented by a collective bargaining group and whether the applicant's relations with its employees is satisfactory. Summarize briefly any loans, profit sharing, retirement, medical, hospitalization or other remuneration plans provided for employees not already included pursuant to Item 6.

(m) *Service Corporations.* Describe briefly the applicant's investment in any subsidiary and the major lines of business (including any joint ventures) of the subsidiary which are material to its operations.

(n) *Pending Legal Proceedings.* Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the applicant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underly the proceeding, the relief sought and counsel's opinion as to the merits of the applicant's position in each such matter. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

(o) *Additional Information.* The Corporation may, upon the request of the applicant, and where consistent with the protection of eligible account holders and others, permit the omission of any of the information required by this Item or the furnishing in substitution therefor of appropriate information of comparable character. The Corporation may also require the furnishing of other information in addition to, or in substitution for, the information required by this Item in any case where such information is necessary or appropriate for an adequate description of the applicant's business done or intended to be done.

Item 8. *Description of the Plan of Conversion.* (a) A statement to the following effect shall be inserted in the proxy statement immediately preceding the information required by this Item: The Federal Home Loan Bank Board has given preliminary approval to the plan of conversion. However, such preliminary approval does not constitute a recommendation or endorsement of the plan. Final approval of the plan will not be given by the Federal Home Loan Bank Board unless at least a majority of the outstanding votes of association members are cast in favor of the plan and certain other conditions are satisfied by the insured institution.

(b) The proxy statement shall contain a description of the plan of conversion. Such description shall contain the information required by paragraphs (c) through (j) of this Item and such additional information as may be necessary to accurately describe the material provisions of the plan.

(c) Briefly describe the effects of conversion from a mutual institution to a stock institution including the following information: (1) state that savings accounts of the applicant will not be affected by the conversion with respect to such matters as balances in the accounts and the extent of insurance of savings accounts by the Corporation; (2) state whether savings and borrowing members of the applicant will continue to have voting rights in the applicant after conversion, and describe any voting rights they will have; (3) state the present liquidation rights of account holders and describe the liquidation account to be reserved on the books of the applicant, including the conditions under which such account will be paid, the interest of eligible account holders in such account and the formula by which such account will be adjusted; (4) state that the rights and obligations of borrowers from the applicant will not be changed in any manner; (5) state that capital stock to be sold by the applicant will not be insured by the Corporation; (6) state that none of the assets of the applicant will be distributed in order to effect the conversion other than to pay expenses incident thereto; and (7) state briefly the reasons why management is recommending the conversion, including any advantages to the community served by the applicant.

(d) With respect to the sale of capital stock of the applicant to eligible account holders and others, furnish the following information: (1) the formula to be used for determining the subscription rights of eligible account holders to purchase their entitlement shares and additional entitlement shares; (2) any minimum share purchase requirements; (3) with respect to eligible account holders, the percentage of any discount on the purchase of their entitlement shares and additional entitlement shares and the conditions under which the discount is available, including the holding period; (4) any provision for purchase without a discount of unsubscribed shares by eligible account holders, other account holders and borrowing members, including the method of allocating such shares among such classes of persons; (5) with respect to directors, officers and employees, the percentage of any discount on the purchase of shares of capital stock and the conditions under which the discount is available, including the holding period, the percentage of the total issue subject to such discount, the allocation of such shares among such classes of persons and the formula for such allocation; (6) the purchase priorities under the plan of conversion; and (7) the use and timing of the order forms with respect to the subscription rights.

(e) (1) Set forth on a per share basis the estimated public offering or other price or price range (before any discount) of the shares of capital stock to be sold pursuant to the plan of conversion; (2) state that the actual public offering or other price will be the pro forma market value of such shares based on an independent valuation, less any applicable discounts; (3) state that all of the shares are required to be sold; and (4) describe briefly the results of the appraisal of the association made by an independent appraiser for the purpose of determining the estimated purchase price or price range.

(f) Set forth in tabular form (1) the earnings per share on a pro forma basis of the capital stock to be sold as of the end of each of the periods covered by the statements of operation required by Item 15(b)(2) and as of the latest statement of financial condition required by Item 15(a); and (2) the book value per share on a pro forma basis as of the date of the latest statement of financial condition required by Item 15(a).

Instruction. Earnings and book value per share shall be furnished without giving effect to the estimated net proceeds from the sale of the capital stock, and then after giving effect to such proceeds with all assumptions used clearly stated.

(g) With respect to the subscription offering, state the proposed commencement and expiration dates of the subscription period and describe any provisions in the plan of conversion related to the timing of the subscription offering or extension of the subscription period. Also, state (1) that a maximum subscription price will be set forth in the offering circular used for the subscription offering, (2) that the actual subscription price will be the public offering or other price less the specified discount but in no event more than such maximum subscription price, and (3) that any difference between the maximum and actual subscription prices will be refunded.

(h) Furnish the following information: (1) describe to the extent practicable the applicant's present intentions with respect to listing the capital stock on an exchange or otherwise providing a market for the purchase and sale of the capital stock in the future; (2) describe briefly the tax effect of the conversion both to the applicant and to eligible account holders, and (3) state that the plan of conversion is attached as an exhibit to the proxy statement and should be consulted for further information.

(i) State whether the plan of conversion provides for the capital stock not purchased in the subscription offering to be offered to the public through underwriters. If such is the case, provide the information to the extent known required by Items 6(b) and (c) of Form OC and indicate the proposed timing of the underwritten offering.

(j) Furnish the following information in tabular form regarding proposed purchases of capital stock involving directors and officers of the applicant:

(1) State the total number of shares proposed to be purchased by all directors and officers as a group without naming them.

(2) As to each officer and director named in Item 6(a)(1), name him, state his position, and the number of shares proposed to be purchased by him.

(3) As to any director and officer who proposes to purchase 1 percent or more of the total number of shares of capital stock of the applicant to be outstanding, name him, state his position, and the number of shares proposed to be purchased by him.

(4) With respect to the information required by (1), (2) and (3) above, indicate separately the number of shares proposed to be purchased with and without any discount and the number of shares proposed to be purchased as an eligible account holder and as a director or officer.

Item 9. Description of Capital Stock. Furnish the following information concerning the capital stock of the applicant to be sold upon conversion:

(a) Outline briefly (1) dividend rights and restrictions; (2) voting rights; (3) liquidation rights; (4) pre-emptive rights; (5) liability to further calls or to assessment by the applicant; and (6) other material provisions.

(b) If the rights of holders of such capital stock may be modified otherwise than by a vote of a majority or more of the capital stock outstanding, voting as a class, so state and explain briefly.

(c) Outline briefly any restrictions on the repurchase or redemption of, and payment of dividends on, capital stock, or any part thereof, by the applicant.

Instructions. 1. This Item requires only a brief summary of the provisions which are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct résumé is required.

2. If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include such information regarding such limitation or qualification as will

enable investors to understand the rights evidenced by the capital stock.

Item 10. Capitalization. Set forth in substantially the tabular form indicated below the dollar amounts of the capitalization of the applicant:

	(A) Capitalization as of latest statement of condition date	(B) Adjustments as a result of conversion	(C) Pro-forma capitalization after giving effect to the conversion
1. Savings accounts	$	$	$
2. FHL bank advances			
3. Subordinated debt securities			
4. Other borrowings			
5. Capital stock			
6. Paid in capital			
7. Undivided profits			
8. Federal insurance reserve			
9. Other reserves			
10. Total			

Instructions. 1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized, the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

2. With respect to the funds to be received by the applicant from the sale of its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making such estimate. Such total amount and price per share shall be clearly identified as being estimates.

Item 11. Use of New Capital. State the principal purposes for which the net proceeds to the applicant from the capital stock to be sold are intended to be invested or otherwise used, and the approximate amount intended for each such purpose.

Instruction. Details of proposed investments are not to be given. There need be furnished, for example, only a brief statement of any investment or other activity of the applicant which will be affected materially by availability of the proceeds. Examples of such activities may include reserve support for future savings growth, expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. Qualified Stock Options.

If action is to be taken with respect to the granting to officers and employees of any "qualified" options to purchase capital stock of the applicant to take effect after conversion, furnish the following information:

(a) State (1) the title and number of shares to be called for by such options; (2) the prices, expiration dates and other material conditions upon which the options may be exercised; (3) the consideration to be received by the applicant for the granting of the options and (4) the Federal income tax consequences of the issuance and exercise of such options to the recipient and to the applicant.

(b) State separately the amount of options to be received by the following persons, naming each such person: (1) Each director or officer named in answer to Item 6(a); (2) each associate of such directors of officers; and (3) each other person who is to receive five percent or more of such options to be received by all directors and officers of the applicant as a group, without naming them.

(c) Furnish such information, in addition to that required by Item 6, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, deferred compensation or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to Item 6(a) who may participate in the qualified stock option plan to be acted upon; (ii) all directors and officers of the applicant as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

Instructions. 1. The term "qualified" refers to options meeting the requirements of Section 424 of the Internal Revenue Code of 1954, as amended.

2. The term "plan" as used in paragraph (c) of this Item means any plan as defined in Instruction 1 to Item 6(b).

Item 13. New Charter, Bylaws or Other Documents. Describe briefly any material differences between the provisions of existing charter, bylaws and any similar documents of the applicant and those which will take effect after conversion.

Instruction. This Item requires only a brief summary of the provisions which are pertinent from both an investment standpoint and a voting standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions verbatim; only a succinct resume is required.

Item 14. Other Matters. State when the applicant will be required to register its capital stock under section 12(g) of the Securities Exchange Act of 1934, as amended, and that upon such registration the proxy rules, insider trading reporting and restrictions, annual and periodic reporting and other requirements of that Act will be applicable.

Item 15. Financial Statements. NOTES: 1. The following instructions specify the statements of financial condition, the statement of operations and statements of stockholders' equity required to be included in the proxy statement. Section 563c.1 governs the certification, form and content of such financial statements including the basis of consolidation.

2. If the applicant has previously used an audit period in connection with its certified financial statements which does not coincide with its fiscal year, such audit period may be used in place of any fiscal year requirement provided it covers a full twelve months' operations and is used consistently. The Board understands that this procedure is also acceptable to the Securities and Exchange Commission in fulfilling the requirements of the Commission's Form 10 for registration of the applicant's capital stock under section 12(g) of the Securities Exchange Act of 1934.

(a) *Statements of Financial Condition of the Applicant.* (1) Furnish a certified statement of financial condition as of the close of the applicant's latest fiscal year. (2) If the statement furnished under (1) is in excess of 120 days from the date of filing for preliminary approval, furnish an additional statement of financial condition as of a date within 120 days of such filing. This additional statements need not be certified.

(b) *Statements of Operations and Statements of Stockholders' Equity.* Furnish in comparative columnar form statements of operations and statements of stockholders' equity of the applicant (1) for each of the five fiscal years preceding the date of the statement of financial condition filed under paragraph (a) and (2) for the period, if any, between the close of the latest of such fiscal years and the date of the statement of financial condition filed under paragraph (a). Furnish a statement of operations for the period comparable to (b)(2) in the immediately preceding fiscal year. Statements for the three latest fiscal years under (b)(1) shall be certified.

Instructions. 1. Reflect information or explanation of material significance to investors in appraising the results shown, or refer to such information or explanation set forth elsewhere in the proxy statement. Include comparable data for any additional fiscal years necessary to keep the statements from being misleading. The statements shall reflect the retroactive adjustment of any material items affecting the comparability of the results.

2. In connection with capital stock sold pursuant to the plan of conversion, the statements shall reflect earnings that would have been applicable to such outstanding stock.

(c) *Statements of Changes in Financial Position.* Furnish certified statements of changes in financial position (1) for each of the three fiscal years preceding the date of the latest statement of financial condition filed under paragraph (a) and (2) for the period, if any, between the close of the latest of such fiscal years and the date of the latest statement of financial condition filed under paragraph (a).

(d) *Omission of Applicant's Statements in Certain Cases.* Notwithstanding paragraphs (a), (b), and (c), the individual financial statements of the applicant may be omitted if (1) the conditions specified in either of the following paragraphs are met, and (2) the Corporation is advised as to the reasons for such omission.

(1) The applicant is primarily an operating company and all subsidiaries included in the consolidated financial statements filed are totally-held subsidiaries; or

(2) The applicant's total assets, exclusive of investments in and advances to the consolidated subsidiaries, constitute 85% or more of the total assets shown by the consolidated statement of financial condition filed and the applicant's total gross revenues for the period for which its statements of operations would be filed, exclusive of interest and dividends received from the consolidated subsidiaries, constitute 85% or more of the total gross revenue shown by the consolidated statements of operations filed.

(e)(1) *Consolidated Statements.* Furnish consolidated statements for the same periods and as of the same dates as would be required for the applicant. These statements shall be certified as would be required for the applicant's statements. (Paragraphs (a), (b), and (c) above).

(2) *Unconsolidated Subsidiaries and Other Persons.* Subject to 563c.1(q)(2) regarding group statements of unconsolidated subsidiaries, there shall be set forth for each majority-owned subsidiary of the applicant not consolidated the financial statements which would be required if the subsidiary were itself an applicant. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the applicant.

(3) *Fifty-Percent-Owned Persons and Other Persons.* If the applicant owns directly or indirectly approximately 50 per cent of the voting securities of any person and approximately 50 per cent of the voting securities of

such person is owned directly or indirectly by another single interest, or if the applicant takes up the equity in undistributed earnings of any other unconsolidated person, there shall be set forth for each such person the financial statements which would be required if it were an applicant, subject to 563c.1(q)(2) regarding group statements. The statements set forth for each person shall identify the other single interest, or other interests in any person operated jointly.

(4) *Omission of Statements Required by Paragraphs (2) and (3).* Notwithstanding paragraphs (2) and (3), there may be omitted from the proxy statement all financial statements of any one or more unconsolidated subsidiaries or 50-percent-owned persons or other persons: (i) if all such subsidiaries and 50-percent-owned and other persons for which statements are so omitted, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary; or (2) if the income from the subsidiary reported by the applicant does not exceed 10 per cent of the consolidated net income for the latest fiscal year for which income statements are filed.

(f) *Special Provisions*—(1) *Succession to Other Business.* (i) If during the period for which its statements of operations are required, the applicant has by merger, consolidation or otherwise succeeded to one or more businesses, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the statements of financial condition set forth. In addition, statements of operations for each constituent business, or combined statements if appropriate, shall be set forth for such period prior to the succession as may be necessary when added to the time, if any, for which statements of operations after the succession are set forth to cover the equivalent of the period specified in paragraphs (a), (b), and (c) above.

(ii) If the applicant by merger, consolidation or otherwise is about to succeed to one or more businesses, there shall be filed for the constituent businesses financial statements, combined, if appropriate, which would be required by these instructions. In addition, there shall be set forth a statement of financial condition of the applicant giving effect to the plan of succession. These statements of financial condition shall be set forth in such form, preferably columnar, as will show in related manner the statements of financial condition of the constituent business, the changes to be effected in the succession and the statement of financial condition of the applicant after giving effect to the plan of succession. By a footnote or otherwise, a brief explanation of the changes shall be given.

(iii) This subparagraph (1) shall not apply with respect to the applicant's succession to the business of any totally-held subsidiary, or to the acquisition of one or more businesses by purchase if such businesses, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

(2) *Acquisition of Other Businesses.* (i) There shall be set forth for any business directly or indirectly acquired by the applicant after the date of the statement of financial condition set forth pursuant to paragraph (a) and for any business to be directly or indirectly acquired by the applicant, the financial statements which would be required if such business were an applicant.

(ii) The acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control.

(iii) No financial statements need be set forth pursuant to this subparagraph (2), however, for any business acquired or to be acquired from a totally held subsidiary. In addition, the statements of any one or more businesses may be omitted if such businesses, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

(g) *Filing of Other Statements in Certain Cases.* The Corporation may, upon the request of the applicant, and where consistent with the protection of eligible account holders and others, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Corporation may also require the inclusion of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of eligible account holders and others.

(h) *Historical Financial Information.*—(1) *Applicability of Paragraph (h).* The information required by this paragraph (h) shall be included in the proxy statement if in the opinion of the applicant it is material to the understanding of its financial condition. If the applicant determines to omit the information required by this paragraph, it shall file with the appropriate form for preliminary approval a statement briefly explaining such omission.

(2) *Scope of Paragraph (h).* The information required by paragraph (h) shall be furnished for the seven-year period preceding the period for which statements of operations are set forth, as to the accounts of each person whose statement of financial condition is set forth. The information is to be given as to all of the accounts specified whether they are presently carried on the books or not. Paragraph (h) does not call for an audit, but only for a survey or review of the accounts specified. It should not be detailed beyond a point material to eligible account holders and others.

(3) *Revaluation of Property.* (i) If there were any material increases or decreases in investments, in property, plant and equipment, or in intangible assets, resulting from revaluing such assets, state (*a*) in what year or years such revaluations were made; (*b*) the amounts of such increases or decreases, and the accounts affected, including all related entries; and (*c*) if in connection with such revaluations any related adjustments were made in reserve accounts, state the accounts and amounts with explanations.

(ii) Information is not required as to adjustments made in the ordinary course of business, but only as to major revaluations made for the purpose of entering on the books current values, reproduction cost or any values other than original cost.

(iii) No information need be furnished with respect to any revaluation entry which was subsequently reversed or with respect to the reversal of a revaluation entry recorded prior to the period if a statement as to the reversal is made.

(4) *Other Changes in Surplus.* If there were any material increases or decreases in surplus, other than those resulting from transactions specified above, the closing of the profit and loss account or the declaration of payment of dividends, state (i) the year or years in which such increases or decreases were made; (ii) the nature and amounts thereof; and (iii) the accounts affected, including all material related entries. Paragraph (3)(iii) shall also apply here.

(5) *Predecessors.* The information shall be furnished, to the extent it is material, as to any predecessor of the applicant from the beginning of the period to that date of succession, not only as to the entries made respectively in the books of the predecessor or the successor, but also as to the changes effected in the transfer of the assets from the predecessor. However, no information need be furnished as to any one or more predecessors which, considered in the aggregate, would not constitute a significant predecessor.

(6) *Omission of Certain Information.* (i) No information need be furnished as to any subsidiary, whether consolidated or unconsolidated, for the period prior to the date on which the subsidiary became a majority-owned subsidiary of the applicant or of the predecessor for which information is required above.

(ii) No information need be furnished to any one or more unconsolidated subsidiaries for which separate financial statements are filed if all subsidiaries for which the information is so omitted, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

(iii) Only the information specified in paragraph (3) need be given as to any predecessor or any subsidiary thereof if immediately prior to the date of succession thereto by a person for which information is required, the predecessor or subsidiary was in insolvency proceedings.

Item 16. Consents of Experts and Reports. (a) The proxy statement shall briefly describe all consents of experts filed pursuant to section 563b.8(n).

(b) The statement shall contain a report of the independent public accountants who have certified the financial statements and other matters in the statement.

Instruction. The instruction to Item 13 shall apply to paragraph (a) of this Item.

Item 17. Attachments. There shall be attached to the proxy statement distributed to association members and others a copy of the applicant's plan of conversion as preliminarily approved by the Corporation. There may also be attached to such statement a copy of any qualified stock option plan described under Item 12.

FORM OC

[FACING SHEET]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Washington, D.C. 20552

Offering Circular

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and ZIP Code)

OFFERING CIRCULAR FORM

Item 1. *Information Required by Form OC.* The offering circular shall be dated as of the date of its issuance. The offering circular shall contain substantially the same information required to be included in the proxy statement of the applicant distributed to association members to vote upon the plan of conversion. Information of the type required to be included in the proxy statement may be omitted from the offering circular only to the extent that it is clearly inapplicable. The offering circular may be in "wrap around" form with the proxy statement attached.

Instructions. 1. The term "offering circular" refers to both the offering circular for the subscription offering and the offering

circular for the public or other offering of the unsubscribed shares, unless otherwise indicated.

2. An offering circular for the subscription offering in "wrap around" form distributed to association members and other persons who have previously been furnished a copy of the proxy statement need not contain the proxy statement as an attachment provided such offering circular states that a copy of the proxy statement has previously been furnished to such persons and that an additional copy thereof will be furnished promptly upon request to the applicant (with the telephone number and mailing address of the applicant stated).

Item 2. *Additional Current Information Required.* The final offering circular for the subscription offering, the preliminary offering circular for the public or other offering used during the subscription period and the final offering circular for the public or other offering shall as of their respective dates of issuance include the following additional current information to the extent that such information is not already included in the proxy statement:

(a) Information with respect to the vote of association members upon the plan of conversion and any qualified stock option plan;

(b) Information with respect to any recent material developments in the business or affairs of the applicant;

(c) Any other information necessary to make such offering circular current, including full financial statements of the applicant within six months prior to the date of issuance of such offering circular.

Item 3. *Statement Required in Offering Circulars.* There shall be set forth on the outside cover page of every offering circular the following statement in capital letters printed in bold-face Roman type at least as large as ten-point modern type and at least two points leaded:

THESE SHARES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE FEDERAL HOME LOAN BANK BOARD OR FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION NOR HAS SUCH BOARD OR CORPORATION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Item 4. *Preliminary Offering Circular.* The outside front cover page of any preliminary offering circular shall bear, in red ink, the caption "Preliminary Offering Circular", the date of its issuance, and the following statement printed in type as large as that used generally in the body of such offering circular.

This offering circular has been filed with the Federal Savings and Loan Insurance Corporation, but has not been authorized for use in final form. Information contained herein is subject to completion or amendment. The shares covered hereby may not be sold nor may offers to buy be accepted prior to the time the offering circular is authorized for use in final form. This offering circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these shares in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

Item 5. *Information with respect to Subscription Offering.* The offering circular used for the subscription offering shall describe all material terms of the subscription offering to the extent that such description is not already in the proxy statement. Such terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price or prices, possible reduction of subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions of the subscription offering.

Item 6. *Information With Respect to Public or Other Offering.* The offering circular for the subscription offering and the offering circular for the public or other offering shall both describe the material terms of the plan or plans of distribution for all unsubscribed shares of capital stock not purchased by eligible account holders or others pursuant to the subscription offering to the extent such description is not already in the proxy statement, including the following:

(a) If the shares are to be offered through underwriters, the outside front cover page of both offering circulars shall give the information called for by this paragraph. In the case of the offering circular for the public offering, such information shall be given in substantially the tabular form set forth below. In the case of the offering circular for the subscription offering, such information may be given in narrative form and, if not known at the time of the subscription offering, so state and estimate.

	Price to public	Underwriting discounts and commissions	Proceeds to applicant
Per share.... $		$	$
Total.....			

(b) The outside front cover page of the offering circular for the public or other offering shall briefly summarize the results of the subscription offering including the number of shares sold to eligible account holders and others, the price or prices at which the shares were so sold, and the number of unsubscribed shares. Such offering circular may omit the description of the subscription offering required by Item 5.

(c) If the unsubscribed shares are to be offered through underwriters, the offering circular for the public offering shall state the names of the principal underwriters and the respective amounts underwritten by each. The names of the principal underwriters other than the managing underwriters and the respective amounts to be underwritten may be omitted from the offering circular for the subscription offering. Both offering circulars shall identify each principal underwriter having a material relationship to the applicant and state the nature of the relationship. Both underwriting circulars shall state briefly the nature of the underwriters' obligation to take the unsubscribed shares.

(d) The offering circular for the public offering shall state briefly the discounts and commissions to be allowed or paid to dealers in connection with the sale of the unsubscribed shares. Such information may be omitted from the offering circular for the subscription offering.

(e) If the unsubscribed shares are to be offered through underwriters, the offering circular for the public offering shall identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the number of shares so intended to be confirmed. Such information may be omitted from the offering circular for the subscription offering.

Instructions. 1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. Only commissions paid by the applicant in cash are to be included in the table. Any other consideration to the underwriters shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

3. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such shares as they may sell to the public. Conditions precedent to the underwriters' taking the shares, including customary "market outs", need not be described.

FORM FA

[Facing Sheet]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Washington, D.C. 20552

Application for Final Approval of Conversion

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and zip code)

(Date of Application)

Item 1. *Form of Application.* Set forth an application for final approval of the plan of conversion in the following form with the names and titles of the officers and directors signing the application indicated below their signatures:

The undersigned hereby makes application for final approval to convert into a stock association, and submits herewith the information and exhibits as required by Part 563b of the Rules and Regulations for Insurance of Accounts of the Federal Savings and Loan Insurance Corporation.

In submitting this application the applicant understands and agrees that, if any appraisals are required by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, they will be conducted by, or as approved by, the Board or the Corporation at the expense of the applicant; and applicant will pay the costs thereof as computed by the Board or the Corporation.

This application has been approved by at least two-thirds of the board of directors of the applicant. In accordance with section 563b.8(c)(4) of the Rules and Regulations for Insurance of Accounts, by the filing of this application, the applicant by its duly authorized representative, the undersigned officers and each member of the applicant's board of directors severally represent, except to the extent otherwise provided in said section, (1) that each such person has read this application; (2) that in the opinion of each such person, he has made such examination and investigation as is necessary to enable him to express an informed opinion that this application complies to the best of his knowledge and belief with the applicable requirements of Part 563b of the Rules and Regulations for Insurance of Accounts and forms thereunder; and (3) that each such person holds such informed opinion.

ATTEST:

(Principal Executive Officer)

(Principal Financial Officer)

(Principal Accounting Officer)

(Director)

(Director)

(Director)

(Director)

(Director)

Applicant

By ---

(Duly Authorized Representative)

(Signatures of at least two-thirds of the Board of Directors)

Item 2. *Vote of Association Members.* With respect to each matter voted upon at the meeting of association members to consider the plan of conversion and related to such plan, state the total number of votes eligible to be cast; the total number of votes cast in favor of each such matter; and the percentage of votes necessary to approve each such matter.

Item 3. *Price Information.* Pursuant to § 563b.7(d), state the maximum subscription price or prices and the estimated maximum public offering price which the applicant proposes to include in the order forms and the final offering circular for the subscription offering. The prices contained in the final approval of the Corporation shall be those included in the order forms and the final offering circular for the subscription offering. The final offering circular for the public offering of unsubscribed shares may contain a public offering price in excess of such estimated maximum public offering price.

Item 4. *Final Offering Circular for the Subscription Offering.* Furnish copies of the proposed final offering circular for the subscription offering. Such offering circular shall be prepared in accordance with Form OC.

Item 5. *Offering Circular for the Public Offering.* Furnish copies of the preliminary offering circular for the other offering which is intended to be used during the subscription period. Furnish by filing an amendment to this Form copies of the proposed final offering circular for the public or other offering. The offering circulars for the public or other offering required to be furnished by this Item shall be prepared in accordance with Form OC.

EXHIBITS

Exhibit 1. Attach an opinion of counsel to the effect that (1) the meeting of members was held in accordance with all requirements of applicable State and Federal law and regulation; and (2) all requirements of State law applicable to the conversion, including State and Canadian securities laws, have been complied with, except to the extent that the granting of final approval by the Corporation is such a requirement.

Exhibit 2. Attach a copy of the pricing materials required by section 563b.7(g) in support of the information contained in Item 2.

Exhibit 3. Attach a certified copy of each resolution adopted at the meeting of the members to consider the plan of conversion.

Exhibit 4. Attach copies of all exhibits and other information required by Form PA and Part 563b and not previously submitted.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260 as amended; 12 U.S.C. 1725, 1726, 1730; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan. No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, JR.,
Assistant Secretary.

[FR Doc.73-25926 Filed 12-7-73;8:45 am]

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PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

LASER PRODUCTS

Proposed Performance Standard

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 1040]

LASER PRODUCTS

Proposed Performance Standard

Pursuant to authority of the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (Public Law 90-602, 42 U.S.C. 263b et seq.), notice is hereby given of a proposal to amend Chapter I of Title 21 of the Code of Federal Regulations by adding a new Part 1040 to the radiological health regulations (formerly Part 278, recodified in the FEDERAL REGISTER of October 15, 1973 (38 FR 28623)), and prescribing performance standards for laser products in new §§ 1040.10 and 1040.11. A laser product may consist of a single laser with or without a power supply, or may incorporate one or more lasers in a complex optical, electrical, or mechanical system. Typically, laser products are used for the demonstration of physical and optical properties; transfer of intense levels of energy to material; cutting and drilling; reading, storage, transmission, and display of information; etc. Such systems have found considerable application in industry, research, education, and medicine.

The proposed radiation performance standard would be applicable to products which constitute or incorporate a laser or laser system, and which are manufactured or assembled on or after the effective date of the standard. A laser system includes a laser in combination with a laser energy source. Under the standard, the manufacturer of a complete laser product or of components designed for use in specific combinations making up a unique laser product would be required to certify that each such laser product or specific combination of components complies with all of the requirements of the standard. Likewise, a person who is engaged in the business of supplying or assembling components of laser products and who specifically recommends or installs a unique combination of components constituting a laser or laser system must certify that the resulting laser product complies with the standard. The modification of any previously certified laser product with respect to radiation safety by a person engaged in the business of such modification is considered "manufacturing" under the act, and the product must be recertified as prescribed in § 1040.10(i). However, laser products which are sold to other manufacturers for use as components of electronic products to be introduced into commerce would not be subject to the requirements of the proposed standard.

There is increasingly widespread use of a growing variety of commercial laser products in environments ranging from restricted industrial locations to completely unrestricted public areas. Such products pose varying degrees of radiation hazards to persons in these environments. The hazard depends upon the type and magnitude of laser radiation which the products produce and the particular function or operation which they are intended to perform. Serious radiation injuries associated with accidental exposure to direct or reflected laser beams have been reported to the Food and Drug Administration. Surveys of laser products in high schools, colleges and industrial installations also indicate the need for additional protective features on laser products. This standard is intended to assure adequate warning to individuals of the hazards associated with accessible radiation from laser products and to reduce the possibility of injury by minimizing unnecessary accessible radiation. This is achieved by means of requirements providing for adequate identification of radiation hazards through labels and instructions, containment of unnecessary radiation, and protective features which will give the operator improved control of the radiation. While the proposed performance standard cannot regulate the manner in which laser products are actually used, it establishes a basis for adoption of uniform use controls by State and Federal agencies.

The proposed performance standard has been reviewed on three separate occasions by the Technical Electronic Product Radiation Safety Standards Committee, a statutory committee which by law must be consulted prior to the promulgation of electronic product performance standards established under Public Law 90-602. More than 50 experts in the many facets of ultraviolet, visible and infrared light bioeffects were invited to submit written comments on the biological basis of the proposed standard. Discussions were held with representatives of laser product manufacturers to discuss added features which would provide improved protection against radiation from laser products and at the same time be technically feasible. In addition, representatives of radiation control and public health agencies, consumer groups, and others have participated in these discussions and submitted comments on preliminary drafts of the proposed standard. The Bureau of Radiological Health of the Food and Drug Administration has also worked very closely with representatives of the American National Standards Institute's Z-136 Committee on the Safe Use of Lasers in the development of the standard. Consideration has been given to other currently recognized national and international radiation protection guidelines, to State regulations, and to the latest available scientific and medical data with respect to the hazards of electronic product radiation. In addition, original research and testing were carried out by the Bureau of Radiological Health. The proposed standard represents the cumulative result of these efforts.

Because of the great variety of commercial laser products, the proposed performance standard prescribes appropriately differing requirements for different kinds of laser products. This is accomplished through the product classification provisions of § 1040.10(c), which are based upon varying degrees of biological hazard from accessible laser radiation. A range of appropriate general provisions for all laser products based upon their respective classes is contained in §1040.10 (f), (g), and (h) pertaining to operational, labeling and informational requirements. Section 1040.11 then adds special requirements which laser products designed to perform certain specific functions are required to meet in addition to the general requirements for their particular class.

The classification provisions establish four different classes of laser products in terms of accessible emission limits. These limits are based upon a graded risk of biological damage from laser radiation. Laser products are classified on the basis of the highest level of laser radiation to which access by any part of the human body or by an object of specified dimensions is possible. Accessible laser radiation of Class I laser products is at levels at which biological damage has not been established. Accessible laser radiation of Class II laser products is at levels of visible laser radiation at which eye damage from chronic exposure is possible. Accessible laser radiation of Class III laser products is at levels at which biological damage to human tissue is possible from acute direct exposure. Accessible laser radiation of Class IV laser products is at levels at which biological damage is possible from acute direct or diffuse exposure. Accessible emission limits of laser radiation for each class are provided in § 1040.10(d) Table I, and methods of determination and measurement of emission levels are given in § 1040.10 (d) and (e).

The operational requirements in § 1040.10(f) (1) and (2) for protective housing and safety interlocks would limit the highest accessible emission level of laser radiation from a laser product. The limitations prescribed would depend upon the extent of access to laser radiation required to perform the product's intended function. The protective housing and the safety interlocks would be required to prevent human access, during normal operation, to laser radiation in excess of the accessible emission limit of the highest class of laser radiation to which access is necessary for the intended function of the product. Consequently, each laser product would be required to comply with the requirements for the lowest class of laser product consistent with its intended function. If a portion of the protective housing is designed to be removed or displaced during normal operation, the product would have to be classified on the basis of the accessible emission level in that configuration. Where safety interlocks are required for that portion of the protective housing, but designed to be defeated during normal operation, the product would be classified according to the accessible radiation under those conditions. However, the classification of a laser product would not be based on those levels of laser radiation that are accessible solely

during maintenance or servicing of the product.

The protective housing and safety interlock requirements would provide graduated degrees of radiation protection at different points around a laser product. These protective features serve to prevent human access to radiation in excess of each accessible emission limit at all points where and at all times when human access to radiation exceeding that limit is not necessary. Hence, all laser products, regardless of their class, would be required to prevent human access to laser and collateral radiation in excess of the lowest accessible emission limit consistent with the intended function of the product at each surrounding point and time.

Section 1040.10(f) also would require fail-safe performance by all safety interlocks on the protective housing of a laser product. Those interlocks which are designed to be intentionally defeated must be equipped with a visible or audible indication of defeat and prevent replacement of the protective housing while defeated. Each laser system except a Class I laser product would be required to provide a visible or audible indication when the system is capable of emission of laser radiation, and would incorporate a mechanical laser beam attenuator. Each Class III or IV laser system would be required to have a key-actuated master control and a remote control connector to permit easy addition of external protective barrier interlocks in laser installations. Furthermore, all viewing optics incorporated into any class of laser product must always attenuate all transmitted laser and collateral radiation to levels less than or equal to the accessible emission limits of Class I. Similarly, each scanning laser product would be required to prevent human access to laser radiation in excess of applicable accessible emission limits in the event of scan failure.

Forewarning the user or bystander of the presence of radiation which can be hazardous and advising of evasive actions to be taken are of utmost importance in the proposed requirements of § 1040.10(g). A warning logotype would be required on all laser products except those in Class I. The logotype and the radiation evasion command combine a hazard warning, a statement of output specifications, and a certification declaration as required for the products by § 1010.2 of this chapter. The logotype and evasion command called for are dependent upon the classification of the product and whether the radiation is visible and/or invisible. In addition, warning labels would be required for laser beam apertures and non-interlocked or defeatably interlocked portions of the protective housing whose removal permits access to hazardous laser radiation. The standard provides that labels be positioned so as to preclude, during reading, access to laser or collateral radiation above the Class I accessible emission limits. For laser products which are too small to label, the required warnings may be given on the innermost packaging container.

Manufacturers would be required to provide radiation safety information pursuant to § 1040.10(h). Each laser product must be accompanied by information including adequate instructions for the safe use, adjustment, and maintenance of the product; the magnitude of certain critical radiation parameters; and clear warnings of precautions to be taken to avoid possible exposure to hazardous radiation. All servicing dealers and distributors, and others upon request, would be provided with instructions for safe service and maintenance of the laser product including a schedule of maintenance necessary to assure compliance with this standard. Catalogs, specification sheets and descriptive brochures pertaining to each laser product would be required to carry a legible reproduction of the warning logotype to be affixed to that product.

Section 1040.11 proposes requirements for laser products designed to perform certain specialized functions. These requirements are in addition to the general requirements for the particular product class. The specialized functions for which these additional requirements would be imposed are ones whose performance creates a unique potential for human exposure to hazardous laser radiation. Specific requirements are prescribed for: Medical laser products designed to expose the living human body to laser radiation for diagnostic or therapeutic purposes; surveying, leveling and alignment laser products designed to transmit laser radiation through open space for measuring and positioning purposes; and demonstration laser products employing laser radiation for demonstration or entertainment display in relatively unrestricted areas. The provisions for medical laser products would require the incorporation of a measurement system to permit accurate monitoring of emitted laser radiation, along with a means for setting the laser emission to one predetermined value that can be maintained by a specified calibration schedule. The requirements for surveying, leveling and alignment laser products and for demonstration laser products would impose appropriate upper limits on the accessible laser emission from such products consistent with their intended function and the generally unrestricted environments in which they are used.

The Commissioner of Food and Drugs proposes to order that these amendments be made applicable to all laser products manufactured or assembled on or after a date which is one year following the date of FEDERAL REGISTER publication of the final order.

Therefore, pursuant to provisions of the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179; 42 U.S.C. 263f) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes to amend Chapter I of Title 21 of the Code of Federal Regulations by adding a new part consisting at this time of the following sections:

PART 1040—PERFORMANCE STANDARDS FOR LIGHT EMITTING PRODUCTS

Sec.
1040.10 Laser products.
1040.11 Special use-group requirements.

AUTHORITY: Sec. 358, 82 Stat. 1177–1179; 42 U.S.C. 263f.

§ 1040.10 Laser products.

(a) *Applicability.* The provisions of this section and § 1040.11 are applicable as specified herein to all laser products manufactured or assembled on or after (one year after the date the final order is published in the FEDERAL REGISTER).

(b) *Definitions.* As used in this section, the following definitions apply:

(1) "Accessible emission level" means the maximum emission from a laser product of laser or collateral radiation of a specific wavelength and emission duration to which human access is possible at a particular point and time, as provided in paragraph (e)(4) of this section.

(2) "Accessible emission limit" means the maximum accessible emission level permitted within a particular class as set forth in paragraphs (c), (d) and (e) of this section.

(3) "Aperture" means any opening in the protective housing or other enclosure of a laser product through which laser radiation is emitted, thereby allowing human access to such laser radiation.

(4) "Aperture stop" means an opening serving to limit the size and to define the shape of the area over which radiant power or energy is sampled by a measurement instrument.

(5) "Class I laser product" means any laser product which does not permit human access to laser radiation in excess of the accessible emission limits of Class I for any emission duration less than or equal to the maximum emission duration.

(6) "Class II laser product" means any laser product which:

(i) Permits human access to laser radiation in excess of the accessible emission limits of Class I but not in excess of the accessible emission limits of Class II for emission durations greater than 0.25 second in the wavelength range of greater than 400 nanometers (nm) through 700 nm; and,

(ii) Does not permit human access to laser radiation in excess of the accessible emission limits of Class I for any other emission duration or wavelength range.

(7) "Class III laser product" means any laser product which permits human access to laser radiation in excess of the accessible emission limits of Class I or Class II as applicable, but which does not permit human access to laser radiation in excess of the accessible emission limits of Class III for any emission dura-

tion less than or equal to the maximum emission duration.

(8) "Class IV laser product" means any laser product which permits human access to laser radiation in excess of the accessible emission limits of Class III.

(9) "Collateral radiation" means any electronic product radiation, except laser radiation, emitted by a laser product as a result of, or necessary for, the operation of a laser incorporated into that product.

(10) "Demonstration laser product" means any laser product manufactured, designed, intended, or promoted for purposes of demonstration, entertainment, advertising display or artistic composition. The term "demonstration laser product" does not apply to laser products which are designed and intended exclusively for other applications though they may be used for demonstration of those applications.

(11) "Emission duration" means the temporal duration of a pulse, or series of pulses, emitted by a laser product.

(12) "Human access" means access at a particular point to laser or collateral radiation by any part of the human body or by an object as specified in paragraph (e)(4) of this section.

(13) "Integrated radiance" means radiant energy per unit area of a radiating surface per unit solid angle of emission, expressed in joules per square centimeter per steradian ($J\ cm^{-2}\ sh^{-1}$).

(14) "Irradiance" means the quotient of the radiant power incident on an element of a surface by the area of that element, expressed in watts per square centimeter ($W\ cm^{-2}$).

15) "Laser" means any device which, when coupled with an appropriate laser energy source, can produce or amplify electromagnetic radiation in the wave length range of greater than 250 nm through 13000 nm primarily by the process of controlled stimulated emission.

(16) "Laser energy source" means any device intended for use in conjunction with a laser to supply energy for the operation of the laser. General energy sources such as electrical supply mains or batteries shall not be considered to constitute laser energy sources.

(17) "Laser product" means:

(i) Any manufactured product which constitutes or incorporates a laser or laser system and which is not sold to another manufacturer for use as a component of an electronic product to be sold to a purchaser; or,

(ii) Any unique combination of components designed or specifically designated for use in that combination by a person engaged in the business of supplying for such use one or more components constituting or incorporating a laser or laser system; or,

(iii) Any installation constituting or incorporating a laser or laser system assembled by a person engaged in the business of assembling such installations. The installation may include portions of the architectural structure which may affect any aspect of the installation's performance for which this section has an applicable requirement.

(18) "Laser radiation" means all electromagnetic radiation within the spectral range specified in paragraph (b)(15) of this section which is produced as a result of controlled stimulated emission, or emitted collinearly with radiation so produced.

(19) "Laser system" means a laser in combination with an appropriate laser energy source with or without additional incorporated components.

(20) "Maximum emission duration" means the maximum duration of repeated, or continuous, operation of which the laser product is capable, whichever is greater.

(21) "Maximum output" means that maximum magnitude, at any time after manufacture, of total accessible laser radiation emitted by a laser product over the full range of operational capability.

(22) "Medical laser product" means any laser product designed or intended for purposes of in vivo diagnostic or therapeutic laser irradiation of any part of the human body.

(23) Protective housing" means those portions of a laser product which are designed to prevent human access to laser and collateral radiation in excess of the prescribed accessible emission limits under conditions specified in this section.

(24) "Pulse duration" means the time increment measured between the half-peak-power points at the leading and trailing edges of the pulse.

(25) "Pulse interval" means the time duration between similar points on two successive pulses.

(26) "Radiance" means radiant power per unit area of a radiating surface per unit solid angle of emission, expressed in watts per square centimeter per steradian ($W\ cm^{-2}\ sr^{-1}$).

(27) "Radiant energy" means energy emitted, transferred or received in the form of radiation, expressed in joules (J).

(28) "Radiant exposure" means the quotient of the radiant energy incident on an element of a surface by the area of that element, expressed in joules per square centimeter ($J\ cm^{-2}$).

(29) "Radiant power" means power emitted, transferred or received in the form of radiation, expressed in watts (W).

(30) "Remote control connector" means a two-terminal connector which permits the connection of external controls placed apart from other components of the laser product to prevent human access to all laser and collateral radiation in excess of limits specified in this section.

(31) "Safety interlock" means a device associated with the protective housing of a laser product to prevent human access to excessive radiation under the conditions specified in paragraph (f)(2) of this section.

(32) "Scanned laser radiation" means laser radiation having a time-varying direction of propagation with respect to a stationary frame of reference.

(33) "Surveying, leveling, or alignment laser product" means a laser product designed or intended for one or more of the following uses:

(i) Determining and delineating the form, extent, or position of a point, body, or area by taking angular measurement.

(ii) Positioning or adjusting parts in proper relation to one another.

(iii) Defining a plane, level, elevation, or straight line.

(34) "Warning logotype" means either a logotype as illustrated in Figure 1 or Figure 2 of paragraph (g) of this section.

(35) "Wavelength" means only the propagation wavelength in air of electromagnetic radiation.

(c) *Classification of laser products.* Each laser product shall be classified on the basis of that combination of emission level, emission duration, and wavelength(s) of accessible laser radiation emitted over the full range of operational capability which results, at any time after manufacture, in the highest class specified in Table I of paragraph (d) of this section pursuant to paragraphs (d) and (e) of this section. For purposes of classification, Class II is higher than Class I, Class III is higher than Class II, and Class IV is higher than Class III.

(1) *Products with multiple beams.* Laser products which can emit laser radiation in two or more spatially resolved sets of wavelengths shall be classified in the highest class for the individual sets of simultaneous spatially unresolved wavelengths in accordance with paragraph (d) of this section.

(2) *Products with removable laser systems.* Any laser system which is incorporated into a laser product and is capable without modification of producing laser radiation when removed from the laser product, shall be considered a laser product and separately subject to the requirements appropriate to its class. It shall be classified on the basis of accessible emission of laser radiation when so removed.

(d) *Accessible emission limits.* Accessible emission limits for laser radiation in each class are specified in Table I of this paragraph in terms of the factors, k_1 and k_2, for different ranges of wavelength and emission duration. These factors are given in Table II of this paragraph, with selected numerical values in Table IIa of this paragraph, for various subranges of wavelength and emission duration. The accessible emission limits in Table I of this paragraph are also expressed in terms of the specific emission duration (t) for some emission duration ranges; and the correction factors in Table II of this paragraph are expressed in terms of the specific wavelength (λ) and specific emission duration (t) for some subranges of wavelength and emission duration.

TABLE I

ACCESSIBLE EMISSION LIMITS FOR LASER PRODUCTS

Wavelength λ nm	Emission Duration Interval sec	Class I – Accessible Emission Limits	Class II – Accessible Emission Limits	Class III – Accessible Emission Limits	Class IV – Accessible Emission Limits
> 250 nm through 400 nm	$\leq 3.0 \times 10^{4}$	$\leq 3.4 \times 10^{-3} k_1 k_2$ J*	Not Applicable	> Class I but $\leq 3.4 \times 10^{-3} k_1 k_2$ J	> Class III
	$> 3.0 \times 10^{4}$	$\leq 8.0 \times 10^{-15} k_1 k_2$ W	Not Applicable	> Class I but $\leq 1.05 \times 10^{-3} k_1 k_2$ W	> Class III
> 400 nm through 1400 nm	$> 1.0 \times 10^{-9}$ to 3.0×10^{-5}	$\leq 2.0 \times 10^{-3} k_1 k_2$ J	Not Applicable	> Class I but $< 10 k_1 k_2^{3/2}$ J cm^{-2} for a max. value of 10 J cm^{-2}	> Class III
	$> 3.0 \times 10^{-5}$ to 3.0×10^{-1}	$\leq 7.0 \times 10^{-4} k_1 k_2^{3/4}$ J *			
	$> 3.0 \times 10^{-1}$ to 10	$\leq 7.0 \times 10^{-4} k_1 k_2^{3/4}$ J			
	> 10 to 3.0×10^{4}	$\leq 2.0 \times 10^{-3} k_1 k_2$ J	> Class I but $\leq 1.0 \times 10^{-3} k_1 k_2$ W**	> Class I or Class II** but $\leq 5.0 \times 10^{-1}$ W	> Class III
	$> 3.0 \times 10^{4}$	$\leq 3.9 \times 10^{-3} k_1 k_2$ W			
	OR				
	$> 1.0 \times 10^{-9}$ to 1.0×10^{-7}	$\leq 10 k_1 k_2^{3/2}$ J cm^{-2} s^{-1}	Not Applicable		
	$> 3.0 \times 10^{-7}$ to 1.0×10^{4}	$\leq 10 k_1 k_2$ J cm^{-2} s^{-1}			
	$> 1.0 \times 10^{4}$	$\leq 3.9 \times 10^{-3} k_1 k_2$ W cm^{-2} s^{-1}			
> 1400 nm through 1500 nm	$> 1.0 \times 10^{-9}$ to 1.0×10^{-7}	$\leq 7.0 \times 10^{-3} k_1 k_2$ J	Not Applicable	> Class I but ≤ 10 J cm^{-2}	> Class III
	$> 1.0 \times 10^{-7}$ to 1.0×10^{4}	$\leq 4.9 \times 10^{-3} k_1 k_2^{3/4}$ J			
	$> 1.0 \times 10^{4}$	$\leq 1.8 \times 10^{-3} k_1 k_2$ W	Not Applicable	> Class I but $\leq 5.0 \times 10^{-1}$ W	> Class IV

* Class I emission limits for $\lambda > 280$ nm to 400 nm shall not exceed the Class I emission limits for $\lambda > 1400$ nm to 2 000 nm for corresponding emission duration intervals.

** Class II emission limits in this table apply only to emission within the wavelength range of $\lambda > 400$ nm through 700 nm for exposure durations of > 0.25 second.

Note: (1) The quantities presented in Table I are radiant energy expressed in joules (J); radiant power expressed in watts (W); radiant exposure expressed in joules per square centimeter (J cm^{-2}); irradiance expressed in watts per square centimeter (W cm^{-2}); source radiance expressed in watts per square centimeter per steradian (W cm^{-2} sr^{-1}); and the source integrated radiance expressed in joules per square centimeter per steradian (J cm^{-2} sr^{-1}).

(2) The factors k_1 and k_2 are wavelength dependent correction factors determined from Table II.

(3) The variable t in the expressions of emission limits is emission duration expressed in units of seconds.

TABLE II

VALUES OF WAVELENGTH DEPENDENT CORRECTION FACTORS k_1 AND k_2

Wavelength Band nm	k_1	k_2		
250 to 302.4	1.0	1.0		
> 302.4 to 315	$10^{\left[\frac{\lambda - 302.4}{5}\right]}$	1.0		
> 315 to 400	330.0	1.0		
> 400 to 700	1.0	1.0		
> 700 to 800	$10^{\left[\frac{\lambda - 700}{515}\right]}$	if: $t \leq \frac{10100}{\lambda - 699}$ then: $k_2 = 1.0$	if: $\frac{10100}{\lambda - 699} < t \leq 10^{4}$ then: $k_2 = \frac{t(\lambda - 699)}{10100}$	if: $t > 10^{4}$ then: $k_2 = \frac{\lambda - 699}{1.01}$
> 800 to 1060	$10^{\left[\frac{\lambda - 700}{515}\right]}$	if: $t \leq 100$ then: $k_2 = 1.0$	if: $100 < t \leq 10^{4}$ then: $k_2 = \frac{t}{100}$	if: $t > 10^{4}$ then: $k_2 = 100$
> 1060 to 1400	5.0			
> 1400 to 1535	1.0	1.0		
> 1535 to 1545	$t \leq 10^{-7}$ sec $k_1 = 100.0$	1.0		
	$t > 10^{-7}$ sec $k_1 = 1.0$			
> 1545 to 10000	1.0	1.0		

Note: The variables in the expressions are emission duration (t) expressed in units of seconds, and wavelength (λ) expressed in units of nanometers.

TABLE II a

SELECTED NUMERICAL SOLUTIONS FOR k_1 AND k_2

Wavelength nm	k_1	k_2				
		$t \leq 100$ sec	t=300 sec	t=1000 sec	t=3000 sec	$t \geq 10{,}000$ sec
250	1.0	1.0				
300	1.0					
302	1.0					
303	1.32					
304	2.09					
305	3.31					
306	5.25					
307	8.32					
308	13.2					
309	20.9					
310	33.1					
311	52.5					
312	83.2					
313	132.0					
314	209.0					
315	330.0					
400	330.0					
401	1.0					
500	1.0					
600	1.0					
700	1.0					
710	1.05	1	1	1.1	3.3	11.0
720	1.09	1	1	2.1	6.3	21.0
730	1.14	1	1	3.1	9.3	31.0
740	1.20	1	1.2	4.1	12.0	41.0
750	1.25	1	1.5	5.0	15.0	50.0
760	1.31	1	1.8	6.0	18.0	60.0
770	1.37	1	2.1	7.0	21.0	70.0
780	1.43	1	2.4	8.0	24.0	80.0
790	1.50	1	2.7	9.0	27.0	90.0
800	1.56	1	3.0	10.0	30.0	100.0
850	1.95	1	3.0	10.0	30.0	100.0
900	2.44	1	3.0	10.0	30.0	100.0
950	3.05	1	3.0	10.0	30.0	100.0
1000	3.82	1	3.0	10.0	30.0	100.0
1050	4.78	1	3.0	10.0	30.0	100.0
1060	5.00	1	3.0	10.0	30.0	100.0
1100	5.00	1	3.0	10.0	30.0	100.0
1400	5.00	1	3.0	10.0	30.0	100.0
1500	1.0	1.0				
1540	100.0*					
1600	1.0					
13000	1.0					

* The factor $k_1 = 100.0$ when $t \leq 10^{-7}$ sec, and $k_1 = 1.0$ when $t > 10^{-7}$ sec.

(1) *Beam of single wavelength.* Laser radiation of a single wavelength exceeds the accessible emission limits of a class, if its accessible emission level is greater than the accessible emission limit of that class within any of the emission duration ranges specified in Table I of this paragraph.

(2) *Beam of multiple wavelengths in same range.* Laser radiation, having two or more simultaneous spatially unresolved wavelengths within any one of the wavelength ranges specified in Table I of this paragraph, exceeds the accessible emission limits of a class, if the sum of the ratios of the accessible emission level to the corresponding accessible emission limit at each such wavelength is greater than unity for that combination of emission duration and wavelength distribution which results in the maximum sum.

(3) *Beam with multiple wavelengths in different ranges.* Laser radiation having simultaneous spatially unresolved wavelengths within two or more of the wavelength ranges specified in Table I of this paragraph exceeds the accessible emission limits of a class, if it exceeds the applicable limits within any one of those wavelength ranges. This determination is made for each wavelength range in accordance with paragraph (d) (1) or (2) of this section.

(4) *Class I dual limits.* Laser radiation in the wavelength range of greater than 400 nm through 1400 nm exceeds the accessible emission limits of Class I if it exceeds both:

(i) The Class I accessible emission limits for radiant energy or radiant power within any corresponding emission duration range specified in Table I of this paragraph.

(ii) The Class I accessible emission limits for integrated radiance or radiance within any corresponding emission duration range specified in Table I of this paragraph.

(e) *Measurement of accessible emissions*—(1) *Measurement conditions.* Measurements to determine compliance with the requirements of this section shall be made:

(i) Under those operational conditions and procedures which maximize the accessible emission levels including start-up, stabilized operation, and shut-down of the laser product.

(ii) With all controls and adjustments listed in the operating and service instructions adjusted for that maximum accessible emission level of laser radiation which is not expected to be detrimental to the functional integrity of the product.

(iii) At points in space to which human access is possible for a given product configuration pursuant to requirements of this section (if normal operation may include removal of portions of the protective housing and defeat of safety interlocks, measurements shall be made at points accessible in that product configuration).

(iv) With the measuring instrument detector so positioned and so oriented with respect to the laser product as to result in the maximum detection of radiation by the instrument.

(v) For a laser product other than a laser system, with the laser coupled to that type of laser energy source specified as compatible by the laser manufacturer and which produces the maximum emission of accessible laser radiation from that product.

(2) *Measurement accuracy and radiation increase.* Compliance with the requirements of this section, with the exception of the requirements in § 1040.11 (a), shall be determined by measurements which shall have a cumulative error due to all sources of inaccuracy not to exceed ±20 percent. The accessible emission level shall be the sum of the measured quantity of radiation, the cumulative measurement error, and the maximum expected increase in the measured quantity of radiation at any time after manufacture.

(3) *Measurement parameters.* Accessible emission levels of laser and collateral radiation shall be based upon the following measurements:

(i) The radiant power (W) or radiant energy (J) detectable within a circular aperture stop having a diameter of 80 millimeters.

(ii) The irradiance ($W\ cm^{-2}$) or radiant exposure ($J\ cm^{-2}$) averaged over a circular aperture stop having a diameter of 7 millimeters.

(iii) The radiance ($W\ cm^{-2}\ sr^{-1}$) or integrated radiance ($J\ cm^{-2}\ sr^{-1}$) which is equivalent to the radiant power (W) or radiant energy (J) detectable through a circular aperture stop having a diameter of 7 millimeters and within an effective solid angle of acceptance of 10^{-3} sr, divided by that solid angle (sr) and by the area of the aperture stop (cm^2).

(iv) For scanned laser radiation only, the radiant power or radiant energy detectable within a stationary circular aperture stop having a 7 millimeter

diameter. The resulting temporal variation of detected radiation shall be considered as a pulse or series of pulses, and the radiant energy of the pulse and average radiant power shall be measured at that accessible point in space and time which results in the maximum detectable within such an aperture stop unassisted by collecting optics.

(4) *Human access.* A laser product shall be considered to permit human access at a particular point to laser or collateral radiation in excess of an accessible emission limit if such radiation in excess of the limit is incident at a point that can be reached by a straight object 3.0 ±0.1 millimeters in diameter and 10.0 ±0.1 centimeters in useful length.

(f) *Operational requirements*—(1) *Protective housing.* Each laser product, regardless of its class, shall have a protective housing, which, when in place, prevents human access during normal operation to:

(i) Laser radiation in excess of the accessible emission limits of Class I at all points where and at all times when human access to laser radiation exceeding the limits of Class I is not necessary for the performance of the intended function(s) of the product.

(ii) Laser radiation in excess of the accessible emission limits of Class II at all points where and at all times when human access to laser radiation exceeding the limits of Class II is not necessary for the performance of the intended function(s) of the product.

(iii) Laser radiation in excess of the accessible emission limits of Class III at all points where and at all times when human access to laser radiation exceeding the limits of Class III is not necessary for the performance of the intended function(s) of the product.

(iv) Collateral radiation in excess of the accessible emission limits specified in Table III of this subdivision at all points where and at all times when human access to collateral radiation in excess of those limits is not necessary for the performance of the intended function(s) of the product.

TABLE III

Accessible Emission Limits for Collateral Radiation from Laser Products.

A. *Accessible emission limits* for collateral radiation having wavelengths greater than 250 nm through 13000 nm are identical to the accessible emission limits of Class I laser radiation as determined from Tables I and II in paragraph (d) of this section for the appropriate wavelength(s) and emission duration.

B. *Accessible emission limit* for collateral radiation within the x-ray range of wavelengths is 0.5 milliroentgens in an hour, averaged over an area of 10 square centimeters with no dimension greater than 5 centimeters.

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(2) *Safety interlocks.* (i) Each laser product, regardless of its class, shall be provided with a safety interlock for each portion of the protective housing which is designed to be removed or displaced during normal operation or maintenance, if such removal or displacement could permit human access to laser or collateral radiation in excess of the accessible emission limits of Class I or Table III of paragraph (f) (1) (iv) of this section. Each such safety interlock, unless defeated, shall:

(*a*) Prevent human access to laser and collateral radiation in excess of the accessible emission limits of Class I or Table III of paragraph (f) (1) (iv) of this section upon removal or displacement of said portion of the protective housing; and,

(*b*) Preclude removal or displacement of said portion of the protective housing when human access to laser and collateral radiation in excess of the accessible emission limits of Class or Table III of paragraph (f) (1) (iv) of this section would not be so prevented.

(ii) Laser products which incorporate required safety interlocks designed to allow safety interlock defeat shall incorporate a means of visible or audible indication of interlock defeat. During interlock defeat, such indication shall be visible or audible when the laser product is energized, with and without the associated portion of the protective housing removed or displaced.

(iii) Replacement of a removed or displaced portion of the protective housing shall not be possible while required safety interlocks are defeated.

(3) *Remote control connector.* Each laser system classified as a Class III or IV laser product shall incorporate a readily accessible remote control connector having an electrical potential difference on the remote control connector no greater than 130 root-mean-square volts. When the terminals of the connector are not electrically joined, human access to all laser and collateral radiation from the laser product in excess of the accessible emission limits of Class I or Table III of paragraph (f) (1) (iv) of this section shall be prevented.

(4) *Key control.* Each laser system classified as a Class III or IV laser product shall incorporate a key-actuated master control. The key shall be removable and the laser shall not be operable when the key is removed.

(5) *Emission indicator.* Each laser system classified as a Class II, III, or IV laser product shall provide visual or audible indication immediately before and during the emission of accessible laser radiation in excess of the limits for Class I. Any visual indicator shall be clearly visible through protective eyewear designed specifically for the wavelength(s) of the emitted laser radiation. If the laser and laser energy source are housed separately and can be operated at a separation distance of greater than two meters, both laser and laser energy source shall incorporate visual or audible indicators as described. The visual indicators shall be positioned so that viewing does not require human access to laser radiation in excess of the accessible emission limits of Class I.

(6) *Beam attenuator.* Each laser system classified as a Class II, III, or IV laser product shall be provided with one or more permanently attached mechanical means, other than electrical power supply switch(es) or the key-actuated master control, capable of preventing human access to all laser radiation in excess of the accessible emission limits of Class I.

(7) *ocation of controls.* Each Class II, III, or IV laser product shall have operational and adjustment controls located so that human access to laser and collateral radiation in excess of the accessible emission limits of Class I or Table III of paragraph (f) (1) (iv) of this section is unnecessary for operation or adjustment of controls.

(8) *Viewing optics.* All viewing optics, viewports, and display screens incorporated into a laser product, regardless of its class, shall attenuate at all times the accessible levels of transmitted laser and collateral radiation to less than the accessible emission limits of Class I and Table III of paragraph (f) (1) (iv) of this section. For any shutter or variable attenuator incorporated into such viewing optics, viewports, or display screens, a means shall be provided:

(i) To prevent human access to laser and collateral radiation in excess of the accessible emission limits of Class I and Table III of paragraph (f) (1) (iv) of this section whenever the shutter is opened or the attenuator varied; and,

(ii) To preclude, upon failure of such means as required in paragraph (f) (8) (i) of this section, opening the shutter or varying the attenuator when human access is possible to transmitted laser or collateral radiation in excess of the accessible emission limits of Class I or Table III of paragraph (f) (1) (iv) of this section.

(9) *Scanning safeguard.* Laser products which emit scanned laser radiation shall not, as a result of scan failure or other failure causing a change in either angular velocity or amplitude, permit human access to laser radiation in excess of the accessible emission limit(s) applicable to the scanned laser radiation when the product is functioning as intended.

(g) *Labeling requirements.* All laser products are subject to the requirements of §§ 1010.2 and 1010.3 of this chapter in addition to the requirements stated in subparagraphs (2) and (3) of this paragraph.

(1) *Class I certification.* Each Class I laser product shall have affixed a certification label including the following wording: "This product complies with DHEW radiation performance standards, 21 CFR Chapter I, Subchapter J".

(2) *Class II certification and warning.* Each Class II laser product shall have affixed a certification label bearing the warning logotype A (Figure 1) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—DO NOT STARE INTO BEAM"; and,

[Position 3 on the logotype]

"This laser product complies with DHEW radiation performance standards, 21 CFR Chapter I, Subchapter J, for a Class II laser product".

WARNING LOGOTYPE A

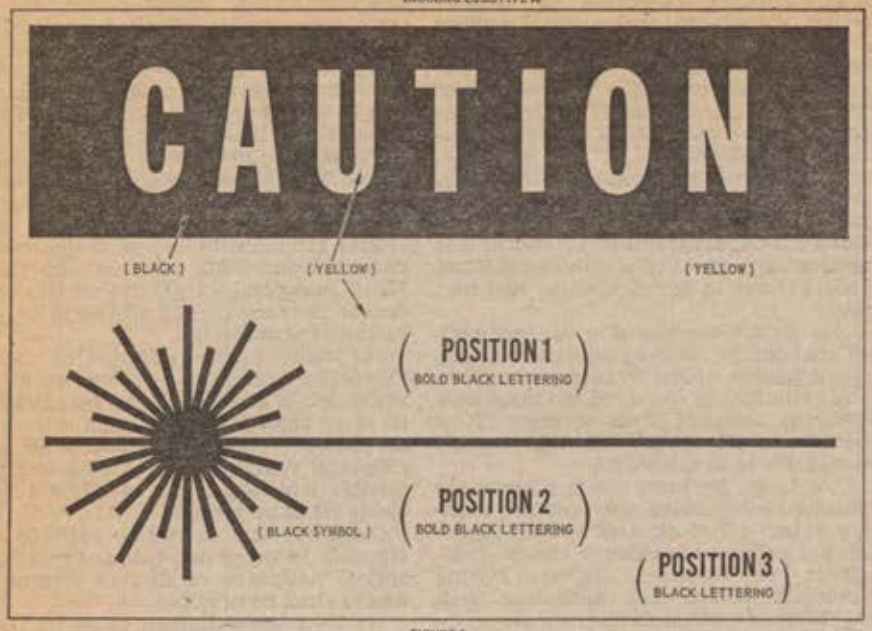

FIGURE 1

(3) *Class III certification and warning.* (i) Each laser product classified in Class III solely because of the emission of accessible laser radiation in the wavelength range of greater than 400 nm through 700 nm, with an irradiance of less than or equal to 2.5×10^{-3} W cm^{-2} and with neither a peak nor an average radiant power in excess of 5.0×10^{-3} W, shall have affixed a certification label bearing the warning logotype A (Figure 1) of paragraph (g)(2) of this section and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—DO NOT STARE INTO BEAM OR VIEW WITH OPTICAL INSTRUMENTS"; and,

[Position 3 on the logotype]

"This product complies with DHEW radiation performance standards, 21 CFR Chapter I, Subchapter J, for a Class III laser product".

(ii) Each Class III laser product other than those described in subparagraph (3)(i) of this paragraph shall have affixed a certification label bearing the warning logotype B (Figure 2) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID DIRECT EXPOSURE TO BEAM"; and,

[Position 3 on the logotype]

"This laser product complies with DHEW radiation performance standards, 21 CFR Chapter I, Subchapter J, for a Class III laser product".

WARNING LOGOTYPE B

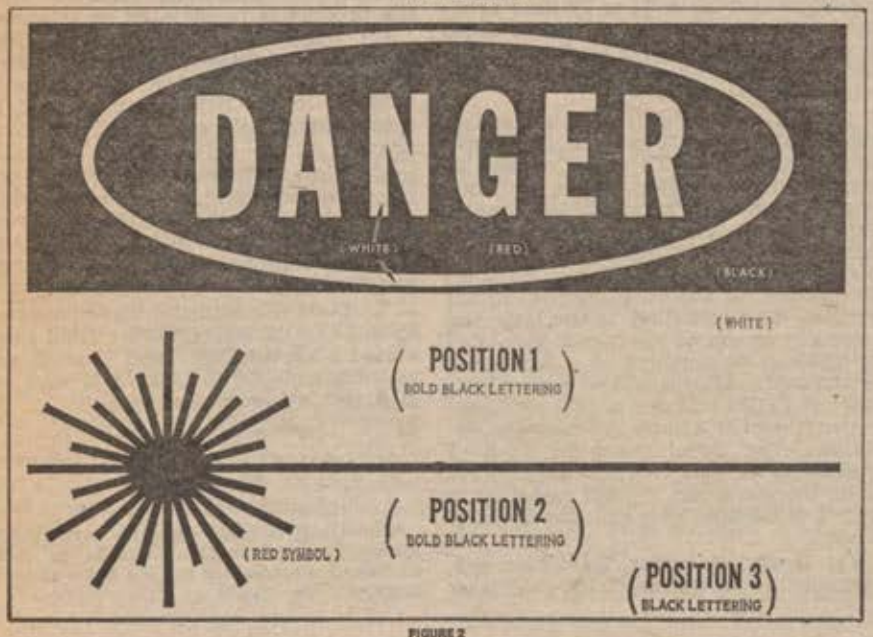

FIGURE 2

(4) *Class IV certification and warning.* Each Class IV laser product shall have affixed a certification label bearing the warning logotype B (Figure 2) of paragraph (g)(3) of this section, and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION"; and,

[Position 3 on the logotype]

"This laser product complies with DHEW radiation performance standards, 21 CFR Chapter I, Subchapter J, for a Class IV laser product".

(5) *Aperture label.* Each laser system classified as a Class II, III, or IV laser product, except medical laser products, shall have affixed a label(s) bearing the following wording: "AVOID EXPOSURE—Laser radiation is emitted from this aperture". The label shall be located in close proximity to each aperture through which accessible laser radiation is emitted.

(6) *Radiation output information.* Each Class II, III, and IV laser product shall state, at position 2 on the required warning logotype, the maximum output of laser radiation, the pulse duration when appropriate, and the laser medium or emitted wavelength(s).

(7) *Protective housing labels.* Each non-interlocked or defeatably interlocked portion of the protective housing which is designed to be displaced or removed during normal operation, maintenance or servicing, and which thereby would permit human access to laser or collateral radiation, shall bear labels as follows:

(i) For laser radiation in excess of the accessible emission limits of Class I but not in excess of the accessible emission limits of Class II, the wording: "CAUTION—Laser radiation when opened. DO NOT STARE INTO BEAM".

(ii) For laser radiation in excess of the accessible emission limits of Class I or Class II as applicable, but not in excess of the accessible emission limits of Class III, wording: "DANGER—Laser radiation when opened. AVOID EXPOSURE".

(iii) For laser radiation in excess of the accessible emission limits of Class III the wording: "DANGER—Laser radiation when opened. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION".

(iv) For collateral radiation in excess of the accessible emission limits in Table III of paragraph (f)(1)(iv) of this section:

(*a*) If the limits in Table III, Item A of paragraph (f)(1)(iv) of this section are exceeded, the wording: "CAUTION—Hazardous Electromagnetic Radiation"; and,

(*b*) If the limit in Table III, Item B of paragraph (f)(1)(iv) of this section is exceeded, the wording: "CAUTION—Hazardous X-ray Radiation".

(8) *Warning for invisible radiation.* On the labels specified in paragraph (f) of this section, if the wavelength(s) of the laser radiation referred to in the applicable subparagraph is:

(i) Outside the range of greater than 400 nm through 700 nm, the word "in-

visible" shall immediately precede the words "laser radiation"; or,

(ii) Both inside and outside the range of greater than 400 nm through 700 nm, the words "visible and invisible" shall immediately precede the words "laser radiation".

(9) *Positioning of labels.* All labels affixed to a laser product shall be positioned so as to preclude, during reading, human access to laser and collateral radiation in excess of the accessible emission limits of Class I or Table III of paragraph (f)(1)(iv) of this section.

(10) *Label specifications.* Labels required by this paragraph shall be clearly visible, legible, and permanently affixed to the laser product. However, if the largest surface area of the product is less than 25 square centimeters, the appropriate labels may be clearly imprinted on the innermost container or packaging in which the laser product is supplied to the purchaser.

(h) *Informational requirements*—(1) *User information.* Manufacturers of laser products shall provide or cause to be provided with each laser product:

(i) Adequate instructions for proper assembly and safe use including clear warnings of precautions to avoid possible exposure to laser and collateral radiation in excess of the accessible emission limits in Table I of paragraph (d) of this section and Table III of paragraph (f)(1)(iv) of this section, and a schedule of maintenance necessary to keep the product in compliance with this section.

(ii) A statement of maximum output and pulse duration(s) including the accuracy and method of measurement of these parameters (duration of pulses resulting from unintentional mode-locking need not be specified; however, those conditions associated with the product known to result in unintentional mode-locking shall be specified).

(iii) Legible reproductions (color optional) of all labels and hazard warnings required to be affixed to the laser products, including the information required for positions 1, 2, or 3 of the applicable logotype (Figure 1 or 2) under paragraph (g)(2) and (3) of this section.

(iv) A listing of controls, adjustments and operational procedures for normal operation or maintenance, including the warning "Caution—use of controls or adjustments or performance of operational procedures other than those specified herein may result in exposure to more hazardous radiation." (For Class I laser products, the word "more" may be omitted from the required warning statement.)

(v) In the case of laser products other than laser systems, a statement of the compatibility requirements for a laser energy source that will assure compliance of the laser product with this section.

(2) *Purchasing and servicing information.* Manufacturers of laser products shall provide or cause to be provided:

(i) In all catalogs, specification sheets and descriptive brochures pertaining to each laser product, a legible reproduction (color optional) of the warning logotype required to be affixed to that product, including the information required for positions 1, 2, and 3 of the applicable logotype (Figure 1 or 2) under paragraph (g)(2) and (3) of this section.

(ii) To servicing dealers and distributors, and to others upon request at a cost not to exceed the cost of preparation and distribution, adequate instructions for service adjustments and service procedures for each laser product model including clear warnings or precautions to be taken to avoid possible exposure to radiation and a schedule of maintenance necessary to keep the product in compliance with this section.

(iii) In all service instructions a listing of controls and procedures which can increase accessible emission levels of radiation, and a clear description of the location of displaceable portions of the protective housing which could allow access by personnel to laser and collateral radiation in excess of the accessible emission limits in Table I of paragraph (d) of this section or Table III of paragraph (f)(1)(iv) of this section. The instructions shall include protective procedures for service personnel, and legible reproductions (color optional) of required labels and hazard warnings.

(i) *Modification of a certified product.* The modification of a laser product, previously certified pursuant to § 1010.2, by any person engaged in the business of manufacturing, assembling or modifying laser products shall be construed as manufacturing under the act if the modification affects any aspect of the product's performance for which this section has an applicable requirement. The manufacturer who performs such modification shall recertify and reidentify the product in accordance with the provisions of §§ 1010.2 and 1010.3.

§ 1040.11 Special use-group requirements.

(a) *Medical laser products.* Each medical laser product shall comply with all of the applicable requirements for laser products of its class. In addition, for that laser radiation intended for irradiation of the human body, the product shall:

(1) On Class III or IV products, incorporate a means for the measurement of the level of such laser radiation with an error in measurement of no more than ±10 percent (indication of the measurement shall be International System Units).

(2) On Class III or IV products, incorporate a means for adjusting the emission of the laser radiation to at least one predetermined value in the approximate middle of the normal operational range, with an error of no more than ±15 percent of that value.

(3) Have specified by the manufacturer a procedure and schedule for calibration of the measurement system and predetermined value as prescribed in paragraph (a)(1) and (2) of this section, respectively.

(b) *Surveying, leveling, and alignment laser products.* Each surveying, leveling, or alignment laser product shall comply with all of the applicable requirements for a Class I, Class II, or Class III laser product and, in addition:

(1) Shall not permit human access to laser radiation in excess of the accessible emission limits of Class I for any emission duration outside the wavelength range of greater than 400 nm through 700 nm.

(2) For Class III laser products, shall not permit human access to laser radiation in the wavelength range of greater than 400 nm through 700 nm, which exceeds any of the following:

(i) An irradiance of 2.5×10^{-3} W cm^{-2}.

(ii) A peak radiant power of 5×10^{-1} W.

(iii) An average radiant power of 5×10^{-3} W.

(c) *Demonstration laser products.* Each demonstration laser product shall comply with all of the applicable requirements for a Class I or Class II laser product and shall not permit human access to laser radiation in excess of the accessible emission limits of Class I and Class II as appropriate.

Interested persons may, on or before February 8, 1973, file with the Hearing Clerk, Food and Drug Administration, Room 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.

(Sec. 358, 82 Stat. 1177-1179; 42 U.S.C. 263f.)

Dated: November 27, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

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