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This is a listing of public bills enacted by Congress and approved by the President, together with the law number, the date of approval, and the U.S. Statute citation. The list is kept current in each issue of the Federal Register and copies of the laws may be obtained from the U.S. Government Printing Office.

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Title 3—The President

Executive Order 11874 • July 25, 1975

Delegation of Functions to the Director of the Office of Management and Budget

By virtue of the authority vested in me by Section 1012 of the Economic Opportunity Act of 1964, as amended by the Legal Services Corporation Act of 1974 (88 Stat. 388, 42 U.S.C. 2996k), and Section 301 of Title 3 of the United States Code, and as President of the United States, the Director of the Office of Management and Budget is hereby designated and empowered to exercise the authority vested in the President by said Section 1012 of the Economic Opportunity Act of 1964, as amended, to direct that appropriate support functions of the Federal Government may be made available to the Legal Services Corporation in carrying out its activities, to the extent not inconsistent with other applicable law. Such functions shall be provided under terms and conditions as may be agreed upon by the Legal Services Corporation and the Federal agencies involved.

Gerald R. Ford

THE WHITE HOUSE,
July 25, 1975.

[FR Doc.75-19737 Filed 7-25-75;1:37 pm]

rules and regulations

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

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

Title 7—Agriculture

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

PART 930—CHERRIES, GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA, AND MARYLAND

Expenses and Rate of Assessment for the 1975–76 Fiscal Period and Carryover of Unexpended Funds

This document authorizes expenses of $129,500 and a rate of assessment of $1.00 per ton of first handled cherries to cover expenses of the Cherry Administrative Board for administration of Marketing Order 930 for the 1975–76 fiscal period. Said order is effective under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 29553) July 14, 1975, and allowed interested persons until July 18, 1975, to submit written data, views, or arguments pertaining to these proposed expenses and the related rate of assessment for the period beginning May 1, 1975, and ending April 30, 1976, pursuant to the marketing Order No. 930, (7 CFR Part 930), regulating the handling of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. None were filed.

After consideration of all relevant matters presented, including the proposals set forth in such notice, which were submitted by the Cherry Administrative Board (established pursuant to said marketing order), it is hereby found and determined that: § 930.205 is added as follows:

§ 930.205 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Cherry Administrative Board, during the period May 1, 1975, through April 30, 1976, will amount to $129,500.

(b) *Rate of assessment.* The rate of assessment for such period, payable by each first handler in accordance with § 930.41 be fixed at $1.00 per ton of cherries.

Terms used in this part shall, when used herein, have the same meaning as is given to the respective term in said order and "ton of cherries" shall mean 2,000 pounds of raw unpitted cherries.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) handling of the current crop of cherries is currently underway; (2) the relevant provisions of said marketing order require that the rate of assessment fixed for a particular season be applicable to all cherries from the beginning of such fiscal period; and (3) the fiscal period began May 1, 1975, and the rate of assessment herein fixed will automatically apply to all cherries beginning with such date.

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

Dated: July 23, 1975.

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

[FR Doc.75-19617 Filed 7-28-75;8:45 am]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Change in List of Varietal Types To Include Dipped Seedless Raisins and Applicable Grade Standards

Notice was published in the July 1, 1975, issue of the FEDERAL REGISTER (40 FR 27691) of a proposal to: (1) Change the list of varietal types of raisins in § 989.110 of Subpart—Administrative Rules and Regulations (7 CFR 989.101–989.176) by adding "Dipped Seedless" raisins to that list and deleting "Soda Dipped" from the list; and (2) amend Subpart—Supplementary Orders Regulating Handling (7 CFR 989.201–989.230; 40 FR 4417) by adding two new sections, §§ 989.211 and 989.212, containing minimum grade and condition standards for natural condition "Dipped Seedless" raisins and minimum grade standards for packed "Dipped Seedless" raisins, respectively.

Interested persons were afforded an opportunity to submit written data, views, or arguments on the proposal. None were received.

The proposal was recommended by the Raisin Administrative Committee, hereinafter referred to as the "Committee". The Committee's recommendation was under §§ 989.10, 989.58(b) and 989.59(b) of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "act".

This action would add a new varietal type of raisin, Dipped Seedless, to the list of varietal types of raisins contained in § 989.110. This new varietal type would include all raisins produced from grapes which are sprayed with, or dipped in, water, with or without a chemical additive, after such grapes have been removed from the vines and which are sun-dried or artificially dehydrated. This varietal type would include those raisins currently identified as "Soda Dipped" raisins. The Committee concluded that raisins produced by the various dipping methods possess characteristics so similar to each other that it is desirable to have them all identified and classified as one varietal type of raisin.

The Committee also recommended that the minimum grade and condition standards and minimum grade standards which are currently applicable to Soda Dipped raisins would be appropriate for Dipped Seedless raisins.

In addition to the changes proposed by the Raisin Administrative Committee, the Department proposed to change the descriptive heading "Subpart—Supplementary Orders Regulating Handling" to "Subpart—Supplementary Regulations". It can be inferred from the current heading that the sections contained in this Subpart are actually sections of the marketing order. The changed heading would more accurately identify the content of this Subpart.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation of the Committee, and other available information, it is found that amendment of Subpart—Administrative Rules and Regulations and Subpart—Supplementary Orders Regulating Handling, as hereinafter set forth will tend to effectuate the declared policy of the act.

Therefore, the changes are as follows:

1. Revise § 989.110 of Subpart—Administrative Rules and Regulations (7 CFR Part 989.1–989.176) to read as follows:

§ 989.110 Changed list of varietal types.

Pursuant to § 989.10, the list of varietal types of raisins contained in that section is changed to read: Natural (sun-dried) Thompson Seedless, natural (sun-dried) Muscat, natural (sun-dried) or artificially dehydrated Sultana, natural (sun-dried) or artificially dehydrated Zane Currant, Layer Muscat, Golden Seedless, Sulfur Bleached, Dipped Seedless, Valencia and Monukka.

2. Change the center heading preceding § 989.201 reading "Subpart—Supplementary Orders Regulating Handling" to "Subpart—Supplementary Regulations."

3. Sections 989.211 and 989.212 are added to read as follows:

§ 989.211 Minimum grade and condition standards for Dipped Seedless raisins.

Under § 989.58(b) the minimum grade and condition standards for Dipped Seedless raisins shall be those set forth for Soda Dipped raisins in § 989.97 Exhibit B of this part.

§ 989.212 Minimum grade standards for packed Dipped Seedless raisins.

Under § 989.59(b), the minimum grade standards for packed Dipped Seedless raisins shall be those set forth for Soda Dipped raisins in § 989.59(a)(2)(i) of this part.

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

Dated: July 24, 1975, to become effective September 1, 1975.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division.

[FR Doc.75–19663 Filed 7–28–75;8:45 am]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Change in Payment Rate for Box and Bin Rental

Notices were published in the June 23 and June 30, 1975, issues of the FEDERAL REGISTER (40 FR 26276; 27485) of proposals to increase the payment rate of rental on boxes and bins containing reserve tonnage raisins held beyond the crop year of acquisition. The rate would be changed from one cent per day per average net weight of raisins in a sweatbox, not to exceed a total payment of 30 cents per box per year (with equivalent rates for containers other than sweatboxes), to one and two-thirds cents per day, not to exceed a total payment of 50 cents per box per year for boxes (containers with capacity of less than 1,000 pounds), and to thirteen and one-third cents per day, per bin, not to exceed a total payment of $4.00 per bin per year for bins (containers with a capacity of 1,000 pounds or more).

Interested persons were afforded an opportunity to submit written data, views, or arguments on the proposals. None were received.

The changes would be under § 989.66(f) of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), hereinafter referred to collectively as the "order", regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This proposal was recommended by the Raisin Administrative Committee established under the order.

The present rate of payment for container rental has been effective since September 1, 1970. The new rates would reflect the increased cost for providing such containers. The proposal would revise § 989.401(c) of Subpart—Schedule of Payments (7 CFR 989.401; 40 FR 4277) and the new rate would become effective September 1, 1975.

After consideration of all relevant matter presented, including that in the notices, the information and recommendation of the Committee, and other available information, amendment of § 989.401(c) to increase the payment rate of rental on boxes and bins containing reserve tonnage raisins held beyond the crop year of acquisition is approved. Therefore, § 989.401(c) is amended to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

* * * * *

(c) *Payment of rental on boxes and bins containing reserve tonnage raisins held beyond the crop year of acquisition.* Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which reserve tonnage raisins are held for the account of the Committee on September 1 of any crop year (commencing with the crop year beginning September 1, 1975) which were also so held on August 15 of the preceding crop year, shall be compensated for the use of such boxes and bins. The rate of compensation shall be: For boxes, one and two-thirds cent per day, not to exceed a total payment of 50 cents per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins, thirteen and one-third cents per day per bin, not to exceed a total of $4.00 per bin per year. For purposes of this paragraph, box means any container with a capacity of less than 1,000 pounds and bin means any container with a capacity of 1,000 pounds, or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes or bins on the succeeding September 1.

* * * * *

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

Dated: July 24, 1975, to become effective September 1, 1975.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division.

[FR Doc.75–19664 Filed 7–28–75;8:45 am]

Title 9—Animals and Animal Products

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

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Deletion of Certain Border Ports Designated for the Importation of Animals

Statement of considerations. On May 5, 1975, there was published in the FEDERAL REGISTER (40 FR 19480), a proposed amendment to 9 CFR 92, to delete the ports of Monticello, Bridgewater, Fort Fairfield, Limestone, Madawaska, Vanceboro and Eastport, Maine; and North Troy, Beecher Falls (Canaan), Island Pond, Newport, St. Albans, and Alburg in Vermont as ports designated in 9 CFR 92.3(b) for animal entry.

The ports of entry located in Maine and Vermont, as mentioned above, do not presently justify inspection and quarantine services because of the low volume of imports of animals. Also they appear to lack adequate inspection and quarantine facilities or have no inspection and quarantine facilities, and the roads to these ports of entry are of poor quality and as a result not heavily traveled. Records for fiscal year 1973 show totals of only 22 importations and 83 animals imported through the 13 ports being deleted from § 92.3(b). There are nine Canadian border ports that remain designated for the importation of animals in Maine and Vermont.

This amendment will have a minimum impact on local importers who only on occasion use the ports of entry and then only for pure-bred bovine animals or horses.

A period of 30 days was allowed for submission of comments by interested persons. Only one comment was received and it was from a Canadian horse association in Perth, New Brunswick which was opposed to withdrawing Fort Fairfield as a port designated for entry of animals. Its comment stated that it could be inconvenient to travel the added distance to other ports in order to participate in horse shows in the Fort Fairfield or Presque Isle area. However, it is believed by the Department that this limited use is insufficient justification for maintaining Fort Fairfield as a designated port of entry for animals. Therefore, after due consideration of all relevant information available to the Department, the proposed amendment is hereby adopted without change.

In § 92.3, paragraph (b) is revised to read as follows:

§ 92.3 Ports designated for the importation of animals.

* * * * *

(b) *Canadian border ports.* The following ports in addition to those specified in paragraph (a) of this section are designated as quarantine stations for the entry of animals from Canada: Calais, Houlton, Van Buren, Fort Kent, Jackman, and Holeb, Maine; Derby Line, Richford, and Highgate Springs, Vermont; Rouses Point, Moores Junction, Chateaugay, Malone, Fort Covington, Hogansburg, Rooseveltown, Waddington, Ogdensburg, Morristown, Alexandria Bay, Charlotte, Niagara Falls, and Buffalo, New York; Detroit, Port Huron, and Sault Ste. Marie, Michigan; Noyes, Minnesota; Pembina and Portal, North Dakota; Sweetgrass, Montana; Eastport and Porthill, Idaho; Spokane, Laurier, Oroville, Nighthawk, Sumas, Blaine, and Lynden, Washington; and Juneau and Skagway, Alaska.

* * * * *

(Secs. 6, 7, 8, and 10, 26 Stat. 416, 417, as amended; sec. 2, 32 Stat. 791, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132 (21 U.S.C. 102–105, 111); 37 FR 28464, 28477; 38 FR 19141.)

Effective date. The foregoing amendment shall become effective July 29, 1975.

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

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

Done at Washington, D.C., this 23rd day of July, 1975.

J. K. ATWELL,
Acting Deputy Administrator Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.75-19618 Filed 7-28-75;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Revised Program To Phase-Out Old Oil Price Ceilings

A. *Introduction.* On July 14, 1975, the Federal Energy Administration adopted an amendment to its regulations to provide for the gradual removal of price controls from domestic crude oil. On July 16, 1975, the amendment was submitted to Congress for its review pursuant to section 4(g)(2) of the Emergency Petroleum Allocation Act of 1973, and on July 22, 1975, the House of Representatives adopted a resolution disapproving the amendment. Accordingly, pursuant to section 4(g)(2) of the Act, the amendment adopted July 14, 1975 shall not take effect.

In light of the foregoing, and upon further consideration of the comments and presentations submitted in the rulemaking proceeding that has been held on the proposal to phase-out old oil price ceilings as well as other information available to FEA, the FEA hereby adopts a revised amendment to its regulations to provide for removal of price controls from domestic crude oil in a manner that is even more gradual than the 30-month decontrol program that was initially adopted. This amendment is being submitted to the Congress for its review pursuant to section 4(g)(2) of the Emergency Petroleum Allocation Act of 1973. Unless disapproved by either house of Congress during the five day period allowed for legislative review, the amendment will decontrol "old" crude oil (now subject to a ceiling price averaging $5.25 per barrel) over a 39-month period beginning September 1, 1975, and ending November 30, 1978. Decontrol would be at the rate of 1.5 percent a month for the first 12 months, 2.5 percent a month for the next 12 months, and 3.5 percent a month until decontrol is complete, after another 15 months.

The amendment also provides for a secondary ceiling price for all domestic crude oil (other than stripper well crude oil) to be in effect during the 39-month decontrol period. This ceiling, which is slightly above the uncontrolled domestic price levels prior to the February, 1975, effective date for a $1.00 per barrel supplementary import fee, will help insure that any future sharp increases by OPEC on crude oil prices would not trigger equally higher domestic crude oil prices. It will also serve to further minimize the impact of decontrol on economic recovery.

The ceiling price will average $11.50 per barrel for the month of September, 1975, and will be increased at the rate of $.05 per barrel per month until price controls have been completely phased out at the end of November, 1978. This ceiling price will therefore reach an average of $13.40 per barrel in the last month of this decontrol program, which is approximately the average cost of all uncontrolled crude oil sold in the United States, including the impact of the $2.00 per barrel supplementary import fee.

This proceeding was initiated on April 30, 1975, when the Federal Energy Administration issued a notice of proposed rulemaking and public hearing (40 FR 19219, May 2, 1975) to amend Part 212 of Title 10 of the Code of Federal Regulations to phase out over a 25-month period all price controls on crude oil at the producer level.

Fifty-nine written comments were received in response to the notice of proposed rulemaking before the close of the period for receipt of such comments. Oral presentations were made by 29 persons at the public hearings held on May 13 and 14, 1975. All these comments and presentations were considered by the FEA, and certain further modifications in the proposed amendments have been made, to arrive at the revised final amendment adopted today, which again reflect FEA's consideration of these comments and presentations as well as other information available to FEA. These modifications included in the decontrol rule now promulgated are discussed in Section E, below.

B. *Background.* The petroleum industry has been subject to various forms of price controls since 1971, a period of about four years. When the general Phase IV price controls ended on April 30, 1974, with the expiration of the Economic Stabilization Act of 1970, the only industry which remained subject to price controls (as administered by the FEO and subsequently the FEA) was the petroleum industry.

The reason for continuing price controls on the petroleum industry was, of course, the serious shortage of crude oil and products derived therefrom in late 1973 and early 1974. In response to this emergency situation, the Emergency Petroleum Allocation Act of 1973 was enacted in November 1973, pursuant to which price controls on the sale of crude oil and derivative products have been retained.

As its name suggests, that Act was chiefly concerned with assuring adequate supplies through regulatory mechanisms by which covered products would be equitably allocated to all regions and to all users throughout the product distribution chain. Price controls were retained to further assure that reduced supplies would not lead to inequitably high prices.

At present, about one-third of total domestic production of crude oil is not subject to the ceiling price of 10 CFR 212.74. This amount represents crude oil which is under the congressionally-mandated stripper well lease exemption and crude oil which is allowed to be priced at market levels under existing production-incentive regulations concerning "new" and "released" crude oil. Taking into account imported crude oil, about 56 percent of all domestically refined crude oil is not subject to price ceilings.

Domestic crude oil subject to price ceilings, defined as "old" crude petroleum, sells at an average of $5.25 a barrel (or about 12½ cents a gallon), while the average price of uncontrolled domestic crude oil rose from about $11.30 a barrel in January, 1975, prior to the increase in import fees, to a level of about $12.25 (29 cents a gallon) by May of this year.

The Emergency Petroleum Allocation Act of 1973 permits exemptions from allocation and price controls for products subject to the Act to be granted only under certain conditions. An exemption may apply to only one product and may ex-

tend for a period of not more than 90 days. Any proposed exemption must be submitted to Congress prior to implementation, together with findings that (1) there is no shortage of the product concerned, (2) the proposed exemption will not have an adverse effect on the supply of any other product, and (3) controls on the product concerned are no longer necessary to carry out the purposes and goals of the Act. Pursuant to § 4(g)(2) of the Act, the exemption may not be implemented if disapproved by either house of Congress during the period of five sessional days allowed by the Act for legislative review by each house.

Having received written comments and having held public hearings on its old oil deregulation proposal, the FEA has transmitted this revised final decontrol amendment to the Congress together with the findings set forth below. Under the amendment adopted today, old oil will be gradually decontrolled over a 39-month period, beginning September 1, 1975, and ending on November 30, 1978. The FEA plans to issue a notice stating what congressional action, if any, was taken under section 4(g)(2) on this revised amendment.

As explained in the notice of proposed rulemaking issued April 30, 1975, the FEA's "old oil" decontrol program (which implements one phase of the overall energy conservation program put forward by President Ford in his State of the Union Message) would affect only crude oil sales at the producer level. It would not affect the crude oil allocation regulations or the allocation or price regulations for any other product at any level of distribution. The old oil decontrol program would both help curb domestic consumption and spur domestic production, thus furthering the important national goal of reducing dependence on imported crude oil.

Decontrol will ultimately permit all domestic crude oil prices to rise to the current prevailing world price levels, so that the demand-dampening effects which have been felt worldwide would be felt to the full extent in the United States. Under the two-tiered price system now in effect, the price of most domestic oil is held at a level less than half that of current world price levels, so that the impact which the escalation of world market prices has had on demand elsewhere in the world has been considerably cushioned in the United States.

In addition to conserving domestic supplies by reducing demand, decontrol of domestic crude oil prices would stimulate domestic production, or at least greatly reduce the rate of decline in domestic production, displacing some supplies of crude oil that would otherwise have to be imported. Measures to promote maximum domestic production of crude oil—especially new exploration and drilling activity and implementation of secondary and tertiary recovery techniques—are considered essential in order to help assure adequate and dependable energy resources for the United States until alternative domestic energy resources can be developed over the long term. Furthermore, the FEA has found that the production incentives afforded by the rules permitting "new" and "released" domestic crude oil to be sold at free market prices are of decreasing impact or effectiveness, as production levels, because of natural rates of decline, are generally falling further below 1972 levels, and 1972 levels of production for a property must be exceeded before the new and released price rules can have any effect.

Thus, many producers, especially those whose current production levels are substantially below the 1972 base levels and are further declining under primary recovery techniques, remain unaffected by the incentives presently afforded because those incentives are too remote to outweigh the cost of implementing the substantial secondary or tertiary recovery programs which would be necessary to bring production up to and above the 1972 base levels. Under the FEA decontrol program, when fully implemented, all production, including additional production, would bring the higher prices now available to uncontrolled oil.

The existing incentives to increase production are, for properties that were producing in 1972, only effective for limited periods of time in any event, since the inevitable slackening of output will eventually bring production below 1972 levels, to the point where existing incentives are no longer adequate to encourage investment in secondary/tertiary recovery and other costly programs designed to increase total output of crude oil. Although the additional incentive afforded by the gradual decontrol of old oil would also eventually diminish in effect with respect to existing properties, due to the inevitable decline or exhaustion of worked-over reservoirs, the purpose of decontrol is not to provide a permanent solution to limited domestic production capabilities. Rather, it is intended simply to provide incentives of sufficient effectiveness and duration as will yield maximum levels of domestic production until such time as supplementary energy resources can be developed. Although existing incentives are believed to have contributed substantially to the current reduction in the rate of decline in domestic production, FEA believes that existing incentives clearly cannot work to maintain domestic production at levels now thought necessary to avoid an unacceptable degree of reliance on imported fuels over the next few years.

As also noted in the April 30, 1975, notice of proposed rulemaking, an additional benefit of decontrol of domestic crude oil will be the elimination of economic distortions caused by the present two-tiered pricing system. The two-tiered pricing system inevitably causes cost disparities among refiners and marketers of petroleum products. Although these cost disparities have been substantially reduced by the crude oil entitlements program, they can never be entirely eliminated while the two-tiered pricing system exists. Such cost disparities significantly hinder FEA's ability to assure that the competitive viability of the independent sector of the petroleum industry is maintained.

Moreover, the existing complicated structure of price controls at all levels of distribution, which is necessitated in large measure by the existence of cost disparities resulting from the two-tiered price system, tends to be self-defeating over the long run by reducing normal incentives toward increased production and cost control, and by eliminating the ability of the industry to engage in long range business planning. As effectiveness of price controls lags over time, regulations of greater complexity and reach become necessary to maintain a controlled-price structure. And tightening of controls, in turn, tends further to stifle initiative and to contribute to greater economic distortions.

C. *Findings. 1. There is no shortage of crude oil.* As FEA representatives have previously testified at congressional hearings, there is currently no shortage of crude oil available to U.S. refiners. Worldwide production capability substantially exceeds current demand. U.S. refiners have been able to obtain from foreign sources all requirements needed to fill the domestic production shortfall. Inputs to U.S. refineries, which dropped markedly during the first three months of 1974, now exceed pre-embargo levels. Domestic crude oil inventories have also increased, and exceed pre-embargo levels.

The level of crude oil production in the OPEC countries continues to decline due to reduced demand. At the end of March, 1975, output was 25.72 million barrels/day (b/d), compared to 28.85 million b/d at the start of 1975, a drop of 11 percent. These production figures represent 66 percent of OPEC's currently estimated producing capacity of 39 million b/d.

U.S. petroleum inventory and import estimates for late April 1975 show an inventory-to-import ratio of approximately 167 days. This is considerably higher than the 123 days of stocks available in April 1974. Petroleum stocks were approximately 852 million barrels at the end of April 1975 and 815 million barrels at the end of April 1974, an increase of 4.5 percent. Imports for the same periods were approximately 5.1 and 6.6 million barrels per day respectively, a decrease of 23 percent.

The general availability of crude oil to meet U.S. demands is also demonstrated by current data concerning the FEA allocation programs. For example, allocation fractions for all major refined products and residual fuel oils are at or close to 1.0, generally indicating that crude oil is in sufficient supply to meet virtually all demand for refined and other products derived from crude oil. While supplies of propane are not always adequate to meet demand in all regions of the U.S., such shortage problems as occur relate principally to the fact that most propane is produced from natural gas rather than crude oil, and there has been a decreasing supply of natural gas.

In addition, activity under the FEA's crude oil allocation program has slackened during recent quarters. The buy-sell

program in its current form enables small and independent refiners to obtain crude oil supplies from the major refiners to supplement their own supplies. The fact that more and more small and independent refiners are obtaining their supplemental crude oil supplies through normal market channels further indicates the general availability of crude oil at all levels and in all regions of the U.S.

2. *The proposed exemption will not have an adverse impact on the supply of any other oil or refined petroleum products subject to the Act.* Under today's conditions, 20 months after passage of the Act, national policy requires that dependence on imported crude oil be reduced. This can be done by stimulating domestic crude oil production and by curbing demand for residual oil and refined petroleum products. The proposal to decontrol old oil is an important step toward a greater degree of self-sufficiency in meeting our energy needs.

To the extent that decontrol contributes, as expected, to stimulate domestic crude oil production by encouraging increased exploration and drilling activity and the use of secondary and tertiary recovery techniques, decontrol obviously tends to enhance rather than adversely affect the supply of products derived from crude oil. To the extent that higher prices resulting from decontrol dampen demand, as expected, decontrol will also tend to increase rather than reduce supplies of petroleum products.

Increased production and reduced demand brought by decontrol will not result in any domestic surplus of crude oil. It is expected that the result will be an offsetting decrease in the amount of crude oil or refined product that would otherwise be imported to meet domestic needs. To this extent, decontrol will not change the overall availability of petroleum products in this country. However, because domestic crude oil is a more reliable source of crude oil for production of petroleum products than is imported crude oil, decontrol will tend to have a beneficial rather than adverse impact on the nature of the domestic supply of petroleum products subject to the Act.

3. *Price controls on crude oil are not necessary to carry out the Act.* All of the purposes and goals of the Act are predicated upon alleviating the emergency conditions resulting from shortages of crude oil, residual fuel oil and refined petroleum products which were being experienced or appeared imminent when the Act was made law late in 1973. As indicated in Finding 1, shortages of crude oil no longer exist. Inasmuch as the underlying condition to which the purposes and goals of the Act generally relate is no longer present, the necessity of price controls on old oil to carry out the Act is no longer apparent.

The express purpose of the Act, as stated in section 2(b), is to grant to and direct the President to exercise "specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products or dislocations in their national distribution system." The specific goals to be reached by exercise of the authority granted under the Act, as set forth in section 4(b)(1), may be placed in the following groupings: (a) To protect the general welfare and the national defense; (b) to maintain residential heating, public services and agricultural operations; (c) to preserve an economically sound and competitive petroleum industry; (d) to allocate crude oil in order to permit refineries to operate at full capacity; (e) to provide for equitable distribution of crude oil, residual fuel oil and refined petroleum products at equitable prices among all regions and among all users; (f) to allocate residual fuel oil and refined petroleum products in order to maintain exploration and production or extraction of fuels; and (g) to provide for economic efficiency and minimization of economic distortion, inflexibility and unnecessary interference with market mechanisms.

The decontrol of old oil prices should serve to further the goals indicated in items (c) and (g), above, under present conditions. The economic inefficiencies and distortions brought about by price controls when they are extended over a long period of time are discussed in Section B, above. In addition, the gradual removal of price controls during a period of adequate supply should lead to improvement in the economic position of the petroleum industry and stimulate resumption of normal competitive conditions. These results are particularly desirable in view of the major effort which will be required to alter the trend of declining U.S. crude oil production.

The adequacy of supply under current conditions means that the threat to the national security and welfare posed by an existing or imminent shortage of crude oil no longer exists. Price controls on crude oil are therefore no longer necessary to achieve the short-term goals of the Act concerning protection of the national defense and public welfare (item (a)). For the longer term, removal of price controls should have a favorable effect on the national defense and public welfare. As the Secretary of the Treasury found in connection with the President's Proclamation regarding imposition of import fees, the heavy reliance by the United States on imported crude oil poses a significant threat to the national security. As noted above, the decontrol of oil prices should over the long run significantly reduce reliance on foreign sources of oil.

The goals indicated in items (d) and (f) relate primarily to the allocation program or to petroleum products other than crude oil. These goals are therefore not directly affected by the proposal to decontrol the price of old oil.

The goals in item (b) address the threat to adequate supplies of fuel for residential heating, public services and agricultural operations resulting from imminent crude oil shortages. This threat was countered primarily by the allocation of crude oil used to produce fuels for these needs, and by the allocation of these fuels themselves. This fact, plus the current absence of any shortage of crude oil, leads to the conclusion that price controls on crude oil are no longer necessary to achieve the goals of the Act relating to maintaining adequate fuel supplies for residential, public service and agricultural needs.

The goal of providing for "equitable distribution of crude oil * * * at equitable prices among all regions and * * * all users" (item (e)) is one which is clearly predicated upon the existence or imminence of a serious crude oil shortage situation. When supplies are short, normal market mechanisms may not assure equitable distribution of supplies across the country and do not prevent price gouging and other shortage-related pricing abuses. In other words, the goal of "equitable prices" should not be isolated and read out of context as mandating permanent price ceilings, even when supplies of crude oil are adequate to permit normal market mechanisms to function. In the absence of shortages of crude oil, therefore, price controls on crude oil are not necessary to carry out the goal of equitable distribution at equitable prices.

In addition, FEA believes that "equitable" prices, within the meaning of section 4(b)(1)(F) of the Act, will be achieved by restoring normal market mechanisms during a period of adequate supply and by eliminating economic distortions caused by the current two-tier pricing system. However, to the extent that a return to normal market mechanisms at this time would bring prices on crude oil to levels which might be viewed in certain sectors of the economy as inequitably high because they result in higher prices on certain petroleum products, this view is outweighted by the need to achieve other objectives of the Act and by other considerations, including the fact that decontrol is being phased in gradually and the availability of legislative measures to alleviate, through tax relief or rebates, the impact of price increases on consumers and other sectors of the economy.

On the basis of all the foregoing considerations, the FEA concludes that price controls on crude oil are not necessary to carry out the Act.

D. *Comments on Old Oil decontrol proposal.* Comments in opposition to the FEA old oil decontrol proposal generally reflected the following arguments:

1. *The argument that U.S. crude oil price levels should be based on production costs and not reflect arbitrary OPEC pricing decisions.* The FEA decontrol program will ultimately permit old oil prices to rise to the vicinity of current prevailing world market prices, plus the supplementary import fee of $2.00 per barrel. Some commentators who opposed the FEA decontrol program generally felt that the world price was artificial and therefore unnecessarily high, and might go higher, resulting in still higher domestic prices for decontrolled crude oil. In order to provide appropriate incentive toward increased domestic production, it was proposed that the old oil price ceiling be retained but set at some higher intermediate level, such as $7.50, $8.50 or $10.00 a barrel.

While no indisputable conclusions in this matter are possible, it is clear that current world price levels, including the supplementary import fee, do not exceed the point at which further price in-

creases cannot be expected to bring significant returns in terms of increased crude oil production. In the view of FEA, decontrol at prices up to price levels averaging $11.50 per barrel for the month of September, 1975, and gradually increasing at the rate of $.05 per barrel per month in each month thereafter, will effectively stimulate domestic production and over time substantially reduce our dependence on imported oil. The amendment adopted today is therefore responsive to the concern that further OPEC domestic price increases could result in further domestic price increases above those levels providing the maximum useful production incentives, since it imposes a secondary ceiling on domestic crude oil prices.

It should be remembered in this connection that the great bulk of new domestic production of crude oil will come not from traditional production techniques within the contiguous portions of the continental United States but from more sophisticated and expensive production techniques within this area, or from the continental shelf and remote areas of Alaska. Most offshore production is expected to come from previously untapped areas of the Atlantic and Pacific rather than from the more familiar and tested reaches of the Gulf of Mexico. These considerations all point to the need for new technologies, heavier investment burdens, greater risks and greatly increased costs of production.

In addition, the potential exists for substantial new recoveries from worked-over "onshore" reservoirs provided technology for secondary and tertiary recovery is further developed or existing technology becomes economically feasible as prices rise. While not as costly as recovery from offshore and Alaskan frontiers, recovery utilizing secondary/tertiary recovery techniques is generally substantially more costly than primary recovery.

Unfortunately, the level of incentive needed to induce high-risk exploration and cost estimates for successful development projects vary considerably due to the substantial uncertainties connected with exploration and ultimate recovery from remote and unhospitable regions and considerable doubt as to future rates of inflation. Thus, even if costs could be projected with great precision, necessary incentives for increased production could not be provided by setting prices which merely covered costs. While producers acknowledge that current uncontrolled domestic crude oil price levels provide sufficient incentive to produce new oil, nevertheless as long as three-fifths to two-thirds of production must be sold at the old oil price ceiling of approximately $5.25 per barrel, cash flow, together with other sources of capital, will not be adequate to generate enough capital to finance exploration and development of new oil, no matter what price it may be expected to bring. This problem is of even greater urgency now that tax reform has removed the depletion allowance as a means of accumulating capital for exploration and development.

In this connection, comment provided by oil producers indicates that while industry profits were high in 1974, profits for the first quarter of 1975 have dropped to an average of about two-thirds of the level of the first quarter of 1974. On an annualized basis, this level of profit would produce a return on stockholder equity of 10.5 percent. For the ten-year period prior to 1974 the rate of return on stockholder equity was 11.4 percent for the petroleum industry compared with 11.6 percent for all manufacturing. These figures tend to support the view that the high profit levels of 1974 were not typical, and were the result of short-term nonrecurring forces. According to industry comments, the steep decline in industry profits this year, while attributable in large degree to the change in the depletion allowance, significantly exceeds the decline attributable to that change.

Management decisions as to capital needs and adequacy of price incentives necessarily rest with producers and, unless control of oil production is to be assumed by the government, oil firms cannot be forced to develop and market additional amounts of crude oil, even if price levels deemed "adequate" by FEA or Congress were to be adopted. Several commentators made reference in this connection to the serious decline in natural gas production that has occurred under long-term federal price regulation.

Taking into account both FEA and industry estimates, adequate incentive for development of new "onshore" crude oil (i.e., enhanced recovery from traditional domestic reservoirs by secondary/tertiary methods) is currently estimated at between $7.00 to $10.00 a barrel; for development of new oil from Alaska and offshore or continental shelf regions, at between $7.00 to $12.00 a barrel; for development of oil from shale, at between $12.00 to $15.00 a barrel; for development of oil from coal, at about $18.00 a barrel. This array of estimates suggests that if imports are to be held at acceptable levels by substituting significant amounts of new domestic production, it will be both necessary and appropriate to allow prices eventually to rise to the vicinity of currently prevailing world market levels.

The foregoing estimates are generally supported by estimates provided to FEA by other sources. For example, industry data submitted by the Society of Petroleum Engineers indicates that the cost of developing and producing a barrel of crude oil in 600 feet of water in the North Atlantic and North Pacific is 3.5 times the cost at the same depth in the Gulf of Mexico, while the cost in the Gulf of Alaska may range up to six times that in the Gulf of Mexico. Lag times are more than twice as great in these frontier areas. In addition, an independent economist testified before a congressional committee that the replacement cost or "economic cost" of domestic crude oil reached a level of $12.73 a barrel in 1974. The high cost of finding "replacement" barrels of crude oil for those we consume today must be financed, in the main, by profits earned on the barrels sold today.

In the opinion of FEA, the task which the nation faces is one of providing sufficient incentives to private industry to develop, to the maximum extent possible and as quickly as possible, additional domestic crude oil resources which will reduce dependence on unreliable foreign crude oil. Revival of domestic production will require a major undertaking in frontier regions at high cost. A decision to offer maximum incentives and to pursue maximum efforts to this end is our own decision and not one dictated by foreign pricing policies.

2. *The argument that decontrol would impose too great a burden on the consumer.* Most commenting refiners stated that old oil decontrol would result in an average price increase of 5 cents or 6 cents per gallon of petroleum product. Suggesting that actual dollar cost increases to the consumer would be within manageable limits, Exxon commented that gasoline prices today are below 1950 levels, in terms of constant dollars, and would remain so even if old oil decontrol were effected immediately. Other comments either directed attention to "ripple effects" or noted that the cost was a small price to pay for greater energy independence.

FEA assessment of impact on the consumer of the revised amendment adopted today indicates that the combined effect of the old oil phase out and secondary ceiling prices will be to keep any increases in retail prices due to increased OPEC prices or other causes at one-half to 1 cent less than they would otherwise be by the end of this year under current controls. This fact illustrates that the program to phase out crude oil price controls over a 39-month period, together with secondary price ceilings, will substantially diminish the impact of decontrol on consumers compared with the original 25-month decontrol proposal. FEA estimates that the total retail price increase attributable to decontrol will be approximately 5–6 cents per gallon of petroleum product by November, 1978.

The FEA assessment of impact on the consumer also takes into account the intangible but real benefits which would accrue to the public at large through increased national economic security brought by lessened dependence on unreliable foreign crude oil sources, improved balance of payments position, revived domestic industrial production and new jobs in the petroleum industry. In addition, the "windfall profits" tax on oil producers' excess revenues proposed by the President would yield tax receipts which would be used to provide direct rebates to energy consumers. These factors mitigate to a significant extent the actual dollar cost to consumers.

On the other hand, the FEA is aware that prices on such products as home heating oil are already very high and that further increases could impair the ability of certain consumers (particularly the aged and the poor) to pay heating bills, despite the gradual nature of the FEA decontrol program and tax relief. Specific legislative proposals, such as a home insulation tax credit, have been proposed to the Congress to minimize the impact that relatively higher energy costs, including costs of home utilities, will ultimately have on various sectors of the economy.

However, the FEA considers the immediate adoption of this gradual crude

oil decontrol program of such overriding national importance that no further delay can be justified. FEA believes this action to be consistent with the admonition in the Conference Report on the Emergency Petroleum Allocation Act of 1973 that in exercising authority under that Act it would be necessary to "strike an equitable balance between the sometimes conflicting needs of providing adequate inducement for the production of an adequate supply and of holding down spiraling consumer costs."

3. *The argument that decontrol will not reduce demand.* Several comments were received which stressed that consumers have already "dialed down" and taken all other available conservation steps, and that no further realistic anti-consumption measures are available, particularly to the homeowner. According to this view, the decontrol program would therefore merely squeeze the consumer.

While the FEA acknowledges that many useful conservation measures in home heating (except perhaps major insulation efforts) were instituted last year, nevertheless comments with respect to inelasticity of demand are not borne out by the demand responses experienced with respect to past price increases.

The decontrol program will contribute to the long-term goal of reducing dependence on unreliable foreign crude oil and the benefits of achieving that goal must therefore be measured on a long-term basis. The FEA position that increased prices of domestic crude oil will dampen demand domestically is based on the realistic assumption that higher fuel prices in the long run will inevitably result in or contribute to smaller and/or more efficient automobiles, more efficient home heating systems, increased construction and use of public transportation systems, and more efficient use of fuels in commerce and industry. All of these will contribute to contracting energy demand.

Moreover, means are available for easing short-term problems relating to demand reduction. The President has consistently urged that appropriate legislative action be taken to ease the burden on consumers of the transition to an economic system based on relatively higher costs for energy than have been experienced in the past. The FEA will continue to work actively in seeking to solve transitional consumer problems.

4. *The argument that decontrol of crude oil should not be undertaken unless natural gas prices are deregulated simultaneously.* A number of petroleum marketers stated that they would not support the FEA decontrol program unless natural gas prices were decontrolled at the same time. Understandably, marketers of petroleum fuels are concerned that they will lose a share of their fuel markets to natural gas marketers if petroleum fuels become increasingly non-competitive in price.

To some degree the concern of petroleum marketers in this respect may be exaggerated. The present short supply of natural gas is expected to become more critical in the coming months, so that it is most unlikely that many consumers will be able to substitute natural gas for petroleum fuels even if the latter become more expensive. Only if Congress acts to decontrol natural gas prices substantially in advance of implementation of a program to decontrol crude oil prices could there be an expansion of natural gas supplies sufficient to permit inroads into the petroleum fuels market. In that event, of course, natural gas prices would have begun to climb before those of petroleum fuels, so that the petroleum marketers would be in a relatively better competitive position.

The FEA agrees that many of the same reasons which support decontrol of crude oil prices support decontrol of natural gas price levels. However, regulation of natural gas prices is not within the jurisdiction of FEA. In exercising its responsibilities under the Emergency Petroleum Allocation Act of 1973, the FEA must move forward to develop policies and programs within its mandate, while recommending for congressional action complementary measures which are beyond FEA authority to implement.

Congress has under active consideration proposals to deregulate the prices of natural gas. In view of the urgency of taking steps now to alter the trend toward increased imports of crude oil, and in view of the gradual phase-out approach of the FEA decontrol program, the FEA believes it is appropriate to commence gradual decontrol of old oil price ceilings without waiting for final congressional action on natural gas prices.

The FEA recognizes that the Emergency Petroleum Allocation Act of 1973 places special emphasis on protecting the competitive viability and market share of independent marketers, to the maximum extent practicable and consistent with the other objectives of the Act. FEA will therefore maintain a continuing review of the market shares of home heating oils versus competing fuels to insure that decontrol of crude oil does not have a significant adverse impact on independent marketers.

5. *The argument that decontrol of crude oil should not be undertaken until a "windfall" profits tax is enacted.* For the reasons given under argument number 4, above, the FEA believes that the decontrol program must begin now, without further delay. Action on a "windfall" profits tax can be completed within the next few months by Congress without disrupting an orderly administrative decontrol program. Increases in producer revenues will be gradual under the phased decontrol schedule, and in any event a new profits tax may be imposed retroactively.

6. *The argument that decontrol by FEA would harm the airline industry, in contravention of one of the goals of the EPAA.* Representatives of the airline industry commented that U.S. airlines, already in financial difficulty because of the increases in jet fuel prices in 1974 and the effects of the recession on airline travel, would be further adversely affected by another round of fuel price increases brought about by decontrol.

The airline industry takes the position, in effect, that decontrol should not be permitted to proceed because it would impair public air transportation in contravention of one of the goals of the Emergency Petroleum Allocation Act.

The FEA recognizes that one of many express goals to be achieved by the allocation and price regulations promulgated under the Emergency Petroleum Allocation Act of 1973 is to "provide for maintenance of all public services * * * including transportation facilities." However, the concern of Congress in this respect was directed to the adequacy of supplies to keep transportation systems running. This is clearly shown by the following specific discussion of air transport problems in the Conference Report on the Act.

> The petroleum fuel shortage threatens numerous areas of commerce. The jeopardy from shortage of these fuels impacts most directly on transportation. Without adequate petroleum fuel most United States' domestic and international transportation, with no option to convert to other fuels, potentially would be seriously disrupted. A significant reduction of transportation capability could adversely affect all other areas of commerce and the national economy. Thus, one of the primary objectives of the Act is to assure maintenance of transportation services.

The Act clearly does not require the "maintenance" of price ceilings on certain petroleum products purchased by a particular industry.

Moreover, each of the many goals listed in section 4(b) of that Act is qualified by the proviso that the allocation and price regulations need provide for those goals only "to the maximum extent practicable." In explaining why this qualification was included, the Conference Report stated, "It is fully recognized that, in some instances, it may be impossible to satisfy one objective without sacrificing the accomplishment of another." The qualification was thus intended, according to the Report, "to give the President administrative flexibility in marshalling short supplies and equitably assigning them to particular needs."

Therefore, even if FEA were to agree with the airline industry's view that decontrol does not fully meet one of the many sometimes conflicting objectives under the Act, this would not overcome the FEA's conclusion as to the overriding need to proceed with this decontrol program—a program designed to reflect the present adequacy of supplies and to begin on a gradual basis to restore the petroleum industry to normal functioning.

The FEA is sensitive to the special problems which face the airline industry and other public service industries due to energy cost increases. The change from a 25 to a 39-month phase-out schedule should serve to reduce the impact of decontrol on industries which are especially dependent on petroleum fuels. The FEA is prepared to discuss with any industry or affected group other ways in which adverse effects under the decontrol program can be minimized.

E. *Rule modification.* 1. *Length of phase-out period.* A great variety of suggestions were received for changing the

25-month period for decontrol proposed by FEA in its notice of proposed rulemaking in this matter. These ranged from requests for immediate decontrol, to decontrol over a 5–10 month period, to decontrol over a 4 or 5-year period. However, many commentators indicated that they would be willing to accept the FEA proposal on this issue as a compromise or second choice.

Those who proposed a longer period for phase-out were chiefly concerned with minimizing or softening the impact on the economy or on consumers, in particular. Those proposing a shorter period stressed either the need to remove the economic distortions and other deleterious effects of controls as soon as possible or the need to achieve a greater degree of national self-sufficiency in crude oil at a more rapid pace.

The FEA must, of course, strike a balance between these opposing considerations or concerns. The FEA initially concluded that a somewhat more gradual decontrol pace, at the rate of 3.3 percent a month for 30 months (after decontrol of one percent for the month of July, 1975), represented a reasonable balance on this issue, and the initial amendment submitted to the Congress on July 16, 1975 therefore provided for a 30-month phase-out.

Upon further consideration, a gradual phase-out program is adopted in this revised decontrol amendment which differs in several significant respects from the 30-month phase-out program. First, the length of the phase-out period has been substantially extended, from 30 months to 39 months. This period is 56 percent longer than the initial 25-month proposal, and 30 percent longer than the 30-month amendment that was submitted to Congress on July 16, 1975. Second, the decontrol program is scheduled to begin effective September 1, 1975, compared with June 1, 1975, under the initial 25-month decontrol program and mid-July under the 30-month decontrol amendment submitted to Congress. Third, the rate of decontrol has been substantially reduced in the first 12 month portion of this longer period, from 3.3 percent each month under the 30-month plan to 1.5 percent each month under the 39-month decontrol program. It has also been reduced in the second 12-month period, from 3.3 percent to 2.5 percent; and in the remaining 15 months of the program, it will be at the rate of 3.5 percent or approximately the same as the 3.3 percent rate that was initially adopted for the entire 30-month decontrol program. These changes will go even further in minimizing the effect of decontrol on the consumer and/or insuring that the decontrol program will not have any appreciable impact on the nation's current economic recovery.

2. *Requirement of maximum feasible rates of production.* Comments were received which expressed concern that the decontrol program, as proposed, might have the unintended result of reducing production temporarily if producers held back on production until the end of the phase-out period, when all crude oil could be sold at uncontrolled price levels.

In view of this possibility, the FEA has decided to adopt generally the same express requirement now applicable by its terms only to the stripper well lease exemption, which requires production to be maintained at maximum feasible rates of production. The FEA believes this requirement is appropriate to assure that the purpose and intent of the decontrol program are not circumvented. The requirement is also fully consistent with the main purpose of decontrol, which is to maintain and increase current levels of domestic production as rapidly as possible. Any holding back would defeat this purpose and would also defeat the effort to minimize adverse effects on the economy by phasing out controls on a gradual basis.

3. *Decontrol base level.* Under the proposed rule the amount of decontrolled oil would have been calculated as a percentage of the base production control level crude petroleum (i.e., 1972 production) rather than as a percentage of the old oil currently being produced. It was pointed out to FEA that inasmuch as 1972 production levels are generally greater than current production levels, the monthly decontrol volume would be correspondingly larger if the amount of decontrolled oil were to be calculated against a 1972 base. This would mean that the old oil produced from a property would be decontrolled in a period of less than 25 months, to the extent that its current production was at less than 1972 levels. Thus, the overall decontrol program, as proposed, would have extended to the end of that 25-month period, and would have affected for the full 25 months (as proposed) those properties which continue to produce at 1972 levels, but would have decontrolled properties producing at less than 1972 levels before the end of that period.

In order to clarify this ambiguity concerning the phase-out schedule and in order to assure a full 39-month phase-out for all properties which continue to be productive, the FEA has concluded that it would be preferable to calculate the amount of decontrolled crude oil on the basis of a recent level of old oil production rather than on the basis of the 1972 base level production.

The FEA has also concluded that, in view of the urgent need for increased domestic production of crude oil, the modified decontrol amendment should be designed to provide production incentives for all properties, at all levels of production, and to provide a continuing incentive for incremental production.

In view of the foregoing considerations, the decontrol rule adopted by FEA today has been modified to measure decontrolled old crude oil by reference to an established base of the recent production level of old oil from the property concerned, which will then be reduced gradually until it has been entirely phased out at the end of the 39-month program for decontrol. This will provide an immediate and continuing price incentive to all properties to increase production above that level. Accordingly, the new regulation establishes a "decontrol base production level," which is defined as the average monthly production of old oil from the property concerned during the three calendar months ending June 30, 1975, based on maximum feasible rates of production in those months, and an "adjusted decontrol base production level," which is the decontrol base production level, reduced in each month by the appropriate percentage (e.g., at the rate of 1.5 percent per month for the first 12 months). Any old oil production above that adjusted decontrol base production level in each month beginning with September 1975, will be decontrolled. Since the decontrol calculations are based exclusively on old oil production levels (total production, less "new" and "released" oil), this amendment leaves undisturbed and is in addition to the existing regulations which permit "new" and "released" crude oil to be priced at market levels, except that such "new" and "released" crude oil will now be subject to the secondary ceiling price.

Thus, producers that have production in excess of 1972 levels shall first calculate the amounts of "new" and "released" crude oil produced and sold from the property concerned. If the amount of "old" crude oil resulting from that calculation is in excess of the adjusted decontrol base production level for that month, the amount of that excess is "decontrolled old crude petroleum." If the amount of "old" crude oil is less than the adjusted decontrol base production level, but there is additional production in excess of the "old" crude oil which constitutes "new" and "released" crude oil, such "new" and "released" crude oil may continue to be priced at the secondary ceiling price, pursuant to the "new" and "released" crude oil price rules.

In order to insure that monthly fluctuations in production and sale of crude oil do not have anomolous price results, a cumulative deficiency provision has been included in the definition of "decontrolled old crude petroleum," which is analogous to the cumulative deficiency provision in the definition of "new crude petroleum." The cumulative deficiency provision provides that, once "decontrolled old crude petroleum" has been produced and sold from a property, any production at less than the adjusted decontrol base production level in future months must first be made up before further sales of decontrolled old crude petroleum can be made. It should be noted that it is only total current production of crude oil from a property at less than the adjusted decontrol base level which will result in a deficiency—not production of old crude oil at less than that level. This will insure that deficiencies in decontrolled old crude petroleum will not result from production at levels in excess of 1972 levels, which result in reduced amounts of old crude oil through operation of the "new" and "released" crude oil price rules.

4. *Decontrolled price ceiling.* Price policies recently announced by OPEC indicate that world crude oil price levels, which have remained generally stable for more than a year, might be increased in the coming months.

In order to avoid the possibility that sharp increases in future world prices might result in equivalent U.S. domestic price increases, and in order further to cushion the impact of decontrol on the current economic recovery, the FEA has further modified its proposed rule, to establish in this amendment a secondary price ceiling for decontrolled domestic crude oil averaging $11.50 per barrel during the first month of the 39-month decontrol period, and gradually increasing at the rate of $.05 per barrel per month in each month thereafter. This ceiling will apply to all domestic crude oil other than stripper well crude oil, which is exempt from price controls pursuant to the Emergency Petroleum Allocation Act of 1973.

With respect to properties from which crude oil was produced and sold on May 15, 1973, or prior thereto, the secondary ceiling price shall be in September, 1975, the old oil ceiling price determined pursuant to § 212.73(b), plus $6.25 per barrel. Since the nationwide average price for old oil subject to the ceiling price rule of § 212.73(b) is currently about $5.25 per barrel, this would result in a nationwide average secondary ceiling price of approximately $11.50 per barrel for new, released and decontrolled crude oil in September 1975. Ceiling prices determined under § 212.73(b) are based on the actual May 15, 1973 postings for crude oil, which reflect price differentials for quality—the principal factors being gravity and sulfur content. Use of May 15, 1973 postings therefore preserves these quality differentials, so that the ceiling price rules do not result generally in purchasers paying the same price for different quality crude oil.

With respect to crude oil produced from properties from which crude oil was not produced or sold on or before May 15, 1973, the secondary ceiling price is specified as $11.50 per barrel for the month of September, 1975, with the proviso that the FEA may, by regulation or order, make appropriate upward and downward adjustments in the secondary ceiling price, but only to reflect the extent to which the sulfur content differs from 1.7 percent and the gravity differs from 34° API. Thus, the secondary ceiling price can be adjusted by FEA to permit quality differentials also to be reflected in this ceiling price. At the same time, however, the national average price level will be maintained at or very near the specified secondary ceiling price level, and the regulation does not, in any event, permit any departure from the prescribed secondary ceiling price level as to 1.7 percent sulfur and 34° API gravity crude oil.

Whichever method is used to ascertain the secondary ceiling price—May 15, 1973 postings or the FEA prescribed secondary ceiling price—that price will be increased at the rate of $.05 per barrel per month in each month after September, 1975.

Should Congress adopt a windfall profits tax measure, as urged by FEA, any increased oil-producer revenues generated due to possible future OPEC price increases would be returned to the Treasury whether or not FEA imposed a secondary crude oil price ceiling. However, assuming a windfall profits tax is enacted and the authority of the FEA to regulate petroleum prices is extended, it would remain the responsibility of FEA to monitor progress toward import-reduction goals and to take such additional steps as might be necessary to assure that domestic production is increased at the rate and in the manner deemed most appropriate. The establishment of a secondary price ceiling at this time helps to clarify energy policy for both producers and consumers and is in keeping with FEA's continuing responsibility to guide and direct attainment of energy policy goals.

5. *Technical changes.* Technical changes have been made in §§ 211.62 and 212.131 to conform the entitlements program and the crude oil sales certification requirements to the decontrol program.

(Emergency Petroleum Allocation Act of 1973, as amended, Pub. L. 93-159, as amended by Pub. L. 93-511; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, Parts 211 and 212 of Chapter II, Title 10 Code of Federal Regulations, are amended as set forth below, effective September 1, 1975, unless this amendment or any portion thereof is disapproved by either house of Congress during the period of five sessional days allowed for legislative review under section 4(g)(2) of the Emergency Petroleum Allocation Act of 1973, as amended.

Issued in Washington, D.C., July 25, 1975.

ROBERT E. MONTGOMERY, JR.,
General Counsel,
Federal Energy Administration.

Parts 211 and 212 are amended as follows:

1. Section 211.62 is amended in the definition of "old oil" to read as follows:

§ 211.62 Definitions.

* * * * *

"Old oil" means old crude petroleum less any related decontrolled old crude petroleum, as each of these terms is defined in § 212.72 of this chapter.

* * * * *

2. Section 212.72 is revised to add, in appropriate alphabetical order, definitions of "adjusted decontrol base production level," "decontrol base production level" and "decontrolled old crude petroleum" to read as follows:

§ 212.72 Definitions.

"Adjusted decontrol base production level" means the decontrol base production level, less:

(a) Where the current month is one of the 12 months following August, 1975, 1.5 percent of the decontrol base production level for that property multiplied by the number of months beginning with September, 1975, through the current month;

(b) where the current month is one of the 12 months following August, 1976, 18 percent of the decontrol base production level for that property plus 2.5 percent of the decontrol base production level for that property multiplied by the number of months beginning with September, 1976, through the current month; and

(c) where the current month is a month following August, 1977, 48 percent of the decontrol base production level for that property plus 3.5 percent of the decontrol base production level for that property multiplied by the number of months beginning with September, 1977, through the current month.

* * * * *

"Decontrol base production level" means the total number of barrels of old crude petroleum produced and sold from the property concerned during the three calendar months ending June 30, 1975, divided by three. The decontrol base production level for each property shall be based upon each well on that property having been maintained at the maximum feasible rate of production during the three calendar months ending June 30, 1975, in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production. In a case where the property concerned was not so maintained, the FEA may assign a decontrol base production level which fairly represents the production level which would have been attained if that property had been so maintained.

"Decontrolled old crude petroleum" means, with respect to a specific property, the total number of barrels of old crude petroleum produced and sold in the current month in excess of the adjusted decontrol base production level for that month, less the current cumulative deficiency in adjusted decontrol base production level. The current cumulative deficiency in adjusted decontrol base production level is the total number of barrels by which production and sale of crude petroleum has been less than the adjusted decontrol base production level, for all months in which production and sale of crude petroleum has been less than the adjusted decontrol base production level subsequent to the first month in which decontrolled old crude petroleum was produced and sold, minus the total number of barrels of old crude petroleum produced and sold in each prior month which was in excess of the adjusted decontrol base production level for that month, but which was not classified as decontrolled old crude petroleum because of this requirement to reduce the amount of decontrolled old crude petroleum in each month by the amount of the current cumulative deficiency in adjusted decontrol base production level.

* * * * *

3. Section 212.74 is revised to read as follows:

§ 212.74 New, released and decontrolled old crude petroleum.

(a) Notwithstanding the provisions of § 212.73(a), but subject to paragraphs (b) and (c) of this section, a producer of crude petroleum may charge any price for the new crude petroleum, the released crude petroleum, and the decontrolled old crude petroleum produced and sold from the property concerned in the month concerned.

(b) Until December 1, 1978, no producer may charge a price for any new crude petroleum, released crude petroleum, or decontrolled old crude petroleum which exceeds the secondary ceiling price. For purposes of this paragraph, the secondary ceiling price is: (1) For crude petroleum produced from a property from which crude petroleum was produced and sold on May 15, 1973, or prior thereto, the ceiling price as determined under § 212.73(b) plus $6.25 per barrel plus an amount equal to $.05 per barrel multiplied by the number of months beginning with October, 1975, through the current month; (2) for crude petroleum produced from a property from which crude petroleum was not produced and sold on May 15, 1973, or prior thereto, $11.50 per barrel for all domestic crude petroleum plus an amount equal to $.05 per barrel multiplied by the number of months beginning with October, 1975, through the current month; provided however, that the FEA may by regulation or order permit appropriate upward adjustments and require appropriate downward adjustments in the secondary ceiling price for crude petroleum having a sulfur content other than 1.7 percent and viscosity other than 34° API to reflect quality differences in actual sulfur content and actual viscosity of the crude petroleum concerned from the 34° API, 1.7 percent sulfur reference crude petroleum.

(c) A producer that charges a price for decontrolled old crude petroleum which exceeds the ceiling price for old crude petroleum shall maintain each well on the property concerned at all times at the maximum feasible rate of production, in accordance with recognized conservation practices, and shall use all reasonable means to insure that production is not significantly curtailed by reason of mechanical failure or other disruption in production.

4. Section 212.131 is revised in paragraphs (a) and (b) to read as follows:

§ 212.131 Certification of domestic crude petroleum sales.

(a)(1) Each producer of domestic crude petroleum shall, with respect to a first sale of domestic crude petroleum, certify in writing to the purchaser: (i) The ceiling price of that domestic old crude petroleum, (ii) the amount of stripper well crude petroleum, (iii) the amount of new crude petroleum, (iv) the amount of released crude petroleum, (v) the amount of decontrolled old crude petroleum, and (vi) the amount of old crude petroleum which has not been decontrolled, provided, that the certification requirements of this paragraph (a)(1) may be complied with by a one-time certification by a producer to the purchaser as to the base production control level crude petroleum for each month of 1972 and as to the decontrol base production level for the particular property. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than the maximum price permitted pursuant to this part.

(2) Each seller of domestic crude petroleum, other than a producer of domestic crude petroleum covered by paragraph (a)(1) of this section shall, with respect to each sale of domestic crude petrolem other than (i) an allocation sale pursuant to § 211.65 of part 211, or (ii) a sale in which no volumes of old oil (as defined in § 211.62) are deemed to have been transferred pursuant to § 211.67(g) of part 211, certify in writing to the purchaser the amount of old crude petroleum which has not been decontrolled included in the volume of domestic crude petroleum so sold. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than the maximum price permitted pursuant to this part.

(b) With respect to each allocation sale under § 211.65 of part 211, the seller shall certify in writing to the purchaser the amount of old crude petroleum which has not been decontrolled deemed (under the provisions of § 211.67(f) of part 211) to be included in the volume of crude petroleum so sold. Such written certification shall be made within 25 days following the month in which the crude oil so sold is delivered to or for the account of the purchaser.

* * * * *

[FR Doc.75-19796 Filed 7-25-75;4:27 pm]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 12796; Amdt. 39-2288]

PART 39—AIRWORTHINESS DIRECTIVES

British Aircraft Corporation Model 1-11, 200 and 400 Series Airplanes

A proposal to amend § 39.13 of Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring measures be taken to prevent failure of the handbrake control valve filter housing on British Aircraft Corporation Model 1-11, 200 and 400 Series airplanes was published in 38 FR 11111.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Although no objections were received, the FAA has reevaluated the need for the proposed AD and has determined that it should be adopted.

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding a new airworthiness directive to read as follows:

BRITISH AIRCRAFT CORPORATION. Applies to BAC Model 1-11, 200 and 400 Series airplanes, except those which have been modified in accordance with Dunlop Modification C.1559, part (b) to incorporate the strengthened filter housing, P/N ACM.27656.

Compliance is required as indicated.

To prevent failure of the handbrake control valve filter housing, accomplish the following:

(a) For handbrake control valves, P/N AC 61772, prior to the accumulation of 7,000 total landings, or within the next 25 landings after the effective date of this AD, whichever occurs later, unless already accomplished within the last 350 landings—

(1) Clean the filter housing on the handbrake control valve, P/N AC 61772;

(2) With the No. 2 hydraulic system pressurized to 3,000 psi, inspect the face of the filter housing, P/N ACM. 23102 for hydraulic fluid leakage and distortion; and

(3) If leakage or distortion is found, before further flight, remove the handbrake control valve from service and comply with paragraph (d).

(b) For handbrake control valves, P/N AC 61772, except those which have been modified in accordance with Dunlop Modification C. 1559, part (a), prior to the accumulation of 9,500 total landings, or within the next 500 landings after the effective date of this AD, whichever occurs later, remove the handbrake control valve from service, and comply with paragraph (d).

(c) For handbrake control valves, P/N AC 61772, which have been modified in accordance with Dunlop Modification C. 1559, part (a), prior to the accumulation of 12,000 total landings (including landings before modification), or within the next 500 landings after the effective date of this AD, whichever occurs later, remove the handbrake control valve from service, and comply with paragraph (d).

(d) Replace handbrake control valves removed as a result of the action required by paragraphs (a)(3), (b), or (c) of this AD with any of the following:

(1) Serviceable handbrake control valves, P/N AC 61772, which have accumulated less than 9,500 landings since new and continue to comply with paragraphs (a) and (b);

(2) Serviceable handbrake control valves, P/N AC 61772, which have been modified in accordance with Dunlop Modification C. 1559, part (a) and have accumulated less than 12,000 landings since new and continue to comply with paragraphs (a) and (c); or

(3) Serviceable handbrake control valves, P/N AC 61772, which have had the old type filter housing, P/N ACM. 23102 replaced with the new strengthened filter housing, P/N ACM. 27656 in accordance with Dunlop Modification C. 1559, part (b).

(e) For the purpose of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours' time in service by the operator's fleet average time from takeoff to landing for the BAC 1-11 airplane. (Dunlop Alert Service Bulletin No. 29-A131, dated December 16, 1971; Dunlop Service

Bulletin No. 29-131, dated December 20, 1971; and Revision 1, dated January 7, 1972; and BAC 1-11 Alert Service Bulletin No. 32-A-PM 5102, dated July 14, 1972, cover this same subject)

This amendment becomes effective August 28, 1975.

Issued in Washington, D.C., on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19569 Filed 7-28-75;8:45 am]

[Docket No. 12906; Amdt. No. 39-2289]

PART 39—AIRWORTHINESS DIRECTIVES

British Aircraft Corporation Model BAC 1-11, 200 and 400 Series Airplanes

A proposal to amend § 39.13 of Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring either the replacement of Rotax static inverters with modified static inverters or the modification of the static inverters presently installed on British Aircraft Corporation Model BAC 1-11, 200 and 400 Series airplanes was published in 38 FR 16391.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Although no objections were received, the FAA has re-evaluated the need for the proposed AD and determined that it should be adopted.

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding a new airworthiness directive to read as follows:

BRITISH AIRCRAFT CORPORATION. Applies to Model BAC 1-11, 200 and 400 Series airplanes.

Compliance is required within the next 500 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent possible static inverter failure which could result in the loss of the A.C. emergency power supply to essential flight instruments, accomplish the following:

(a) For airplanes which have not had BAC Modification 4535 incorporated, either—

(1) Replace the installed Rotax static inverter, P/N U6705, with a serviceable Rotax static inverter, P/N U6705/1; or

(2) Modify the installed Rotax static inverter, P/N U6705, in accordance with paragraph (c).

(b) For airplanes which have had BAC Modification 4535 incorporated, either—

(1) Replace the installed Rotax static inverter, P/N U6724, with a serviceable Rotax static inverter, P/N U6724/1; or

(2) Modify the installed Rotax static inverter, P/N U6724, in accordance with paragraph (c).

(c) Rotax static inverters, P/N U6705, may be converted to Rotax static inverters, P/N U6705/1, and Rotax static inverters, P/N U6724, may be converted to Rotax static inverters, P/N U6724/1, for compliance with paragraph (a)(2) or (b)(2) by—

(1) Changing the R6 and R7 resistors on Printed Circuit Board No. 1 from 220 ohms/1.5 watt to 82 ohms/0.25 watt or 0.5 watt; and

(2) Satisfying the functional tests for the modified static inverters as specified in Rotax Service Bulletin No. 24-420 at Revision 1, dated August 20, 1971 (Rotax Modification No. 4743 U) or an FAA-approved equivalent.

(British Aircraft Corporation, Model BAC 1-11 Service Bulletin No. 24-PM 4992, Revision 1, dated November 8, 1971, refers to this same subject)

This amendment becomes effective August 28, 1975.

Issued in Washington, D.C., on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19570 Filed 7-28-75;8:45 am]

[Docket No. 11470; Amdt. 39-2285]

PART 39—AIRWORTHINESS DIRECTIVES

British Aircraft Corporation Model BAC 1-11 200 and 400 Series Airplanes, Equipped With AiResearch Model GTCP-85-115, -115C, -115K, or -115CK Auxiliary Power Units

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive to prevent possible overheat damage of the rear fuselage tail cone structure due to fire resulting from an APU or jet pipe assembly failure on BAC 1-11, 200 and 400 Series airplanes was published in the Federal Register, 36 FR 21064.

Interested persons have been afforded an opportunity to participate in the making of the Amendment. One commentator proposed a visual check of exhaust emission color with the APU operating at no bleed load prior to each flight to determine APU condition rather than an oil sampling analysis program as proposed in the NPRM. The FAA does not agree because it would involve judgment of emission color level and verification of compliance would be impractical.

Other commentators requested that an approved oil sampling program be accepted in lieu of specific 25 hour oil checks. However, paragraph (a)(1) of this A.D. does permit this.

Two commentators requested that operation of the APU on the ground be allowed before modifications of the APU and tail cone contrary to the NPRM. The FAA does not agree. This restriction is necessary to ensure that an overheat condition cannot exist at the time of takeoff.

Comments indicated that Part (d) of BAC Albert Service Bulletin 49-A-PM-4714 does not apply to some versions of installed APU's and one commentator stated that parts would not be available in time to comply within the time limit proposed in the NPRM. However, Part (d) of the Service Bulletin does apply to all APU's covered by this A.D. In addition, BAC has advised that the commentator has ordered and received parts.

One commentator requested that the compliance times in the NPRM refer to hours of APU operation rather than airplane hours of operation. The FAA agrees and the A.D. is revised accordingly.

The FAA has re-evaluated the need for the proposed A.D. and has determined that it should be adopted.

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89) § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive.

BRITISH AIRCRAFT CORPORATION. Applies to Model BAC 1-11, 200 and 400 Series Airplanes Equipped with AiResearch Model GTCP 85-115, -115C, -115K, or -115CK Auxiliary Power Units (APU).

Compliance is required as indicated. To prevent possible overheat damage of the rear fuselage tail cone structure due to fire resulting from an APU or jet pipe assembly failure, accomplish the following:

(a) Check the condition of the APU turbine bearing seals either—

(1) In accordance with an oil sampling analysis program that detects progressive deterioration of the bearing seals and that must be approved by an FAA maintenance inspector within the next 25 APU hours' time in service after the effective date of this AD; or

(2) In accordance with paragraphs 2.2.1, 2.2.2, and 2.2.3, BAC 1-11 Alert Service Bulletin No. 49-A-PM 4714, Issue 4, dated March 8, 1971, or an FAA-approved equivalent, within the next 25 APU hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 25 APU hours' time in service from the last inspection.

(b) If a defective turbine bearing seal is found during a check required by paragraph (a), before further flight, either—

(1) Repair the APU in accordance with the applicable AiResearch Maintenance Manual or an FAA-approved equivalent; or

(2) Mechanically disconnect the APU so that it is not possible to operate the APU on the ground or in flight and install a placard in the cockpit in clear view of the pilot stating that the APU is not to be operated.

(c) Within the next 1,000 APU hours' time in service after the effective date of this AD, unless already accomplished, either—

(1) Mechanically disconnect the APU so that it is not possible to operate the APU on the ground or in flight and install a placard on the APU cockpit controls stating that the APU is not to be operated; or

(2) Modify the APU installation and tail cone assembly to provide a means that automatically shuts down the APU when an overheat condition occurs, as follows:

(i) For airplanes equipped with a premodification PM 3520 tail cone installation, modify the APU installation and tail cone assembly in accordance with BAC 1-11 Service Bulletin No. 49-PM 4714, Part 1, Revision 1, dated November 9, 1970, and Parts 2 (a), (b), and (d), dated November 16, 1970, or an FAA-approved equivalent.

(ii) For airplanes equipped with a post-modification PM 3520 tail cone installation, modify the APU installation and tail cone assembly in accordance with BAC 1-11 Service Bulletin No. 49-PM-4714, Part 1, Revision 1, dated November 9, 1970, and Parts 2 (a), (b), (c), and (d), dated November 16, 1970, or an FAA-approved equivalent.

(d) The checks required by paragraph (a) may be discontinued after the APU has been disconnected in accordance with subparagraph (b)(2), or subparagraph (c)(1) or

after the modification specified in subparagraph (c)(2) has been accomplished.

(e) Placards installed in accordance with subparagraph (b)(2), or subparagraph (c)(1) may be removed after the modification specified in subparagraph (c)(2) has been accomplished.

(f) The checks required by paragraph (e) constitute preventive maintenance under FAR 43.

This amendment becomes effective August 28, 1975.

Issued in Washington, D.C. on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19576 Filed 7-28-75;8:45 am]

[Docket No. 14832, Amdt. 39-2292]

PART 39—AIRWORTHINESS DIRECTIVES

Dowty Rotol R245/4-40-4.5/13, R259/4-40-4.5/17, and R209/4-40-4.5/2 Propeller Blades

There have been cracks found in propeller blade root sections of Dowty Rotol R245/4-40-4.5/13 and R259/4-40-4.5/17 propeller blades used on certain Convair 600 series aircraft and R209/4-40-4.5/2 propeller blades used on YS-11 series aircraft that could result in failure of a propeller blade in flight. Since this condition is likely to exist or develop in a certain group of blades of the same type design an airworthiness directive is being issued to require a one-time inspection of the affected blades.

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

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

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

DOWTY ROTOL. Applies to Dowty Rotol Propellers R245/4-40-4.5/13, R259/4-40-4.5/17 and R209/4-40-4.5/2 used on Convair 600 series and YS-11 series airplanes.

Compliance required as indicated within the next 300 hours propeller time in service after the effective date of this AD or before the accumulation of 5300 hours propeller time in service, whichever occurs later, unless already accomplished.

To prevent propeller blade failures from occurring in flight:

(a) Inspect and test the following serial number blades for cracks or forging defects in accordance with Appendix B of Dowty Rotol Alert Service Bulletin 61-A862, Revision 1, dated May 22, 1975 (hereafter Dowty Rotol Bulletin 61-A862) or later FAA-approved revision, or an equivalent approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa and Middle East Region, c/o American Embassy, APO New York, N.Y. 09667.

YS11 & 11A propeller blades with blade serial numbers

A124879	A124882	A124884	A124890
A124892	A124893	A124894	A124906
A124907	A124908	A124909	A124910
A124928	A124929	A125008	A125009
A125010	A125016	A125017	A125018
A125019	A125025	A125027	A125028
A125035	A125036	A125037	A125038
A125039	A125040	A125047	A125048
A125049	A125050	A125051	A125057
A125058	A125059	A125061	A125062
A125090	A125091	A125093	A125112
A125113	A125115	A125116	A125121
A125122	A125123	A125141	A125142
A125143	A125149	A125151	A125152
A125159	A125160	A125161	A125165
A125166	A125167	A125169	A125171
A125238	A125239	A125242	A125243
A125244	A125245	A125246	A125247
A125248	A125249	A125251	A125252
A125262	A125263	A125264	A125272
A125275	A125276	A125283	A125285
A125287	A125288	A125290	A125291
A125292	A125293	A125294	A125296
A125298	A125299	A125302	A125304
A125316	A125317	A125318	A125527
A125528	A125538	A125540	A125547
A125549	A125556	A125557	A125565
A125566	A125567	A125569	A125570
A125583	A125585	A125587	A125589
A125590	A125611	A125612	A125613
A125614	A125628	A125629	A125642
A125654	A125655	A125674	A125676
A125677	A125708	A125709	A125718
A125720	A125762	A125780	A125822
A125824	A125833	A125834	A125835
A125842	A125843	A125900	A125908
A125911	A125930	A125956	A125982
A125984	A125985	A125980	A126089
A126090	A126122		

Convair propeller blades with blade serial numbers

A125447	A125448	A125458	A125462
A125661	A125662	A125699	A125844

(b) If cracks or forging defects are found, comply with (1) or (2) as appropriate:

(1) Repair the blade in accordance with Appendix B of Dowty Rotol Bulletin 61-A862 or later FAA-approved revision or an FAA equivalent approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa and Middle East Region, c/o American Embassy, APO New York, N.Y. 09667.

(2) Remove the blade from service if repair cannot be made in accordance with paragraph (b)(1).

(c) Blades may be returned to service following inspection and test if found free of cracks or forging defects or have been repaired in accordance with paragraph (b)(1) of this AD.

This amendment becomes effective July 29, 1975.

Issued in Washington, D.C. on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19578 Filed 7-28-75;8:45 am]

[Docket No. 14833; Amdt. 39-2293]

PART 39—AIRWORTHINESS DIRECTIVES

Flug-und Fahrzeugwerke Diamant HBV, and 16.5 Gliders

Installation of an improperly dimensioned left vertical fin hinge fairing that causes pressure on the fairing under conditions of full right rudder deflection could result in full right rudder jam on Diamant HBV gliders and on certain Diamant 16.5 gliders. Since this condition is likely to exist or develop in other gliders of the same type design, an airworthiness directive is being issued which requires a one-time inspection to verify sufficient fin fairing overlap of the rudder nose and lengthening of rudder nose for fin fairings of insufficient overlap for all Diamant HBV gliders and certain Diamant 16.5 gliders.

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

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

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

FLUG-UND FAHRZEUGWERKE A.G. Applies to Diamant HBV gliders, all serial numbers, and Diamant 16.5 gliders, S/N 011 through 069, except 030, 031, 036, 058, 067, and 068, certificated in all categories.

Compliance is required within 25 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent jamming of the rudder, accomplish the following:

(a) Visually inspect and measure the fin fairing overlap of the rudder nose for right full rudder to assure an overlap of more than 0.4 in. (10 mm) in accordance with Flug-und Fahrzeugwerke A.G. Service Bulletin No. 2, dated May 15, 1970, or an FAA-approved equivalent.

(b) If fin fairing overlap measured in accordance with paragraph (a) of this AD is less than 0.4 in. (10 mm), modify (lengthen) the rudder nose by bonding fiberglass strips to the nose in accordance with Flug-und Fahrzeugwerke A.G. Service Bulletin No. 2, dated May 15, 1970, or an FAA-approved equivalent.

This amendment becomes effective August 12, 1975.

Issued in Washington, D.C. on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19573 Filed 7-28-75;8:45 am]

[Docket No. 14829; Amdt. 39-2290]

PART 39—AIRWORTHINESS DIRECTIVES

Israel Aircraft Industries, Ltd. Jet Commander Models 1121, 1121A and 1121B, and Westwind Model 1123 Airplanes

There have been reports of failures of certain Collins Model AP-105 autopilot vertical reference components installed in non-pressurized areas of Israel Aircraft Industries Jet Commander Models 1121, 1121A, and 1121B, and Westwind Model 1123 airplanes. These failures oc-

curred without actuation of the warning indicator and resulted in unsafe flight conditions due to erroneous attitude information and improper autopilot operation. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued which requires immediate placarding of the attitude indicators and a modification of the autopilot vertical reference installed on Israel Aircraft Industries Jet Commander Models 1121, 1121A, and 1121B, and Westwind Model 1123 airplanes.

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

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

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

ISRAEL AIRCRAFT INDUSTRIES, LTD. Applies to Israel Aircraft Industries Jet Commander Models 1121, 1121A and 1121B, and Westwind Model 1123 airplanes certificated in all categories having autopilot vertical reference component Collins P/N 332D-11/522-3985-001 or Collins P/N 332D-11A/792-6694-001 or both, installed in an unpressurized area.

Compliance is required as indicated unless already accomplished.

To prevent loss of attitude information and improper operation of the autopilot, accomplish the following:

(a) Before further IFR or night flight, install a placard on the instrument panel in full view of the pilot to read, "Cross Check Attitude Indicators with Third Attitude Indicator to Detect Unflagged Failures".

(b) Within the next 100 hours' time in service, after the effective date of this AD, modify the vertical reference (Collins P/N 332D-11/522-3985-001, or Collins P/N 332D-11A/792-6694-001), in accordance with Collins Service Bulletin No. 9, dated May 1, 1974, or an FAA-approved equivalent.

(c) The placard required by paragraph (a) of this AD may be removed when the modification required by paragraph (b) has been accomplished.

This amendment becomes effective August 12, 1975.

Issued in Washington, D.C., on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19571 Filed 7-28-75;8:45 am]

[Docket No. 14826; Amdt. 39-2286]

PART 39—AIRWORTHINESS DIRECTIVES

Mitsubishi Model MU-2B Series Airplanes

There has been a report of fatigue failure of the wing flap main actuator jack screw on a Mitsubishi MU-2B series airplane that resulted in jamming of the right wing flap in the takeoff position and an asymmetric flap condition during flap retraction following takeoff. The failure was determined to be the result of misalignment of the main actuator gear box housing component which subjected the jack screw to combined bending and torsion loads. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued which requires a one-time inspection of the wing flap main actuator jack screw for cracks and the realignment of the actuator gear box housing on certain MU-2B-20/-25 and MU-2B-30/-35 airplanes.

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

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

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

MITSUBISHI HEAVY INDUSTRIES, LIMITED. Applies to Mitsubishi MU-2B-20/-25 (serial numbers 201 through 311 except 285, 291, 301, 305, and 309) and MU-2B-30/-35 (serial numbers 541 through 650 except 559, 612, 632, 645, and 648) airplanes certificated in all categories.

Compliance is required within the next 100 hours time in service after the effective date of this AD, unless already accomplished.

To prevent fatigue failure of the wing flap main actuator jack screw, accomplish the following:

(a) Irrespective of the airplane total hours time in service, inspect the left and right wing flap main actuator jack screws for cracks, replace the jack screws that are found cracked, and realign all the main actuator gear box housing units in accordance with the instructions contained in Mitsubishi MU-2 Service Bulletin No. 167, as revised January 9, 1975 (hereinafter MU-2 Service Bulletin 167), or an equivalent approved by the Chief, Engineering and Manufacturing District Office, FAA, Pacific-Asia Region.

(b) During the realignment process, ensure there is a nominal clearance of 2.0 mm (.080 inch), and under no circumstances less than 0.5 mm (.020 inch), between the main actuator gear box housings and wing rear spar.

(c) For airplanes equipped with a rubber bearing pad between a main actuator gear box housing and the wing rear span, accomplish the modification of the main gear box and removal of the rubber pad, as described in paragraph 3.1(7) or paragraph 3.2 1(b) of MU-2 Service Bulletin 167, as applicable, prior to realignment of the main gear box housings.

NOTE: MU-2 Service Bulletin 167, paragraphs 4 and 5, and the appropriate Mitsubishi MU-2 Maintenance Manuals contain information on adjustment and operational check of the flap system.

This amendments becomes effective August 5, 1975.

Issued in Washington, D.C. on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19577 Filed 7-28-75;8:45 am]

[Docket No. 14834; Amdt. 39-2294]

PART 39—AIRWORTHINESS DIRECTIVES

Mitsubishi MU-2B Series Airplanes

There have been reports of separation of the control lever on engine propeller pitch control units on Mitsubishi Model MU-2B airplanes which in one case caused the propeller to move to the high pitch-low rpm position during takeoff. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued which requires repetitive inspections of the propeller pitch control lever on Mitsubishi Model MU-2B, MU-2B-10, -15, -20, -25, -26, -30, -35, and -36 airplanes.

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

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

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

MITSUBISHI HEAVY INDUSTRIES, LIMITED. Applies to Mitsubishi Model MU-2B, MU-2B-10, MU-2B-15, MU-2B-20, MU-2B-25, MU-2B-26, MU-2B-30, MU-2B-35, and MU-2B-36 airplanes certificated in all categories.

Compliance is required within the next 25 hours time in service after the effective date of this AD, unless already accomplished within the last 75 hours time in service, and therafter at intervals not to exceed 100 hours time in service from the last inspection.

To prevent possible separation of the control lever on the engine propeller pitch control unit, inspect the propeller pitch control lever, Mitsubishi P/N 022A-43111, P/N 022A-43111-3, or P/N 867304-1 in accordance with paragraph (a) or (b) of this AD, as applicable.

(a) For airplanes with AN3H5A bolt or MS24673-3 bolt installed in a threaded propeller pitch control level, accomplish the following:

(1) Remove safety wire and loosen bolt.

(2) Ensure that the propeller pitch control lever is mounted securely on the shaft.

(3) Retorque the AN3H5A bolt to 20-25 inch pounds or the MS24673-3 bolt to 25-30 inch pounds, as applicable, and install safety wire.

(4) Ensure that the power management system is properly rigged in accordance with Section VI of the Garrett-Airesearch Turboprop Engine Series 331 Maintenance Manual or an FAA-approved equivalent.

(b) For airplanes with AN3-6A bolt and NAS679C3W nut installed in an unthreaded propeller pitch control lever, accomplish the following:

(1) Loosen the AN3-6A bolt.

(2) Ensure that the propeller pitch control lever is mounted securely on the shaft.

(3) Retorque the AN3-6A bolt to 20-25 inch pounds.

(4) Ensure that the power management system is properly rigged in accordance with Section VI of the Garrett-Airesearch Turboprop Engine Series 331 Maintenance Manual or an FAA-approved equivalent.

(Mitsubishi MU-2 Service Bulletin No. 168, dated April 18, 1975, refers to this same subject)

This amendment becomes effective August 12, 1975.

Issued in Washington, D.C. on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19574 Filed 7-28-75;8:45 am]

[Docket No. 14827; Amdt. 39-2284]

PART 39—AIRWORTHINESS DIRECTIVES

Pilatus Aircraft Limited B4-PC11

A condition of rudder control cable chaffing against crotch strap attachment brackets has been found on Pilatus Aircraft Ltd. B4-PC11 gliders that could result in separation or jamming of the rudder cable and loss of yaw control. Since this condition is likely to exist or develop in other gliders of the same type design, an airworthiness directive is being issued which requires a one-time inspection of the rudder control cables and installation of a rudder control cable guard over the crotch strap attachment brackets on B4-PC11 gliders.

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

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

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), Section 39.13 of Part 39 of the Federal Aviation Regulation is amended by adding the following new airworthiness directive:

PILATUS AIRCRAFT LTD. Applies to B4-PC11 gliders, serial numbers 141 and subsequent, certificated in all categories.

Compliance is required as indicated

To prevent rudder cable chaffing, jamming, or separation accomplish the following:

(a) Within 10 hours' time in service after the effective date of this AD, unless already accomplished, visually inspect the rudder control cables for chaffing in that portion adjacent to the crotch strap attachment brackets and repair, or replace as required in accordance with the Pilatus B4-PC11 Maintenance Manual or an FAA-approved equivalent.

(b) Within 25 hours' time in service after the effective date of this AD, unless already accomplished, install a polyurethane foam block P/N 112.50.11.065 on the underside of the pilot seat to provide a grooved channel to cover the crotch strap attachment bracket in accordance with the accomplishment instructions set forth in Pilatus Aircraft Service Bulletin No. 1002 dated May 1974, or an FAA-approved equivalent.

This amendment becomes effective July 29, 1975.

Issued in Washington, D.C. on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19575 Filed 7-28-75;8:45 am]

[Docket No. 14831; Amdt. 39-2291]

PART 39—AIRWORTHINESS DIRECTIVES

Szybowcowy Zaklad Doswiadczalny SZD-24-4A FOKA 4 Glider

There have been failures of the adhesive bonding in several areas of the wing and evidence of aging of other structural components in SZD-24-4A FOKA 4 gliders that could result in catastrophic failure of major aircraft components. Since this condition is likely to exist or develop in other gliders of the same type design, an airworthiness directive is being issued to require initial and periodic inspection of wing, fuselage, and tailplane, and to require repair or replacement of parts, components, or structure found unserviceable.

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

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), Section 39.13 of Part 39 of the Federal Aviation Regulation is amended by adding the following new airworthiness directive:

SZYBOWCOWY ZAKLAD DOSWIADCZALNY. Applies to SZD-24-4A FOKA 4 gliders, all serial numbers, certificated in all categories.

Compliance is required within the next 10 hours time in service after the effective date of this AD, unless already accomplished, and thereafter at intervals of 50 hours time in service from the last inspection.

To prevent structural failure of wing, fuselage, and tailplane, accomplish the following:

1. Inspect the wing, fuselage, tailplane and associated components or parts in accordance with "Detailed Range of the Glider Inspection", paragraphs 2.1 thru 2.4.5 of Annex Nr. 1 of SZD-24-4A Service Manual Edition II, dated 1967, or an FAA-approved equivalent.

2. Repair or replace parts, components, or structure found to be unserviceable in accordance with "Removing of the Faults", paragraphs 3.1 thru 3.6 of Annex Nr. 1 of SZD-24-4A Service Manual Edition II, dated 1967, or an FAA-approved equivalent.

This amendment becomes effective July 29, 1975.

Issued in Washington, D.C. on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19572 Filed 7-28-75;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 75-183]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Supplies and Equipment for Aircraft

In the matter of § 10.59(f), Customs Regulations, relating to free withdrawal of supplies and equipment for aircraft, amended to add Iran to the list of qualified countries.

In accordance with section 309(d), 46 Stat. 690, as amended (19 U.S.C. 1309 (d)), the Secretary of Commerce has found and in a letter dated April 29, 1975, advised the Secretary of the Treasury that Iran allows to aircraft registered in the United States and engaged in foreign trade privileges substantially reciprocal to those provided for in sections 309 and 317, 46 Stat. 690, as amended, 696, as amended (19 U.S.C. 1309, 1317). Corresponding privileges are accordingly extended to aircraft registered in Iran and engaged in foreign trade effective as of the date of such notification.

Accordingly, paragraph (f) of § 10.59, Customs Regulations, is amended by the insertion of "Iran" in appropriate alphabetical order and the number of this Treasury Decision in the opposite column headed "Treasury Decision(s)" in the list of nations in that paragraph.

(Secs. 309, 317, 624, 46 Stat. 690, as amended, 696, as amended, 759 (19 U.S.C. 1309, 1317, 1624))

As there is a statutory basis for the exemption from Customs duties on withdrawal of supplies by aircraft when reciprocity has been established, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

[SEAL] G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: July 16, 1975.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.75-19604 Filed 7-28-75;8:45 am]

[T.D. 75-184]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Supplies and Equipment for Aircraft

In the matter of § 10.59(f), Customs Regulations, relating to free withdrawal of supplies and equipment for aircraft, amended to add Morocco to the list of qualified countries.

In accordance with section 309(d), 46 Stat. 690, as amended (19 U.S.C. 1309 (d)), the Secretary of Commerce has found and in a letter dated April 29, 1975, advised the Secretary of the Treasury that Morocco allows to aircraft registered in the United States and engaged in foreign trade privileges substantially reciprocal to those provided for in sections 309 and 317, 46 Stat. 690, as amended, 696, as amended (19 U.S.C. 1309, 1317). Corresponding privileges are accordingly extended to aircraft registered in Morocco and engaged in foreign trade effective as of the date of such notification.

Accordingly, paragraph (f) of § 10.59, Customs Regulations, is amended by the insertion of "Morocco" in appropriate alphabetical order and the number of this Treasury Decision in the opposite column headed "Treasury Decision(s)" in the list of nations in that paragraph.

(Secs. 309, 317, 624, 46 Stat. 690, as amended, 696, as amended, 759 (19 U.S.C. 1309, 1317, 1624))

As there is a statutory basis for the exemption from Customs duties on withdrawal of supplies by aircraft when reciprocity has been established, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

[SEAL] G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: July 16, 1975.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.75-19605 Filed 7-28-75;8:45 am]

[T.D. 75-185]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

PART 145—MAIL IMPORTATIONS

Duty-Free Exemption of Certain Gifts

In the matter of §§ 10.152, 10.153(b), 10.153(d) (2) and (3), 10.153(f), and § 145.32 of the Customs Regulations, relating to the duty-free exemption for gifts sent to persons in the United States, amended.

Section 610(a) of the Trade Act of 1974 (Pub. L. 93-618) amended section 321(a)(2)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(A)), to increase the duty- and tax-free exemption for articles sent as bona-fide gifts from persons in the Virgin Islands, Guam, and American Samoa to persons in the United States from $10 to $20 fair retail value.

In order to conform the Customs Regulations with the above-cited statutory amendment, it is necessary to change the center heading immediately preceding § 10.151 of the Customs Regulations (19 CFR 10.151) and to amend §§ 10.152, 10.153(b), 10.153(d) (2) and (3), § 10.153(f), and § 145.32 of the Customs Regulations (19 CFR 10.152, 10.153(b), 10.153(d) (2) and (3), 10.153(f), 145.32) in the following manner:

§ 10.151 [Center heading amended]

(1) The center heading immediately preceding § 10.151 of the Customs Regulations (19 CFR 10.151) is amended to read: "IMPORTATIONS NOT OVER $1 AND BONA-FIDE GIFTS".

(2) The section heading and the first sentence of § 10.152 are revised to read as follows:

§ 10.152 Bona-fide gifts.

Pursuant to section 321(a)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(A)), the district director shall pass free of duty and tax, and without the preparation of an entry, any article sent as a bona-fide gift from a person in a foreign country to a person in the United States, provided the aggregate fair retail value in the country of shipment of such articles received by one person on 1 day does not exceed $10 or, in the case of articles sent from a person in the Virgin Islands, Guam, and American Samoa, $20. * * *

(3) Paragraphs (b), (d) (2) and (3), and (f) of § 10.153 are revised to read as follows:

§ 10.153 Conditions for exemption.

* * * * *

(b) A parcel addressed to a person in the United States from an individual in a foreign country which contains a gift should be clearly marked on the outside to indicate that it contains a gift. Such marking is not conclusive evidence of a gift nor is the absence of such marking conclusive evidence that an article is not a gift. Ordinarily an article not exceeding $10 in fair retail value in the country of shipment sent from a person in a foreign country to a person in the United States ($20, in the case of an article sent from a person in the Virgin Islands, Guam, and American Samoa) will be recognizable as a gift from the nature of the article and obvious facts surrounding the shipment.

* * * * *

(d) * * *

(2) The separate gifts not exceeding $10 in fair retail value in the country of shipment ($20, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa) included in the consolidated shipment are before shipment individually wrapped and addressed to the donee in the United States;

(3) Each gift package is marked on the outside to indicate that it contains a gift not exceeding $10 in fair retail value in the country of shipment ($20, in the case of packages sent from persons in the Virgin Islands, Guam, and American Samoa); and

* * * * *

(f) The exemptions provided for in § 10.151 or § 10.152 are not to be allowed in respect of any shipment containing one or more gifts having an aggregate fair retail value in the country of shipment in excess of $10 ($20, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), except as indicated in paragraph (d) of this section. For example, an article ordinarily subject to an ad valorem rate of duty but sent as a gift, if the fair retail value exceeds the $10 (or $20) exemption, would be subject to a duty based upon its value under the provisions of section 402 or 402(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a or 1402), even though the dutiable value is less than the $10 (or $20) exemption.

* * * * *

(R.S. 251, as amended, secs. 498, 624, 46 Stat. 728, as amended, 759, sec. 7, 52 Stat. 1081, as amended (19 U.S.C. 66, 1321, 1498, 1624))

Section 145.32 is revised to read as follows:

§ 145.32 Bona-fide gifts.

The district director shall pass free of duty and tax, without issuing an entry, articles sent as bona-fide gifts from persons in foreign countries to persons in the United States having an aggregate fair retail value in the country of shipment not exceeding $10 ($20, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), subject to the requirements set for in §§ 10.152 and 10.153 of this chapter.

(R.S. 251, as amended, secs. 498, 624, 46 Stat. 728, as amended, 759, sec. 7, 52 Stat. 1801, as amended (19 U.S.C. 66, 1321, 1498, 16244))

Because these amendments merely conform the Customs Regulations with a statutory amendment, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. These amendments shall become effective July 29, 1975.

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

Approved: July 16, 1975.

DAVID R. MCDONALD,
Assistant Secretary of the Treasury.

[FR Doc.75-19606 Filed 7-28-75;8:45 am]

[T.D. 75-182]

PART 111—CUSTOMHOUSE BROKERS

Fees to Accompany Applications for License

In the matter of § 111.19, Customs Regulations, relating to the fee to accompany an application for a license to transact business as a customhouse broker in an additional district, amended.

On January 21, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 3299), which proposed to amend § 111.19(b) of the Customs Regulations (19 CFR 111.19(b)) by conforming the amount of the fee required to accompany an application for a license to transact business as a customhouse broker in an additional Customs district to the amount of fee required to accompany an initial application for a customhouse broker's license. The proposed amendment provided for an increase in the fee from $150 to $200 to more nearly recover the actual costs incurred by the United States Customs Service in rendering this service to the public.

The only comment received in response to the notice of proposed rulemaking was favorable, and no changes in the proposed amendment were deemed necessary.

Accordingly, § 111.19(b) of the Customs Regulations (19 CFR 111.19(b)) is revised to read as follows:

§ 111.19 Licenses for additional districts.

* * * * *

(b) Submitting the fee of $200 with the application; and

* * * * *

(R.S. 251, as amended, secs. 624, 641, 46 Stat. 759, as amended, sec. 501, 65 Stat. 290 (19 U.S.C. 66, 1624, 1641, 31 U.S.C. 483(a)))

Effective date. This amendment shall become effective August 28, 1975.

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

Approved: July 16, 1975.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.75-19607 Filed 7-28-75;8:45 am]

Title 21—Food and Drugs

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

ADMINISTRATIVE PRACTICES AND PROCEDURES

Correction

In FR Doc. 75-13283, appearing at page 22950 in the issue for Tuesday, May 27, 1975, make the following changes:

1. On page 23002, second column, the first paragraph under § 2.116, presently designated "(i)" should be designated "(a)".

2. On page 23007, the third column, the third line should read "(e) If on motion under this section a".

3. On page 23008, the first column, the fifth complete paragraph, the last word which presently reads "questions" should read "examination".

4. On page 23016, the first column, the fourth sentence in § 2.312(a), the reference which reads "§ 2.30(a)" should read "§ 2.304(a)".

5. On page 23020, the third column, the fifth complete paragraph, the first line, which presently reads "An agency-directed assignment" should read "An agency-directed assignment is an assignment".

6. On page 23029, the second column, the ninth line, § 5.105, the word "Assistance" should read "Assistant".

7. On page 23035, the first column, "Region IV", the fifth line, the word "Plus" should read "Plus".

8. On page 23039, the third column, numbered paragraph (3), the eighth line, the word "set" should read "act".

9. On page 23041, the second column, the eighth line from the top, the parenthetical material should read "(i)".

Title 22—Foreign Relations

CHAPTER II—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[AID Reg. 5]

PART 205—PER DIEM, MONTHLY MAINTENANCE AND OTHER PAYMENTS TO AND ON BEHALF OF PARTICIPANTS IN NON-MILITARY ECONOMIC DEVELOPMENT TRAINING PROGRAMS

Per Diem Payments

The regulation governing per diem payments to participants in nonmilitary economic development training programs is revised to include monthly maintenance payments and allowances for books, equipment, costs connected with the preparation of the Master's thesis and doctoral dissertation, tuition, health insurance and other necessary program expenses. Amounts paid to participants for per diem, monthly maintenance and other allowances can be paid in advance.

This revision brings AID Regulation 5 more closely in conformity with Title 22, Chapter I, §§ 61.3 and 61.5 of the Code of Federal Regulations, as revised January 2, 1975, concerning "Payments to and on Behalf of Participants in the International Educational and Cultural Exchange Program."

The heading for Part 205 is revised to read as set forth above. Part 205 of Chapter II, Title 22 of the Code of Federal Regulations (AID Reg. 5) is revised to read as follows:

Sec.
205.1 Per diem rates.
205.2 Monthly maintenance.
205.3 Other allowances paid to participants.
205.4 Tuition.
205.5 Insurance.
205.6 Advance payment.
205.7 Additional authorization.

AUTHORITY: Foreign Assistance Act of 1961, as amended sec. 636(a), 1322 U.S.C. 2396.

§ 205.1 Per diem rates.

Participants in any training program under the Foreign Assistance Act of 1961 other than Part II may receive a per diem allowance in accordance with the following rates:

(a) For participants in programs of training in the United States, a per diem allowance not to exceed $35, or, in exceptional circumstances such other rate not to exceed $45 as the Administrator of the Agency for International Development or his designee may prescribe and such designee may be authorized to redelegate such authority. Per diem rates apply to participants in travel status. Those in academic or nonacademic residence status receive monthly rates. Per diem and monthly maintenance cannot be paid for the same period, except to academics, who travel in mid-program and receive a reduced travel per diem rate.

(b) For participants in programs of training in countries other than the United States, a per diem allowance not to exceed those prescribed by the Standardized Regulations (Government Civilian, Foreign Areas).

§ 205.2 Monthly maintenance.

Academic participants attending educational institutions for one quarter, semester, trimester or longer will receive monthly maintenance allowances, in lieu of per diem, at rates not to exceed those in § 61.5 of this title. Participants in non-academic programs who remain in one city for more than 30 days will also receive a monthly rate established by A.I.D., (SER/IT), in lieu of per diem.

§ 205.3 Other allowances paid to participants.

Allowances for books, training equipment, costs connected with preparation of the Master's thesis and preparation and publication of the doctoral dissertation and other necessary training expenses may be authorized for participants. These allowances will not exceed the maximums paid by State/CU to grantees in similar programs.

§ 205.4 Tuition.

Normal institution-established tuition and related fees for approved courses of study will be paid by A.I.D.

§ 205.5 Health insurance.

Premiums for health and accident insurance established by the training institution or under A.I.D. contracts with insurance carriers will be paid by A.I.D. In exceptional cases in which the participant cannot meet medical expenses, A.I.D., with appropriate approval, shall pay necessary medical expenses with appropriated funds.

§ 205.6 Advance payment.

Per diem, monthly maintenance and other allowances to participants may be paid in advance, when necessary and appropriate.

§ 205.7 Additional authorization.

Any emergency, unusual or additional payment deemed necessary for the satisfactory completion of program objectives if allowable under existing authority, whether or not specifically provided for by this part, may be authorized by the Assistant Administrator, Bureau for Program and Management Services.

Since these revisions relate solely to per diem, monthly maintenance and other allowances for foreign participants

in the A.I.D. training program who will receive actual notice in each instance of the allowances to be received, notice of proposed rulemaking and delayed effective date under 5 U.S.C. 553 is considered to be unnecessary in this instance.

Effective Date: These revisions will become effective July 1, 1975.

Dated: July 16, 1975.

CHARLES A. MANN,
Assistant Administrator Bureau for Program and Management Services.

[FR Doc.75-19592 Filed 7-28-75;8:45 am]

Title 29—Labor

CHAPTER XXV—OFFICE OF EMPLOYEE BENEFITS SECURITY

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2555—INTERPRETIVE BULLETINS RELATING TO FIDUCIARY RESPONSIBILITY

Interpretive Release

In the matter of Section 2555.75-6—Interpretive Bulletin Relating to section 408(c)(2) of the Employee Retirement Income Security Act of 1974.

The Department of Labor today announced guidelines for determining when a party in interest with respect to an employee benefit plan may receive an advance for expenses to be incurred on behalf of the plan without engaging in a transaction prohibited by section 406 of the Employee Retirement Income Security Act of 1974. That section prohibits, among other things, any lending of money from a plan to a party in interest, or transfer to, or use by or for the benefit of, a party in interest of any assets of the plan, as well as any act whereby a fiduciary deals with the assets of a plan in his own interest or for his own account.

However, section 408(c)(2) of the Act provides that nothing in section 406 of the Act shall be construed to prohibit the reimbursement by a plan of expenses properly and actually incurred by a fiduciary in the performance of his duties with the plan. Questions have arisen under section 408(c)(2) of the Act as to whether a plan may reimburse a party in interest in the performance of his duties with the plan and as to whether a plan might make an advance to a fiduciary or other party in interest for expenses to be incurred in the future.

The Department of Labor views the relevant provisions of section 408(c)(2) as clarifying the scope of section 406 so as to permit reimbursement of fiduciaries for expenses incurred in the performance of their duties with a plan. Similarly, consistent with section 408(c)(2), section 406 is construed to permit the reimbursement by the plan of expenses properly and actually incurred by a party in interest in the performance of his duties with the plan.

If a plan makes an advance to a fiduciary or other party in interest to cover expenses to be properly and actually incurred by such person in the performance of his duties with the plan, a prohibited transaction within the meaning of section 406 shall not occur when the plan makes the advance if—

(a) The amount of such advance is reasonable with respect to the amount of the expense which is likely to be properly and actually incurred in the immediate future (such as during the next month), and

(b) The party in interest accounts to the plan at the end of the period covered by the advance for the expenses actually incurred (whether computed on the basis of actual expenses incurred or on the basis of actual transportation costs plus a reasonable per diem allowance, where appropriate).

It should be noted, however, that despite the reasonableness of the amount of the advance and of the expenses underlying it, the question of whether incurring such expenses was prudent, and thus whether the advance was for reasonable expenses, is to be judged pursuant to section 404 of the Act (relating to fiduciary responsibilities).

Signed at Washington, D.C. on July 23, 1975.

JAMES D. HUTCHINSON,
Administrator of Pension and Welfare Benefit Programs.

[FR Doc.75-19598 Filed 7-24-75;10:44 am]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 2—DELEGATIONS OF AUTHORITY

Chief Benefits Director

Section 2.97 is added as follows:

§ 2.97 Chief Benefits Director delegated responsibility to enter into agreement with Federal Trade Commission to utilize its services and facilities to carry out investigations and make determinations as to enrollment of eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive or misleading either by actual statement, omission, or intimation.

This delegation of authority is identical to § 21.4001(f) of this chapter.

Approved: July 21, 1975.

By direction of the Administrator.

[SEAL] ODELL W. VAUGHN,
Deputy Administrator.

[FR Doc.75-19642 Filed 7-28-75;8:45 am]

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Liberalization in Educational Assistance and Vocational Rehabilitation Programs

On page 19341 of the FEDERAL REGISTER of May 7, 1975, there was published a notice of proposed regulatory development to implement the provisions of Pub. L. 93-508 (88 Stat. 1578) and Pub. L. 93-602 (88 Stat. 1957), to provide for increases in monthly rates and to provide other liberalizations in the educational assistance and vocational rehabilitation programs.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations.

A total of 18 comments were received. Four of these deal with issues which would require statutory changes, such as an increase in the reporting fee, a delay in implementation of the provision extending the 85-15 rule to accredited schools, and a change in the terminology, "joint apprenticeship training committee." One of these also seeks a change not in the regulation but rather in its implementation administratively. The remaining 14 comments deal with a single issue, § 21.4200(e). This new paragraph (e) adds a definition of "standard college degree." The objection is that the term as defined includes degrees offered by schools which are "candidates" for recognition as the term is used by the regional accrediting groups, but excludes those offered by schools who only have "preaccreditation" status with specialized accrediting groups. The regional accrediting agencies have similar definitions and standards for the preaccreditation status of "candidate." There appears to be no such uniformity among other accrediting bodies that have one or more preaccreditation categories known by different names.

Most of the schools who have commented are not affected at this time because the Office of Education, Department of Health, Education, and Welfare has not yet recognized "preaccreditation" standards for the specialized accrediting group to which these schools are likely to belong. The only current such approvals are for the groups accrediting Bible colleges, art schools and several health fields.

Furthermore, the Office of Education in the January 1975 issue of "Criteria and Procedures for Listing by the U.S. Commissioner of Education and Current List," states, "Unlike the regional commissions, the specialized accrediting agencies and associations demonstrate marked variation among their criteria for accreditation, definitions of eligibility, and operating procedures. There are 49 national specialized accrediting agencies and associations recognized by the U.S. Commissioner of Education, one of which functions at the secondary level." On the other hand, "while the procedures of the regional accrediting commissions differ somewhat in detail, their rules of eligibility, basic policies, and standards are similar."

The Veterans Administration is aware of the issue raised by these comments and will consider a future change to this paragraph, if further study or developments demonstrate that the Office of Education approves standards for preaccreditation status for schools seeking accreditation by a specialized accrediting group which are reasonably similar and

which insure that the school has met standards of educational quality consistent with other institutions offering standard college degrees.

Effective date. These VA Regulations are effective December 3, 1974, except rate increases under Public Law 93-508 which are effective September 1, 1974 and rate increases under Public Law 93-602 and loan provisions which are effective January 1, 1975.

Approved: July 21, 1975.

By direction of the Administrator.

[SEAL] ODELL W. VAUGHN,
Deputy Administrator.

Part 21 of Title 38 is amended as set forth below:

1. In § 21.132, paragraph (j) (1) is revised to read as follows:

§ 21.132 Reduction or discontinuance.

* * * * *

(j) *Error—payee's or administrative.* (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with his or her knowledge.

* * * * *

2. Section 21.133 is revised to read as follows:

§ 21.133 Rates.

(a) Subsistence allowance is payable at the following monthly rates effective September 1, 1974:

Type of training	Monthly rate of subsistence allowance			
	No dependent	1 dependent	2 dependents	More than 2 dependents
Institutional:				
Full time	$201	$249	$293	$21
¾ time	151	188	221	17
½ time	100	125	147	11
Institutional on-farm (IOF), apprentice or other on-job (OJT) [1] (full time only)	175	212	245	17
Combination (institutional and OJT) (full time only):				
Institutional ½ time or more	201	249	293	21
Institutional less than ½ time	175	212	245	17
Cooperative (full time only):				
Institutional full time	201	249	293	21
Business/industry full time	175	212	245	17

[1] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(38 U.S.C. 1504(b); Public Law 93-508, 88 Stat. 1578.)

(b) Subsistence allowance is payable at the following monthly rates effective January 1, 1975:

Type of training	Monthly rate of subsistence allowance			
	No dependent	1 dependent	2 dependents	More than 2 dependents
Institutional:				
Full time	$209	$259	$304	$22
¾ time	157	194	229	17
½ time	105	130	152	11
Institutional on-farm (IOF), apprentice or other on-job (OJT) [1] (full time only)	182	220	254	17
Combination (institutional and OJT) (full time only):				
Institutional ½ time or more	209	259	304	22
Institutional less than ½ time	182	220	254	17
Cooperative (full time only):				
Institutional full time	209	259	304	22
Business/industry full time	182	220	254	17

[1] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(38 U.S.C. 1504(b); Public Law 93-602, 88 Stat. 1957.)

3. In § 21.134, the introductory portion preceding paragraph (a) is revised to read as follows.

§ 21.134 Postrehabilitation pay.

Upon being rehabilitated, except under conditions stated in § 21.281(b) and (c), a lump-sum payment of 2 months' postrehabilitation pay will be authorized as follows, based upon the rate of subsistence allowance the veteran was entitled to at the time his or her employability is determined:

* * * * *

4. Sections 21.135 and 21.136 are revised to read as follows:

§ 21.135 Specialized restorative training.

When specialized restorative training is prescribed for the sole purpose of enabling the veteran to retain employment in the occupation in which he or she is currently employed, the rate of subsistence allowance authorized may not exceed the difference between the veteran's current rate of pay and the rate which will be paid him or her upon completion of the prescribed course of specialized restorative training.

§ 21.136 Two-veteran cases; dependents.

The payment of additional subsistence allowance under § 21.133 to a veteran for a spouse who is also a veteran and for a child will not bar the payment of additional subsistence or educational assistance allowance under § 21.4136 to the spouse for his or her spouse and the same child.

5. In § 21.137, paragraph (c) is revised to read as follows:

§ 21.137 Apportionment.

* * * * *

(c) *Child adopted out of family.* Where evidence establishes that a veteran is the natural parent of a child or children legally adopted outside of the veteran's family, only such additional amount of subsistence allowance on account of the existence of such child or children will be apportioned in favor of the child or children. The veteran is not entitled in his or her own right to whatever additional amount of subsistence allowance is payable because of the existence of such child unless the veteran is contributing to the child's support.

6. In § 21.138, paragraphs (b) and (c) (2) and (3) are revised to read as follows:

§ 21.138 Advance payment.

* * * * *

(b) *Payment.* The amount of the payment is not to exceed the subsistence allowance for the month or fraction thereof in which the course will commence plus the subsistence allowance for the following month. Upon application and completion of arrangements for enrollment and if there is no evidence in the veteran's file showing that he or she is not eligible for such an advance, the check, made payable to the veteran, shall be mailed to the institution for delivery to the veteran upon registration. No delivery shall be made more than 30 days in advance of commencement of his or her program. Subsequent payments shall be made each month in advance subject to information furnished by the Veterans Administration staff or the training facility. Final payment may be withheld until certification is received that the veteran pursued his or her course and any necessary adjustments made.

(c) * * *

(2) He or she has been accepted by the institution or is eligible to continue his or her training there;

(3) He or she has notified the institution of his or her intention to attend that institution or to re-enroll in it;

* * * * *

7. In § 21.145, paragraphs (a), (b) (1) and (2) and (d) are revised to read as follows:

§ 21.145 Veteran-student services.

(a) *Eligibility.* Veteran-students who are pursuing full-time programs of education or training under chapter 31 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in the amount of $625 will be

paid. An advance payment of $250 will be made for the first 100 hours agreed to be worked. Advances of lesser amounts may be made in return for agreements to perform services for periods of less than 100 hours.

(b) *Selection criteria.* Whenever feasible, veteran-students with disabilities rated at 30 percent or more are to be given priority in selection for this allowance. In addition the following selection criteria should be considered:

(1) Need of the veteran to augment his or her subsistence allowance;

(2) Availability to the veteran of transportation to the place where his or her services are to be performed;

* * * * *

(d) *Survey.* A survey of each regional office will be conducted annually to determine the number of veteran-students whose services can be effectively utilized.

8. In § 21.274, paragraph (b) is revised to read as follows:

§ 21.274 Authorization for travel for attendants.

* * * * *

(b) Persons not in regular civilian employment of the Federal Government may be authorized to act as attendants and will be furnished common-carrier transportation, meal and lodging requests, or, in lieu thereof, will be granted a mileage allowance. Such persons will be paid a fee, except when they are relatives of the veteran. A relative, for this purpose, means a spouse, parent, son or daughter, brother or sister, uncle or aunt, niece or nephew, by blood or marriage. Persons in the regular civilian employment of the Federal Government may be authorized to act as attendants and, when so assigned, will be entitled to transportation and expenses. They may be allowed per diem in lieu of subsistence in accordance with the provisions of Federal Travel Regulations. No fee will be paid to civilian employees of the Federal Government who act as attendants.

9. Section 21.278 is revised to read as follows:

§ 21.278 Tutoring.

All appropriate individualized tutoring at Government expense may be provided when, for a veteran to be successfully rehabilitated, there is need for special assistance beyond that given to other students pursuing the same or comparable courses.

10. Section 21.700 is revised to read as follows:

§ 21.700 Counseling disabled veterans.

(a) Counseling will be provided each disabled veteran who has basic eligibility for vocational rehabilitation and applies for training. The principal purpose of counseling will be to assist each veteran who needs vocational rehabilitation training to select a suitable vocational objective and plan for its achievement. Counseling psychologists will apply approved counseling principles and techniques in accordance with professional standards and practices.

(b) Counseling will be provided to assist a veteran in overcoming problems of personal adjustment which may interfere with his or her achieving, or deriving maximum benefit from, vocational rehabilitation. Such assistance will be provided by counseling psychologists whenever needed prior to entering training, while pursuing training, or in adjusting to employment following training.

(c) Each eligible disabled veteran who is homebound or hospitalized will be provided such counseling service as may be found appropriate to his or her physical or mental condition. This service will be provided through visits to the home of the veteran or through consultation with psychological and other personnel at Veterans Administration hospitals.

11. Section 21.701 is revised to read as follows:

§ 21.701 Need for vocational rehabilitation.

(a) A veteran having basic eligibility for whom training is found medically feasible may be afforded training if he or she is found in need of vocational rehabilitation because of the handicap of his or her service-connected disability.

(b) A veteran who has a service-connected disability of compensable degree which resulted from service in the Armed Forces on or after September 16, 1940, will be presumed to be in need of vocational rehabilitation. However, a veteran will be held not in need of training, if it is determined through counseling that he or she is employed or fully qualified for employment in a suitable occupation. An occupation in which a disabled veteran is employed or in which he or she could obtain and hold employment, will be considered suitable when the following criteria are met:

(1) The occupation is one which is pursued by workers in the locality where the veteran resides; and

(2) The veteran can meet the requirements of the occupation with no great likelihood of aggravating the disability; and

(3) The occupation is one in which a trained worker normally pursues employment and earns a livelihood; and

(4) Job requirements are such that a period of training (over and beyond vestibule training) is required to secure and hold employment in it; and

(5) The occupation is consistent with the veterans' aptitudes, abilities, interests, and capacities.

(c) A veteran who has a service-connected disability for blindness or other serious disability arising out of service after September 16, 1940, will be determined to be in need of vocational rehabilitation in accordance with paragraph (b) of this section provided he or she has not been rehabilitated. If the veteran has been rehabilitated, it must be established that he or she is no longer able to perform the duties of the occupation for which he or she was rehabilitated because of the worsening of his or her service-connected disability since he or she was rehabilitated. For the purpose of this paragraph:

(1) Blindness is defined as visual acuity no better than 20/200 in the better eye after correction, or a field of vision restricted to an angle of 15 degrees or less.

(2) Serious disability encompasses all disabilities of 100 percent regular schedular evaluation for service-connected disability.

(3) Generally an evaluation of 70–90 percent will qualify as a serious disability.

(4) Fifty-sixty percent service-connected disability (including disability for visual impairment) may constitute a serious disability when related to employment potential.

(5) A rating of less than 50 percent will rarely constitute a serious disability for the purpose of this paragraph.

(6) In all cases a determination as to need will require consideration of the veteran's employment potential.

(d) The determination as to whether a disabled veteran is in need of vocational rehabilitation will be made by counseling psychologists in Veterans Services Divisions in field stations.

12. Section 21.705 is revised to read as follows:

§ 21.705 Noncooperation of disabled veterans.

When a disabled veteran fails or refuses to cooperate in the counseling process to the extent required to determine need for vocational rehabilitation or medical feasibility of training, or refuses to select an employment objective which is considered suitable for vocational rehabilitation purposes, action will be sus- his or her cooperation can be obtained. pended on his or her application until his or her cooperation can be obtained.

13. In § 21.711, paragraph (a) is revised to read as follows:

§ 21.711 Redeterminations as to need.

(a) *Prior to induction into training.* When a determination has been made that a disabled veteran needs vocational rehabilitation, this decision will not be changed unless there is (1) unmistakable error of fact or law; or (2) there is new and material evidence which justifies a change. This will apply to determinations made by counseling psychologists in Veterans Services Divisions while on authorized visit to a Veterans Administration hospital as well as to determinations made at other Veterans Administration counseling locations. When a veteran requests induction into vocational rehabilitation training after having declined such training, or after a determination was made that he or she did not need such training, a redetermination as to need will be made in order to consider whether conditions basic to such determination have changed.

* * * * *

14. In § 21.715, paragraph (a) is revised to read as follows:

§ 21.715 Seriously handicapped veterans.

(a) It is the policy of the Veterans Administration to bring all applicable specialized resources effectively to bear upon the vocational rehabilitation of seriously handicapped veterans. To this end, the field station will utilize the services of staff specialists of the nearest Department of Medicine and Surgery clinic or hospital as well as of the Veter-

ans Services and Adjudication Divisions. For this purpose the station head will establish a Vocational Rehabilitation Board comprised of a counselor as chairman; a vocational rehabilitation specialist; a medical consultant; and a member of the Social Service staff. Other Department of Medicine and Surgery staff specialists will participate as consultants in individual cases whenever the Board has need of their services.

* * * * *

15. In § 21.1021, paragraphs (b), (d), and (e) are revised to read as follows:

§ 21.1021 Definitions.

* * * * *

(b) "Active duty" means active duty as defined in § 3.6(b), except (b)(4) of this chapter. It also includes the initial period of active duty for training in the Reserves or National Guard pursuant to Section 511(d), title 10, United States Code, served subsequent to January 31, 1955 provided that at some time subsequent to the completion of such period of active duty for training the veteran serves on active duty for a consecutive period of 1 year or more (excluding service as a cadet or midshipman at one of the service academies). (38 U.S.C. 1652 (a)(3), 1682(b)). See §§ 21.1040, 21.1042, and 21.4136. This term does not include periods of excess leave without pay.

* * * * *

(d) "Educational assistance allowance" includes training assistance allowance based on apprentice or other on-the-job training. (38 U.S.C. 1684)

(e) "Unit" means not less than one hundred and twenty 60-minute hours or their equivalent of study in any high school subject in 1 academic year. (38 U.S.C. 1788)

16. Section 21.1022 is revised to read as follows:

§ 21.1022 Nonduplication; 38 U.S.C. chapters 31, 34, and 35.

A person who is eligible for educational assistance under chapter 34 and is also eligible for vocational rehabilitation under chapter 31 or educational assistance under chapter 35 must elect which benefit he or she will receive. The election is subject to the conditions specified in § 21.4022.

17. In § 21.1040, paragraphs (a), the introductory text of (b) and (e) preceding subparagraph (1), and (e)(2) are revised to read as follows:

§ 21.1040 Basic eligibility.

Basic eligibility for educational assistance is subject to the following requirements.

(a) *Service.* The veteran must have served on active duty for a continuous period of 181 days or more, any part of which occurred on or after February 1, 1955, or if he or she served for less than 181 days, must have been discharged or released on or after February 1, 1955, because of service-connected disability. Traveltime which meets the requirements of § 3.6(b)(6) of this chapter may be included.

(b) *Periods excluded.* In computing the 181 days service, there will be excluded any period during which he or she:

* * * * *

(e) *Persons on active duty.* Educational assistance may be afforded a person while on active duty if he or she:

* * * * *

(2) Meets the requirements of paragraphs (a) and (b) of this section, and has served a total of 181 days or more on active duty, any part of which occurred on or after February 1, 1955, excluding periods of time specified in § 3.15 of this chapter. Educational assistance otherwise payable may be provided under this subparagraph so long as he or she continues on active duty, or

* * * * *

18. In § 21.1041, paragraphs (a)(1) and (2) and (d) are revised to read as follows:

§ 21.1041 Periods of entitlement.

(a) *General.* (1) A veteran with less than 18 months active duty service or a person on active duty who meets the requirements of § 21.1040 will be entitled to full-time educational assistance for a period computed on the basis of 1½ months (or the equivalent in part-time educational assistance) for each month or fraction of month of service on active duty on or after February 1, 1955, but not in excess of 36 months, except as provided in paragraph (d) of this section. There will be excluded from the period of entitlement the periods specified in § 21.1040 (b) and (c).

(2) A veteran who has served a continuous period of not less than 18 months on active duty on or after February 1, 1955, and who has been released from such service under conditions that satisfied his or her active duty obligation, will be entitled to full-time educational assistance for a period of 36 months (or the equivalent in part-time educational assistance) and any additional period authorized under paragraph (d) of this section. The periods specified in § 21.1040(b) will be excluded in computing the 18-months period.

* * * * *

(d) *Extension.* The period of entitlement, including the 36-months period, may be extended, but not beyond the 10-year delimiting date specified in § 21.1042:

(1) To the end of a term, quarter or semester in a school regularly operated on a term, quarter or semester system, when the period of entitlement ends during the term, quarter or semester.

(2) To the end of the course or for 12 weeks, whichever is less, in all other schools, when the period of entitlement ends after more than half of the course has been completed. In a course consisting exclusively of flight training and in a course pursued exclusively by correspondence, the period of entitlement will be extended to the end of the course or for the total additional amount of instruction that $728, effective September 1, 1974 and $756, effective January 1, 1975, will provide, whichever is less. (38 U.S.C. 1661)

(3) No extension of the period of entitlement will be made where training is pursued in a training establishment as defined in § 21.4200(c).

(4) An extension, not to exceed 9 months, will be granted to be utilized in pursuit of a program of education leading to a standard undergraduate college degree. This includes a program of education leading to a first professional degree. If an extension had previously been granted under paragraph (d)(1) of this section the period of such extension will be deducted from any extensions to be authorized under this subparagraph. However, if the student qualifies for an extension under paragraph (d)(1) of this section at the expiration of any extension granted under this subparagraph, the extension will be granted. Only a student pursuing a standard undergraduate college degree at the time that his or her basic 36 months entitlement is exhausted shall qualify for this extension. Furthermore, only that amount of extension as is required to obtain the degree or complete the minimal requirements for the degree shall be allowed, not to exceed 9 months or the equivalent in part-time assistance. The extension must be utilized for the same program which was being pursued on the date basic entitlement expired.

19. In § 21.1045, paragraphs (a)(2) and (b)(2) are revised to read as follows:

§ 21.1045 Entitlement charges.

(a) *Residence courses.* * * *

(2) *Flight training courses; chapter 34.* A charge against the period of entitlement for a program consisting exclusively of flight training will be made on the basis of 1 month for each $260, effective September 1, 1974, and $270, effective January 1, 1975, which is paid to the veteran as an educational assistance allowance for such course. Where the computation results in a period of time other than a full month, or other than exactly three-fourths, one-half or one-fourth fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1677(b); Pub. L. 93-508, 88 Stat. 1578; Pub. L. 93-602, 88 Stat. 1957)

* * * * *

(b) *Correspondence courses.* * * *

(2) *Other courses.* Except as provided in paragraph (b)(1) of this section, the period of entitlement of any eligible veteran who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each $175 paid to the veteran as an educational assistance allowance for such course, for contracts entered into before January 1, 1973. For agreements entered into after December 31, 1972, the period of entitlement of any eligible veteran, wife, husband, widow, or widower who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each $220 paid before September 1, 1974, to the veteran, wife, husband, widow, or widower as an educational assistance allowance for such course. For payments

made on or after September 1, 1974, the charge will be 1 month for each $260 paid and for payments made on or after January 1, 1975, the charge will be 1 month for each $270 paid. Where the computation results in a period of time other than a full month, or other than exactly three-fourths, one-half or one-fourth fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1786(a)(2); Pub. L. 93-508, 88 Stat. 1578; Pub. L. 93-602, 88 Stat. 1957)

* * * * *

20. In § 21.3046, paragraph (c) is revised to read as follows:

§ 21.3046 Periods of eligibility; wives, husbands, widows, and widowers.

* * * * *

(c) *Extension to ending date.* Wife or husband is enrolled and eligibility ceases for a reason specified in paragraph (c)(1), (2) or (3) of this section: extended to end of quarter or semester for schools operating on quarter or semester system, or for schools not operating on quarter or semester system, to end of course or for 9 weeks, whichever is earlier. In a course pursued exclusively by correspondence, the period of eligibility will be extended to the end of the course or for the total additional amount of instruction that $546, effective September 1, 1974, and $567, effective January 1, 1975 (Pub. L. 93-508, 88 Stat. 1578; Pub. L. 93-602, 88 Stat. 1957) will provide whichever is less. No extension may exceed maximum entitlement or extend beyond the 10-year delimiting date specified in paragraph (a) of this section. Extension is authorized without regard to whether the midpoint of the quarter, semester or term has been reached. No extension of the period of eligibility will be made where training is pursued in a training establishment as defined in § 21.4200(c).

(1) Veteran is no longer rated permanently and totally disabled.

(2) Wife or husband is divorced from veteran without fault on her or his part.

(3) Spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii). (38 U.S.C. 1711(b), 1712(b), 1732, 1786)

21. In § 21.3300, paragraph (c) is revised to read as follows:

§ 21.3300 Special restorative training.

* * * * *

(c) Special restorative training may be provided in excess of 36 months where an additional period of time is needed to complete such training. Entitlement, including any authorized in excess of 36 months, may be expended through an accelerated program requiring a rate of payment in excess of $82, effective September 1, 1974 and $85, effective January 1, 1975, per calendar month. See §§ 21.3303 and 21.3333(b).

(38 U.S.C. 1741(b), 1742; Pub. L. 93-508, 88 Stat. 1578; Pub. L. 93-602, 88 Stat. 1957)

* * * * *

22. In § 21.3301, paragraph (a)(2) is revised to read as follows:

§ 21.3301 Need.

(a) When the case of a handicapped person is referred to the Vocational Rehabilitation Board, because of a request by a parent or guardian or upon recommendation of a counselor, the board will determine whether:

* * * * *

(2) It is in the best interests of an eligible person to begin special restorative training after having reached his or her 14th birthday;

* * * * *

23. In § 21.3330, paragraph (b)(1) is revised to read as follows:

§ 21.3330 Payments.

* * * * *

(b) The special training allowance will be paid only for the period of the eligible person's approved enrollment as certified by the vocational rehabilitation specialist. In no event, however, will such allowance be paid for any period during which:

(1) The eligible person is not pursuing the prescribed course of special restorative training that has been determined to be full-time training with respect to his or her capacities.

* * * * *

24. In § 21.3333, paragraphs (a) and (b) are revised to read as follows:

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rate except as provided in paragraph (c) of this section.

Course	Monthly rate	Accelerated charges
Special restorative training.	$260 effective Sept. 1, 1974, $270 effective Jan. 1, 1975.	If costs for tuition and fees average in excess of $82, effective Sept. 1, 1974, and $85 effective Jan. 1, 1975, per-month rate may be increased by such amount in excess of $82 effective Sept. 1, 1974, and $85 effective Jan. 1, 1975.

(b) *Accelerated charges.* The additional monthly rate may be paid if the parent or guardian concurs in having the eligible person's period of entitlement reduced by 1 day for each $8.69, effective September 1, 1974, and $9.02, effective January 1, 1975, that the special training allowance exceeds the basic monthly rate of $260, effective September 1, 1974, and $270, effective January 1, 1975. Fractions of more than one-half day will be charged as 1 day; fractions of one-half or less will be disregarded. Charges will be recorded when the eligible person is entered into training. (38 U.S.C. 1742; Pub. L. 93-508, 88 Stat. 1578; Pub. L. 93-602, 88 Stat. 1957)

* * * * *

25. In § 21.4001, paragraphs (a), (d), and (e) are revised and paragraph (f) is added so that the revised and added material reads as follows:

§ 21.4001 Delegations of authority.

(a) Except as otherwise provided, authority is delegated to the Chief Benefits Director and to supervisory or adjudicative personnel within the jurisdiction of the Education and Rehabilitation Service designated by him or her to make findings and decisions under 38 U.S.C. chs. 34, 35 and 36 and the applicable regulations, precedents and instructions, as to programs authorized by these paragraphs.

* * * * *

(d) The Chief Benefits Director is delegated responsibility for obtaining evidence of voluntary compliance for vocational rehabilitation, education and special restorative training to implement title VI, Civil Rights Act of 1964. Authority is delegated to him or her and designee to take any necessary action as to programs of vocational rehabilitation, education or special restorative training under 38 U.S.C. chs. 31, 34, 35 and 36 for the purpose of securing evidence of voluntary compliance directly or through the agencies to whom the Administrator has delegated responsibility for various schools or training establishments to implement Part 18 of this chapter.

(e) The Chief Benefits Director is delegated responsibility for obtaining evidence of voluntary compliance from recognized national organizations whose representatives are afforded space and office facilities in field stations under his or her jurisdiction.

(f) The Chief Benefits Director is delegated responsibility to enter into an agreement with the Federal Trade Commission to utilize, where appropriate, its services and facilities, consistent with its available resources, to carry out investigations and make determinations as to enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation. (38 U.S.C. 1796; Pub. L. 93-508, 88 Stat. 1578)

26. In § 21.4005, paragraph (a) (1) and (2) is revised to read as follows:

§ 21.4005 Conflicting interests.

(a) *General.* (1) Every officer or employee of the Veterans Administration who has, while such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any school operated for profit in which a veteran or eligible person was pursuing a course of education under 38 U.S.C. chapter 34, 35, or 36 will be immediately dismissed from his or her office or employment.

(2) If the Administrator finds that any person who is an officer or employee of a State approving agency has, while he or she was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, a school operated for profit in which a veteran or eligible person was pursuing a course of education or training under chapter 34, 35, or 36, payments under § 21.4153 to such State approving agency will be discontinued unless such agency takes, without delay, such steps as may be necessary to terminate the employment of such person and payments will not be resumed while such person is an officer or employee of the State approving

agency, or State Department of Veterans' Affairs or State Department of Education.

* * * * *

27. In § 21.4136, paragraphs (a), (b), and (c) are revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) *Rates.* (1) Educational assistance allowance is payable at the following monthly rates effective September 1, 1974:

Type of course	Monthly rate			
	No dependent	1 dependent	2 dependents	Additional for each additional dependent
Institutional:				
Full time	$270	$321	$366	$22
¾ time	203	240	275	17
½ time	135	160	182	11
Less than ½ but more than ¼ time [1]	[2] 130			
¼ time or less	[2] 65			
Cooperative, other than farm cooperative (full time only)	217	255	289	17
Apprentice or on-job (full time only but see footnote [3] below)				
Payment designated training assistance allowance:				
1st 6 mo	189	212	232	9
2d 6 mo	142	164	184	9
3d 6 mo	96	117	137	9
4th 6 mo and succeeding periods	47	70	90	9
Correspondence	90 per centum of the established charge for number of lessons completed by veteran and serviced by school [4]—Allowance paid quarterly.			
Flight training	90 per centum of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay—Allowance paid monthly based on actual flight training received.			
Farm cooperative:				
Full time	217	255	289	17
¾ time	163	191	218	13
½ time	109	128	145	9

[1] If a veteran under Ch. 34 or an eligible person under Ch. 35 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed >130 per month if the maximum allowance was not initially authorized.
[2] See par. (b) of this section.
[3] See footnote 3 of § 21.4270(c) for measurement of full time and par. (l) of this section for proportionate reduction in award for completion of less than 120 h per month.
[4] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran whichever is the lesser. Enrollments before Jan. 1, 1973, will receive 100 percent of the established charges.

(38 U.S.C. 1677, 1682, 1786, 1787; Public Law 93-508, 88 Stat. 1578.)

(2) Educational assistance allowance is payable at the following monthly rates effective January 1, 1975:

Type of course	Monthly rate			
	No dependent	1 dependent	2 dependents	Additional for each additional dependent
Institutional:				
Full time	$270	$321	$366	$22
¾ time	203	240	275	17
½ time	135	160	182	11
Less than ½ but more than ¼ time [1]	[2] 135			
¼ time or less	[2] 68			
Cooperative, other than farm cooperative (full time only)	217	255	289	17
Apprentice or on-job (full time only but see footnote 3 below)				
Payment designated training assistance allowance:				
1st 6 mo	196	220	240	10
2d 6 mo	147	171	191	10
3rd 6 mo	98	122	142	10
4th 6 mo and succeeding periods	49	73	93	10
Correspondence	90 percent of the established charge for number of lessons completed by veteran and serviced by school [4]—Allowance paid quarterly.			
Flight training	90 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay—Allowance paid monthly based on actual flight training received.			
Farm cooperative:				
Full time	217	255	289	17
¾ time	163	191	218	13
½ time	109	128	145	9

[1] If a veteran under ch. 34 or an eligible person under ch. 35 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $135 per month if the maximum allowance was not initially authorized.
[2] See par. (b) of this section.
[3] See footnote 3 of § 21.4270(c) for measurement of full time and par. (l) for proportionate reduction in award for completion of less than 120 h per month.
[4] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran whichever is the lesser. Enrollments before Jan. 1, 1973, will receive 100 percent of the established charges.

(38 U.S.C. 1677, 1682, 1786, 1787; Public Law 93-508, 88 Stat. 1578; Public Law 93-602, 88 Stat. 1967.)

(b) *Less than half-time.* The monthly rate for an individual who is pursuing an institutional course on less than one-half time basis may not exceed the monthly rate of the cost of the course, computed on the total cost for tuition and fees which the school requires similarly circumstanced nonveterans enrolled in the same course to pay. "Cost of the course" does not include the cost of supplies which the student is required to purchase at his or her own expense.

(c) *Active duty.* The monthly rate for an individual who is pursuing a program of education while on active duty may not exceed the monthly rate of the cost of the course as specified in paragraph (b) of this section. For the purpose of a course pursued under the provisions of § 21.4235(a)(1) "cost of the course" shall include the cost of books and supplies peculiar to the course which the institution requires similarly circumstanced nonveterans enrolled in the same or a similar course to have. Where there is no same program, the cost of the course will be established by the Veterans Administration based on a report from the State approving agency showing the estimated cost for operation of the program and the anticipated enrollment. Subject to these limitations, the rate will be:

Measurement	Rates	
	Effective Sept. 1, 1974	Effect ve Jan. 1, 1975
Full time	$260	$270
¾ time	195	203
½ time	130	135
Less than ½, but more than ¼ time	130	135
¼ time or less	65	68

(38 U.S.C. 1682; Public Law 93-508, 88 Stat. 1579 and Public Law 93-602, 88 Stat. 1967)

* * * * *

28. In § 21.4137, paragraphs (a), (b), and (g) (2) and (3)(iii) are revised to read as follows:

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. ch. 35.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates:

Type of courses	Monthly rate	
	Public Law 93-508—Effective Sept. 1, 1974	Public Law 93-602—Effective Jan. 1, 1975
Institutional:		
Full time	$270	$270
¾ time	203	203
½ time	135	135
Less than ½ but more than ¼ time	130	135
¼ time or less	65	68
Cooperative, other than farm cooperative (full time only)	200	217
Apprentice or on-job (full time only but see footnote [1] below).		
Payment designated training assistance allowance:		
1st 6 mo	188	196
2d 6 mo	142	147
3d 6 mo	96	98
4th 6 mo and succeeding periods	47	49

Type of courses	Monthly rate: Public Law 93-508—Effective Sept. 1, 1974	Monthly rate: Public Law 93-602—Effective Jan. 1, 1975
Farm cooperative:		
Full time	217	217
¾ time	163	163
½ time	109	109
Correspondence:		
90 per centum of the established charge for number of lessons completed by eligible wife, husband, widow, or widower and serviced by the school [2]—Allowance paid quarterly		

[1] See footnote 5 of § 21.4270(g) for measurement of full time and par. (f) of this section for proportionate reduction in award for completion of less than 120 hrs per month.

[2] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible wife, husband, widow, or widower whichever is the lesser.

(38 U.S.C. 1682, 1732, 1786, 1787; Public Law 93-508, 88 Stat. 1579; Public Law 93-602, 88 Stat. 1957.)

(b) *Less than half-time.* The monthly rate for an individual who is pursuing an institutional course on less than one-half time basis may not exceed the monthly rate of the cost of the course, computed on the total cost for tuition and fees which the school requires similarly circumstanced individuals enrolled in the same course to pay. "Cost of the course" does not include the cost of books or supplies which the student is required to purchase at his or her own expense. (38 U.S.C. 1732(a)(2))

* * * * *

(g) *Advance payment.* * * *

(2) *Payment.* The amount of the payment is not to exceed the allowance for the month or fraction thereof in which the course will commence plus the allowance for the following month. Upon receipt of an application, together with an enrollment certification or other information as required by paragraph (g)(3) of this section and if there is no evidence in the eligible person's file showing that he or she is not eligible for such an advance, the check, made payable to the eligible person, shall be mailed to the institution for delivery to the eligible person upon registration. No delivery shall be made more than 30 days in advance of commencement of the program. Subsequent payments shall be made each month in advance subject to certification requirements set out in §§ 21.4138, 21.4203, 21.4204, and 21.4205. Final payment will be withheld if absence reporting is required until the required certification is received and any necessary adjustments made.

(3) *Certification.* Advance payment will be authorized initially and at the beginning of each subsequent term within an enrollment period preceded by an interval of non-payment for one full calendar month or more provided the application, enrollment certification or other document signed either by an authorized official of the institution or the eligible person contains the following information:

* * * * *

(iii) The eligible person has notified the institution of his or her intention to attend that institution or to reenroll in it;

* * * * *

29. In § 21.4138, paragraphs (b) and (c) are revised to read as follows:

§ 21.4138 Certifications.

Educational assistance allowance will be paid to or on behalf of a veteran or eligible person under chapter 34 or 35 on the basis of a certification as required in §§ 21.4136, 21.4137, 21.4203, 21.4204, and 21.4205 concerning enrollment in or the pursuit of a course during the reporting period. For institutional courses not leading to a standard college degree:

* * * * *

(b) Where a course is pursued by an eligible person or an eligible veteran not on active duty and on a half-time or greater basis, an application from such eligible person or veteran certifying that he or she will be enrolled will be sufficient to release payment of educational assistance allowance representing the initial payment of an enrollment period, not to exceed the allowance for the month or fraction thereof in which the course will commence plus the allowance for the following month. Subsequent payments shall be made each month in advance subject to submission of reports from the eligible person or veteran and the school as required by §§ 21.4203, 21.4204, and 21.4205. Payment for the last month of the enrollment period will be released upon receipt of the final certification required by §§ 21.4203 and 21.4205.

(c) Where a course is pursued by a serviceman or servicewoman on active duty on a half-time or greater basis, or by a serviceman or servicewoman training under the predischarge education program, a certification by the school that the serviceman or servicewoman will be enrolled will be sufficient to release payment in a lump sum not earlier than 30 days prior to the date the serviceman's or servicewoman's program of training will begin.

30. In § 21.4139, paragraphs (a) and (b)(1) are revised to read as follows:

§ 21.4139 Payee.

(a) *Educational assistance allowance-Chapter 34.* Payment will be made to the veteran or to a duly appointed fiduciary. Direct payment to the veteran may be made notwithstanding his or her minority.

(b) *Educational assistance allowance-Chapter 35.* (1) Payment will be made to the eligible person if he or she has attained majority and has no known legal disability or, notwithstanding minority, where it is found to be in his or her best interests unless there is some known reason why he or she should not be designated as payee.

* * * * *

31. In § 21.4145, paragraphs (a), (b)(1) and (2), and (d) are revised to read as follows:

§ 21.4145 Veteran-student services.

(a) *Eligibility.* Veteran-students who are pursuing full-time programs of education or training under chapter 34 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in the amount of $625 will be paid. An advance payment of $250 will be made for the first 100 hours agreed to be worked. Advances of lesser amounts may be made in return for agreements to perform services for periods of less than 100 hours.

(b) *Selection criteria.* Whenever feasible, veteran-students with disabilities rated at 30 percent or more are to be given priority in selection for this allowance. In addition the following selection criteria should be considered:

(1) Need of the veteran to augment his or her subsistence allowance;

(2) Availability to the veteran of transportation to the place where his or her services are to be performed;

* * * * *

(d) *Survey.* A survey of each regional office will be conducted annually to determine the number of veteran-students whose services can be effectively utilized.

32. In § 21.4153, paragraph (c)(3) is revised to read as follows:

§ 21.4153 Reimbursement of expenses.

* * * * *

(c) *Reimbursable expenses.* * * *

(3) *Administrative expenses.* An allowance for administrative expenses for which payment may be authorized will be determined in accordance with the formula contained in this subparagraph. Salary cost includes basic salary plus fringe benefits such as Social Security, retirement, and health, accident or life insurance which is provided all similarly circumstanced State employees.

Total salary cost reimbursable	*Allowable for administrative expense*
$5,000 or less	$550.
Over $5,000 but not exceeding $10,000	$1,000.
Over $10,000 but not exceeding $35,000	$1,000 for the first $10,000 plus $925 for each additional $5,000 or fraction thereof.
Over $35,000 but not exceeding $40,000	$6,050.
Over $40,000 but not exceeding $75,000	$6,050 for the first $40,000 plus $800 for each additional $5,000 or fraction thereof.
Over $75,000 but not exceeding $80,000	$12,000.
Over $80,000	$12,000 for the first $80,000 plus $700 for each additional $5,000 or fraction thereof.

* * * * * * *

33. In § 21.4200, paragraphs (e) and (f) are added to read as follows:

§ 21.4200 Definitions.

* * * * *

(e) *Standard college degree.* The term means an associate or higher degree awarded by:

(1) An institution of higher learning that is accredited as a collegiate institution by a recognized accrediting agency (there are seven agencies that grant such accreditation: six regional accrediting associations and the Board of Regents, New York State); or

(2) An institution of higher learning that is a "candidate" for accreditation, as that term is used by the six regional accrediting associations; or

(3) An institution of higher learning upon completion of a course which is accredited by an agency recognized to accredit specialized degree-level programs.

(f) *Undergraduate college degree.* The term means a college or university degree obtained through the pursuit of unit subjects which are below the graduate level. Included are associate degrees, bachelors' degrees and first professional degrees.

34. In § 21.4202, paragraph (c)(1) is revised to read as follows:

§ 21.4202 Overcharges; restrictions on enrollments.

* * * * *

(c) *Restrictions; proprietary schools.* (1) Enrollment under chapter 34 will not be approved for any veteran, not already enrolled, in any course not leading to a standard college degree other than one offered pursuant to special assistance for the educationally disadvantaged or the predischarge education program offered by a proprietary school other than a job training establishment during any period when more than 85 percent of the students enrolled in the course are having all or any part of their tuition, fees, or other charges paid to or for them by the school or the Veterans Administration under chapters 31, 34, 35, or 36 (38 U.S.C. 1673(d)).

* * * * *

35. In § 21.4203, paragraph (b)(3) is revised to read as follows:

§ 21.4203 Reports by schools; requirements.

* * * * *

(b) *Entrance or reentrance.* * * *

(3) Where the veteran or eligible person is enrolling in a farm cooperative course, the school's certification will include a report of the dates of the prescheduled classroom instruction.

* * * * *

36. In § 21.4205, paragraph (c) (1) and (4) is revised to read as follows:

§ 21.4205 Absences.

* * * * *

(c) *Reporting.* (1) Veterans and eligible persons must report each full day of absence from scheduled attendance as well as days when the school was closed for local and school holidays and, if reported enrollment was on an ordinary school year basis, intervals between terms, quarters or semesters. When the school is closed for the weekend, those days will not be reported nor will legal holidays established by Federal or State law or customary vacation periods connected with them be reported if the school is closed. These customary vacation periods will be reasonable periods identified as a holiday vacation on the school approval literature. Generally a reasonable period will be interpreted to mean not more than 1 calendar week at Christmas and at New Years and shorter periods of time in connection with other legal holidays. However, if classes are normally scheduled for Saturday and Sunday, absences must be reported. At the discretion of the Administrator, days of absence will not be reported for days of nonattendance within a certified period of enrollment during which the school is closed under an established policy based upon an Executive order of the President or due to an emergency situation.

* * * * *

(4) For a farm cooperative course the absences to be reported by the veteran or eligible person and verified by the school will be those days of nonattendance which occur during a period of the prescheduled classroom instruction.

37. In § 21.4206, the introductory text preceding paragraph (a) and paragraphs (a) and (b) are revised to read as follows:

§ 21.4206 Reporting fee.

The Veterans Administration may pay annually to each educational institution furnishing education or each joint apprenticeship training committee acting as a training establishment under 38 U.S.C. ch. 34, 35, or 36 a reporting fee for required reports or certifications. The reporting fee will be paid as soon as feasible after the end of the calendar year.

(a) Except as provided in paragraph (b) of this section, the reporting fee will be computed for each calendar year by multiplying $3 by the number of eligible veterans and eligible persons enrolled under chapter 34, chapter 35, or chapter 36 on October 31 of that year.

(b) For any school or joint apprenticeship training committee where the peak enrollment of veterans and eligible persons varies more than 15 percent from the enrollment on October 31, another date may be established as representative of peak enrollment. (38 U.S.C. 1784(b); Pub. L. 93-508; 88 Stat. 1578)

* * * * *

38. In § 21.4208, paragraph (a) is revised to read as follows:

§ 21.4208 Central Office Education and Training Review Panel.

(a) *Purpose.* The panel will receive evidence and hear the testimony of witnesses and the arguments of interested parties regarding matters considered by the field station Committee on Educational Allowances and make recommendations to the Director, Education and Rehabilitation Service, in connection with such matters which are before him or her for final administrative determination under § 21.4202 or 21.4207.

* * * * *

39. In § 21.4230, paragraph (c) is revised to read as follows:

§ 21.4230 Requirements.

* * * * *

(c) *Selection; chapter 34.* A program of education under chapter 34 selected by an eligible veteran or serviceman or servicewoman will be approved if it meets the requirements of paragraph (a) or (b) of this section and the veteran or serviceman or servicewoman is not already qualified for the objective for which the program of education is offered, except:

(1) A course or courses at the secondary school level for persons who have previously received a secondary school diploma or an equivalency certificate and deficiency courses needed or required to qualify for an educational or training program may be authorized under the provisions of § 21.4235, and

(2) An eligible veteran may receive up to 6 months educational assistance, or the equivalent in part-time assistance, for training in a program of education in which the veteran is already qualified, provided that the program pursued is refresher training to permit the veteran to update knowledge and skills and to be instructed in the technological advances which have occurred in the veteran's field of employment during and since the veteran's period of service. The program of education must be a course to be taken after the date of the veteran's discharge or release from active duty. It may be to update skills learned either during or prior to service but not for skills first acquired after discharge from service. Educational assistance allowance paid under this subparagraph will be charged against the veteran's basic entitlement.

* * * * *

40. In § 21.4233, the introductory portion preceding paragraph (a) and paragraph (d) are revised to read as follows:

§ 21.4233 Combination.

An approved program may consist of a combination of courses with instruction offered by a school alternating with instruction in a business or industrial establishment (a cooperative course); courses offered by two schools concurrently; or courses offered through class attendance and by television concurrently. A farm cooperative program may be approved which consists of a combination of institutional agricultural courses and concurrent agricultural employment (see § 21.4264). A school may contract the actual training to another school or entity, provided the course is approved by the State approving agency having approval jurisdiction of the school or entity which actually provides the training.

* * * * *

(d) *Farm cooperative course.* A program of education consisting of institutional agricultural courses pursued by a veteran or other eligible person who is concurrently engaged in agricultural em-

ployment which is relevant to such institutional course may be approved if the course meets the requirements of § 21.4264.

* * * * *

41. In § 21.4236, paragraphs (c) and (d) are revised to read as follows:

§ 21.4236 Special supplemental assistance (tutorial).

* * * * *

(c) *Educational assistance allowance.* In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 or 21.4137 the cost of such tutorial assistance in an amount not to exceed $60 per month will be authorized.

(d) *Entitlement charge.* No charge will be made against the period of the veteran's entitlement as computed under § 21.1041 or the eligible person's entitlement as computed under § 21.3044. Special supplemental assistance provided under this section will not exceed a maximum of $720. (38 U.S.C. 1690, 1692, 1693; Pub. L. 93-508; 88 Sat. 1578)

42. In § 21.4251, paragraph (g) is revised to read as follows:

§ 21.4251 Period of operation of course.

* * * * *

(g) *Period of operation of predischarge education program courses.* Any course as contemplated in § 21.4235(a)(1) which is established under § 21.4260 (b)(2) will be accepted as having been in operation for the 2-year period if it is similar in character to one which the institution has had in operation for a 2-year period at its parent location.

43. In § 21.4252, paragraphs (b) introduction, (b)(4), (e), (f) (1) and (2), (g) and (h) are revised to read as follows:

§ 21.4252 Courses precluded.

* * * * *

(b) *Avocational and recreational.* Enrollment will not be approved in any course which is avocational or recreational in character or the advertising for which contains significant avocational or recreational themes. The courses identified in paragraph (b) (1), (2), and (3) of this section are presumed to be avocational or recreational in character and require justification for their pursuit.

* * * * *

(4) To overcome the presumption that a course is avocational or recreational in character, the veteran or eligible person will be required to establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

* * * * *

(e) *Correspondence courses.* Enrollment in such courses will not be approved for eligible children under chapter 35. See § 21.4256 as to chapter 34 and wives, husbands, widows, and widowers under chapter 35.

(f) *Courses on secondary level; chapter 35.* (1) A curriculum offered by a public or private school at the secondary school level leading to the completion of the eligible child's regular secondary school education, that is, leading to a high school diploma or its equivalent, may not be pursued as a program of education or as part of a course of education of an eligible child under chapter 35. An eligible wife, husband, widow, or widower may pursue secondary school courses only under the special assistance for the educationally disadvantaged program. See § 21.4237.

(2) Where the eligible person has ended his or her secondary school education, by completion or otherwise, after having passed the age of compulsory school attendance, he or she may pursue a specialized vocational program of education in a school at the secondary level if such program leads to a bona fide vocational objective. Such a program may be pursued if it is deemed adequate to prepare graduates to enter directly into employment in the occupation or vocation which the eligible person expects to enter.

* * * * *

(g) *Vocational courses; chapters 34, 35, and 36.* Enrollment in any course with a vocational objective will not be approved unless the veteran or eligible person, or the institution offering such course, establishes that at least one-half of the persons completing such course over the preceding 2-year period, excluding the number of persons who completed such course with assistance under title 38, United States Code, while serving on active duty and the number of persons who are unavailable for employment, have been employed in the occupational category for which the course was designed to provide training. (38 U.S.C. 1673(a), 1723(a); Pub. L. 93-508, 88 Stat. 1578.)

(h) *Erroneous, deceptive, misleading practices.* Enrollment will not be approved in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation. The services and facilities of the Federal Trade Commission shall be utilized by the Veterans Administration, where appropriate, pursuant to an agreement to carry out investigations and to make determinations under this paragraph as provided by section 1796, title 38, United States Code.

44. In § 21.4264, the heading, paragraphs (a)(2), and (b) introduction, and (b)(3) are revised to read as follows:

§ 21.4264 Farm cooperative courses.

(a) *General.* * * *

(2) In computing the clock-hour requirements, the time involved in field trips and individual and group instruction may be included when they are sponsored and conducted by the educational institution through a duly authorized instructor of such institution in which the veteran, spouse or child is enrolled. (38 U.S.C. 1682, 1732; Pub. L. 93-508, 88 Stat. 1578.)

(b) *Application.* Any school desiring to enroll veterans, spouses or children in farm cooperative courses will submit to the appropriate State approving agency a written application for approval in accordance with § 21.4253 or 21.4254 as appropriate. In addition, the school must submit statements of fact showing at least the following:

* * * * *

(3) That the school itself verifies on a continuing basis that students are engaged in suitable agricultural employment which is relevant to the institutional agricultural course offered by the school and is in an area consistent with his or her institutional training program. Suitable agricultural employment must include employment on a farm or other agricultural establishment where the basic activity is the cultivation of the ground, such as the raising and harvesting of crops, including fruits, vegetables, pastures, or the feeding, breeding and managing of livestock, including poultry and other specialized farming. Employment in training establishments which are engaged primarily in the processing, distribution or sale of agricultural products, or combinations thereof, such as dairy processing plants, grain elevators, packing plants, hatcheries, stockyards, and florist shops, will not be considered suitable agricultural employment. (38 U.S.C. 1682, 1732; Pub. L. 93-508, 88 Stat. 1578).

* * * * *

45. In § 21.4270, paragraph (a) is revised to add footnote 8 to read as follows:

§ 21.4270 Measurement of courses.

Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week.

Courses		Full time	¾ time	½ time	Less than ¾ more than ½ time	½ time or less
Kind of school	Kind of course					
(a) Trade or technical (includes college courses not leading to a standard degree).[1]	Shop practice an integral part of course.	30 clock hours attendance with not more than 2½ h rest period allowance.	22 through 29 clock hours attendance with not more than 2 h rest period allowance.	15 through 21 clock hours attendance with not more than 1⅝ h rest period allowance.	8 through 14 clock hours attendance with not more than ¾ h rest period allowance.	1 through 7 clock hours attendance.
	Theory and class instruction predominates.[1]	25 clock hours net instruction.	18 through 24 clock hours net instruction.	12 through 17 clock hours net instruction.	7 through 11 clock hours net instruction	1 through 6 clock hours net instruction.

[1] An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter or semester-hour basis (with full time measured on the same basis as provided by par. (c) of this section, provided: (1) the academic portions of such courses must require outside preparation and be measured on a minimum of 50 min. net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses must be measured on a minimum of 2 h of attendance per week for each quarter or semester hour of credit, (3) the shop portions of such courses must be measured on a minimum of 3 h of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 h per week of attendance is required. Not more than 2 h rest period shall be allowed per week for courses in which shop practice is an integral part of full-time courses; 1½ h for ¾ time courses of 16 to 21 clock hours; 1 h for ½ time courses of 11 to 15 clock hours; or ½ h for less than ½-time courses of 6 to 10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

46. A new subpart F is added to read as follows:

Subpart F—Education Loans

Sec.
21.4500 Definitions.
21.4501 Eligibility.
21.4502 Applications.
21.4503 Determination of loan amount.
21.4504 Promissory note.
21.4505 Advertising.
21.4506 Right to administrative review.

AUTHORITY: The provisions of this Subpart F issued under 72 Stat. 1114, 88 Stat. 1589; 38 U.S.C. 210, 1686, 1737, Subchapter III, Chapter 36.

Subpart F—Education Loans

§ 21.4500 Definitions.

(a) *General.* These definitions shall be applicable for Subpart F of Part 21.

(b) *Education loan.* A loan made by the Veterans Administration to an eligible veteran or person pursuant to section 1798, title 38, United States Code.

(c) *Academic year.* The 9 month period usually from August or September to May or June, which includes generally two semesters or three quarters.

(d) *Loan period.* Loans are normally to be made for a quarter, semester, term, academic year or academic year plus a summer term. However, for courses which do not conform to the academic year, such as enrollments for students pursuing a course which does not lead to a standard college degree, a loan will be granted for a term of not more than 12 months provided the course requires at least 6 months at the full-time rate to complete.

(e) *Total amount of financial resources.* This term means the total of the following:

(1) The annual adjusted effective income of the veteran or other eligible person, less Federal income taxes paid or payable by the veteran or other eligible person with respect to such income, as described in paragraph (h) of this section.

(2) The amount of cash assets of the veteran or other eligible person, as described in § 21.4502(b)(2).

(3) The amount of financial assistance received by the veteran or other eligible person under the provisions of title IV of the Higher Education Act of 1965, as amended.

(4) Educational assistance received or receivable by the veteran or eligible person under section 1661 or subchapter II of chapter 35, title 38, United States Code, exclusive of an education loan.

(5) Financial assistance received by the veteran or other eligible person under any scholarship or grant other than the one specified in paragraph (e)(3) of this section.

(f) *Actual cost of attendance.* This term means the actual per student charges for tuition, fees, room and board (or expenses related to commuting a reasonable distance), books, and an allowance for such other expenses as are reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled.

(g) *Loan fee.* This shall be a fee collected by discounting the amount of any loan granted to a veteran or eligible person by an appropriate amount. The fee shall be collected for each separate loan authorized. Effective January 1, 1975, the amount of the fee shall be 3 percent of the total loan amount.

(h) *Annual adjusted effective income.* This income shall be considered to be the net taxable income less the Federal income tax paid or payable of the veteran or other eligible person. It is not limited to such income which may be available for use by the veteran or other eligible person for education needs. The amount available for education needs is to be determined in accordance with § 21.4503.

§ 21.4501 Eligibility.

(a) *General.* An eligible veteran or other eligible person shall be entitled to an education loan if the program of education is pursued in a State and if such eligible veteran or other eligible person:

(1) At the time the loan is authorized, is in attendance at an educational institution on at least a half-time basis and

(i) Is enrolled in a course leading to a standard college degree, or

(ii) Is enrolled in a course, the completion of which requires 6 months or longer, leading to an identified and predetermined professional or vocational objective;

(2) Has sought and is unable to obtain a loan for the academic year or other loan period in the full amount needed, as determined by § 21.4503, under a student loan program insured pursuant to the provisions of part B of title IV of the Higher Education Act of 1965, as amended, or any successor authority;

(3) Has financial resources that may be reasonably expected to be expended for education needs which are insufficient to meet the expected actual cost of attendance;

(4) Executes a promissory note payable to the Veterans Administration, as provided by § 21.4504; and

(5) Is in receipt of educational assistance allowance under section 1661 or subchapter II of chapter 35, title 38, United States Code.

(b) *Exclusions.* No veteran or other eligible person shall be authorized an education loan who:

(1) Is pursuing a program of correspondence, flight, apprenticeship, or other on-job or predischarge education program training, or

(2) Has defaulted on a previous education loan and there is a remaining unliquidated payment due the Veterans Administration.

§ 21.4502 Applications.

(a) *General.* An application for an education loan by an eligible veteran or other eligible person may not be submitted to the Veterans Administration prior to the date training is to commence. The application shall be made in the manner prescribed and upon the forms prescribed by the Veterans Administration. The application shall be certified by the school as to data required thereon from the school by the Veterans Administration.

(b) *Information.* The application shall provide the Veterans Administration with the following information and such other information as may be reasonable upon specific request:

(1) A statement of the amount of the net income of the veteran or other eligible person, less the Federal income tax paid or payable thereon, as reported or expected to be reported on the Federal income tax return of each such individual for the current tax year in which the application for the education loan is received by the Veterans Administration.

(2) The amount of all funds of the veteran or other eligible person on hand on the date of the application including cash on hand, money in a bank or savings and loan association account, and certificates of deposit.

(3) The full amount of the tuition for the course to be paid by the veteran or other eligible person during the period for which the loan is sought.

(4) The amount of reasonably anticipated expenses for room and board to be expended by the veteran or other eligible person during the period for which the loan is sought, including a reasonable amount for commuting normal distances to classes if the student does not reside on campus.

(5) The anticipated reasonable cost of books and supplies required for the courses to be taken during the period for which the loan is sought.

(6) A copy of two decisions with reference to applications made by the veteran or other eligible person for student loans insured pursuant to part B, title IV of the Higher Education Act of 1965, as amended, or any successor authority, unless fewer than two lenders within normal commuting distance are known by the school financial aid officer to be participating in such program.

§ 21.4503 Determination of loan amount.

(a) *General.* The amount of the education loan shall be computed by:

(1) Determining the total amount of financial resources of the veteran or other eligible person, as defined in § 21.4500(e), which may be reasonably expected to be expended for education needs in any academic year or other loan period.

(2) Subtracting the available resources determined in paragraph (a)(1) of this section from the actual cost of attendance, as defined in § 21.4500(f), to obtain the net amount by which costs exceed the resources available for education needs. If the available resources and the costs are equal, or if the resources exceed the costs, no loan will be authorized.

(b) *Amount.* A loan shall be authorized in the amount of the excess of cost over available resources as determined in paragraph (a) of this section subject to the following limitations:

(1) If the costs exceed the available resources by $50 or less no loan shall be granted.

(2) The aggregate of the amounts any veteran or other eligible person may borrow for an education loan may not exceed the amount obtained by multiplying $270 times the number of months of educational assistance allowance to which the veteran or other eligible person is entitled under section 1661 or subchapter II of chapter 35, title 38, United States Code, on the date that training commences during the period for which the loan is sought, but in no event more than $600 in any one academic year.

(3) No single loan shall be authorized at one time for a period longer than the academic year plus the summer term, quarter or semester consisting of a course or courses aggregating at least 10 weeks in length in the case of a student pursuing a standard college degree or for a period longer than 12 months in the case of a student pursuing a course which does not lead to a standard college degree.

(4) If the loan period is for more than one term, quarter, or semester in the case of students pursuing a course leading to a standard college degree, or for more than 6 months in the case of students pursuing a course not leading to a standard college degree, the following maximum amounts shall be paid on the loan at the beginning of such term:

(i) $600 for an academic year.

(ii) $800 for an academic year and following summer term.

(iii) $400 for a quarter and following summer term.

(iv) $500 for a semester and following summer term.

(v) $300 for any semester.

(vi) $200 for any term of 10 weeks or more leading to a standard college degree which is not part of the normal academic year or for a quarter.

(vii) $400 for a course not leading to a standard college degree 6 through 8 months in length.

(viii) $600 for a course not leading to a standard college degree 9 through 11 months in length.

(ix) $800 for a course not leading to a standard college degree 12 months in length.

(5) No amount authorized will be paid by the Veterans Administration until the veteran or other eligible person is certified as being enrolled and actually pursuing the course.

(6) An eligible veteran or other eligible person may receive more than one loan covering separate loan periods subject to paragraph (b) (3) and (7) of this section.

(7) If the veteran or other eligible person has a material change in economic circumstances subsequent to the original application for a loan, he or she may reapply for an increase in an authorized loan or for a loan, if otherwise qualified, if no loan was originally granted. However, the Veterans Administration will not decrease or revoke a loan once granted, absent fraud in the application.

§ 21.4504 Promissory note.

(a) *General.* The agreement by the Veterans Administration to loan money pursuant to section 1798, title 38, United States Code, to any eligible veteran or eligible person shall be in the form of a promissory note which shall include:

(1) The full amount of the loan.

(2) Agreement to pay a fee not to exceed 3 percent for an insurance fund against defaults.

(3) A note or other written obligation providing for repayment of the principal amount, and interest on the loan in annual installments over a period beginning 9 months after the date on which the borrower first ceases to be at least a half-time student in the program for which he or she is to be enrolled and ending 10 years and 9 months after such date.

(4) A provision for acceleration of repayment of all or part of the loan, without penalty, at the option of the borrower.

(b) *Interest.* The promissory note shall advise the student that the loan shall bear interest, on the unpaid balance of the loan at a rate to be determined by the Veterans Administration and Department of the Treasury. The interest shall accrue from the beginning date for repayment of the loan as determined by paragraph (a)(3) of this section. The current average market yield on outstanding marketable obligations of the United States which have comparable terms of maturity shall be considered in determining this rate of interest. The rate shall be determined as of the date the agreement is executed and shall be a fixed amount.

(c) *Security.* The loan shall be made without security and without endorsement.

(d) *Default.* Whenever the Veterans Administration determines that a default, in whole or in part, has occurred on any such loan the eligible veteran or other eligible person shall be notified that the amount of the default shall be recovered from the eligible veteran or other eligible person concerned in the same manner as any other debt due the United States.

(e) *Death or disability.* If the eligible veteran or eligible person dies or becomes permanently and totally disabled, even though he or she ceases to be permanently and totally disabled subsequent to the granting of the loan, the remaining liability of such person for an educational loan shall be discharged.

(f) *Fraud.* Material misrepresentation of fact by the eligible veteran or eligible person, including omissions of relevant information, shall render the loan agreement null and void. The deferred payment provisions of the agreement shall not apply in such a case and the full amount of any loan balance shall become due and payable immediately. The amount due shall be recovered from the eligible veteran or eligible person in the same manner as any other debt due the United States.

(g) *Signature.* A veteran or eligible person may sign both the loan application and the promissory note required and payment of the amounts authorized will be made to such person, notwithstanding his or her minority, unless the person has a legal guardian. In such cases the legal guardian must sign and will be paid the loan amounts.

§ 21.4505 Advertising.

(a) *General.* No educational institution or training establishment shall include a statement in advertisements or brochures intended to solicit students as to the availability of education loans from the Veterans Administration for eligible persons, except as provided in paragraph (b) of this section.

(b) *Form.* The statement which is permitted shall be as follows:

Certain eligible veterans and other eligible persons may qualify for a maximum educational loan of $600 per academic year from the Veterans Administration depending upon need. Applications for such loans shall be made to the Veterans Administration on forms prescribed by it.

§ 21.4506 Right to administrative review.

Loan determinations, other than those determinations involving basic eligibility to educational assistance, will not be subject to appellate review. The claimant

will, however, have the right to an administrative review of such determinations.

[FR Doc.75-19641 Filed 7-28-75;8:45 am]

Title 39—Postal Service

CHAPTER I—U.S. POSTAL SERVICE

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

Postal Service Manual; Miscellaneous Amendments

Chapter I of the Postal Service Manual, which has been incorporated by reference in the FEDERAL REGISTER (see 39 CFR 111.1) has been amended by the issuance of Post Office Services (Domestic) Transmittal Letter 38, Issue 109, dated July 21, 1975.

In accordance with 39 CFR 111.3 notice of these changes is hereby published in the FEDERAL REGISTER as an amendment to that section and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the Manual will receive these amendments automatically from the Government Printing Office. (For other availability of Chapter I of the Postal Service Manual, see 39 CFR 111.2).

Description of these amendments to Chapter I of the Postal Service Manual follows:

PART 122—ADDRESSES

1. Sections 122.411 and .412 are amended by deleting the word "Local" as a requirement on simplified addresses. Mail addressed in the simplified form need only bear the address "Postal Customer" or "Rural Route Boxholder." The use of the word "local" following the above forms becomes optional. Section 122.42 is amended by deleting the words "or Local" from the example shown for addressing mail to Postal Customer, or Occupant, Householder, Resident. The last line of the address should contain the post office, State and Zip Code.

PART 132—SECOND CLASS

2. Section 132.33(e) is amended to have postmasters report exceptional dispatch approvals to the sectional center manager, rather than the regional mail classification branch which has been discontinued.

PART 163—COD MAIL

PART 164—INDEMNITY CLAIMS

3. Parts 163 and 164 are amended to authorize full COD service with American Samoa and the Trust Territory of the Pacific Islands (Caroline Islands, Mariana Islands, and Marshall Islands). Specific changes are:

a. Section 163.16 is amended to remove all restrictions on COD service with the Trust Territory of the Pacific Islands and American Samoa.

b. Section 163.18 is amended to extend the waiting period before filing a report of delayed remittance for COD mail where extended transit time for surface ocean transportation is involved.

c. Section 164.131 is amended to extend the minimum waiting period before filing any claim for loss of a COD to 45 days. The waiting period before filing loss claims for all accountable mail (including COD) for parcels sent by ocean surface transportation is extended to 75 days after the date of mailing.

In consideration of the foregoing, 39 CFR 111.3 is amended as follows:

§ 111.3 [Amended]

Transmittal letter	Date	FEDERAL REGISTER publication
Letter 38, Issue 109	July 21, 1975	40 F.R.

These amendments are effective immediately.

(5 U.S.C. 552(a), 39 U.S.C. 401).

LOUIS A. COX,
General Counsel.

[FR Doc.75-19622 Filed 7-28-75;8:45 am]

Title 41—Public Contracts, Property Management

CHAPTER 9—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA-PR TEMPORARY REGULATION NO. 11]

PART 9-7—CONTRACT CLAUSES

PART 9-15—CONTRACT COST PRINCIPLES AND PROCEDURES

ERDA Cost Principles

Purpose. Pending complete restructuring of Part 9-15 of the ERDA-PR, the following cost principles are issued as directly implementing the indicated subparagraphs of FPR 1-15.205. Other principles may be promulgated from time to time, if needed in the interval before the restructured Part 9-15 is issued. The following principles will apply to the negotiation and administration of contracts and subcontracts under cost-type contracts, in accordance with FPR 1-15.102. ERDA-PR § 9-15.5010-13, Bidding expense and cost of proposals, and § 9-15.5010-12, Research and development, are rescinded.

Effective date. This regulation becomes effective August 29, 1975.

Expiration date. This regulation will remain in effect until cancelled or until its provisions are incorporated into a permanent ERDA-PR.

Explanation of changes.

1. In § 9-7.5006-10 paragraph (d)(17) is revised, (d)(18) added and (e)(20) removed and reserved as follows:

§ 9-7.5006-10 Allowable cost and fixed fee (supply contracts and research and development contracts with concerns other than educational institutions.

(d) * * *

(17) *The costs of preparing bids and proposals,* in accordance with § 9-15.205-3.

(18) *Independent research and development costs* in accordance with § 9-15.205-35.

(e) * * *

(20) [Reserved]

2. Add new § 9-15.205-3, "Bidding costs."

§ 9-15.205-3 Bidding costs.

The costs of preparing bids or proposals shall include an amount for absorption of their appropriate share of related indirect costs. A contractor's bidding costs are allowable in accordance with FPR 1-15.205-3 up to a ceiling amount equal to the average annual bidding costs computed from the actual costs for the contractor's three most recent years.

3. Section 9-15.205-35 is amended by revising paragraphs (d) and (e) and adding a new paragraph (h) as follows:

§ 9-15.205-35 Research and development costs.

* * * * *

(d) A contractor's costs of independent research are allowable in accordance with FPR 1-15.205-35(d) provided the research also is of benefit to the ERDA program.

(e) Costs of a contractor's independent development are allowable in accordance with FPR 1-15.205-25(e) provided the development also is of benefit to the ERDA program.

* * * * *

(h) When the cost of the work involved in segregating the independent research and development which benefits the ERDA program is disproportionate to the amounts involved, an allocable share of those costs may be allowed up to a maximum equal to 5% of the total cost of the contract, but not in excess of $50,000.

(Sec. 105 of the Energy Reorganization Act of 1974 (Pub. L. 93-438))

JOSEPH L. SMITH,
Director of Procurement.

[FR Doc.75-19655 Filed 7-28-75;8:45 am]

Title 45—Public Welfare

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

CHILD SUPPORT ENFORCEMENT PROGRAM

General Administration; Postponement of Effective Date of Regulations

In the matter of Part 205—General Administration—Public Assistance Programs; Part 232—Special Provisions Applicable to Title IV-A; Part 233—Coverage and Conditions of Eligibility in Financial Assistance Programs; Part 234—Financial Assistance to Individuals; Part 235—Administration of Financial Assistance Programs.

Final regulations implementing certain provisions of Part B of Pub. L. 93-647 which impose new requirements under title IV-A of the Social Security Act were published on June 26, 1975 (40 FR 27154) with an effective date of July 1, 1975.

However, the effective date of Part B of Pub. L. 93-647 has been postponed until August 1, 1975 by Pub. L. 94-46, signed by the President on June 30, 1975.

Accordingly, the effective date of the regulations implementing these provisions of Part B of Pub. L. 93-647 is postponed until August 1, 1975. Also the regulations in Parts 205, 233, 234, and 235 of this title as previously published remain in effect until July 31, 1975 and 45 CFR Part 232 does not become effective until August 1, 1975.

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

Dated: July 11, 1975.

(It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.)

JOHN A. SVAHN,
Acting Administrator, Social and Rehabilitation Service.

Approved: July 23, 1975.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc.75-19643 Filed 7-28-75;8:45 am]

PART 220—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN, TITLE IV PARTS A AND B OF THE SOCIAL SECURITY ACT

Paternity and Support: Postponement of the Effective Date of Revocation

Notice of revocation of § 220.48, appearing in Part 220 of this title, was published on June 26, 1975 (40 FR 27030) with an effective date of July 1, 1975. This regulation was revoked because of the repeal of the sections of the Social Security Act on which the regulation was based.

However, the effective date of the repeal of these sections has been postponed until August 1, 1975, by Pub. L. 94-46, signed by the President on June 30, 1975.

Accordingly, the effective date of the notice is postponed until August 1, 1975, and the regulation in § 220.48 of this title as previously published remains in effect until July 31, 1975.

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

Dated: July 11, 1975.

(It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.)

JOHN A. SVAHN,
Acting Administrator, Social and Rehabilitation Service.

Approved: July 23, 1975.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc.75-19644 Filed 7-28-75;8:45 am]

CHILD SUPPORT ENFORCEMENT PROGRAM

State Plan Requirements: Postponement of Effective Date of Regulations

In the matter of Part 301—State Plan Approval and Grant Procedures; Part 302—State Plan Requirements; Part 330—Standards for an Effective Program; Part 304—Federal Financial Participation.

Final regulations implementing the Child Support Enforcement Program established by Part B of Pub. L. 93-647 were published on June 26, 1975 (40 FR 27156) with an effective date of July 1, 1975.

However, the effective date of Part B of Pub. L. 93-647 has been postponed until August 1, 1975 pursuant to Pub. L. 94-46 signed by the President on June 30, 1975.

Accordingly, the effective date of the regulations implementing this Program is postponed until August 1, 1975.

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

Dated: July 11, 1975.

(It is hereby certified that the economic and inflationary impacts of this regulation have carefully evaluated in accordance with OMB Circular A-107.)

JOHN A. SVAHN,
Acting Director, Office of Child Support Enforcement.

Approved: July 23, 1975.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc.75-19645 Filed 7-28-75;8:45 am]

Title 49—Transportation

CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[MTB Docket No. 1]

ESTABLISHMENT OF MATERIALS TRANSPORTATION BUREAU AND RULEMAKING PROCEDURES

The purpose of this amendment is to restructure Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations to reflect the establishment of the Materials Transportation Bureau within the Department of Transportation and to establish rulemaking procedures applicable to the activities of that Bureau, including those pertaining to hazardous materials and pipeline safety.

This amendment makes a series of technical changes to conform the overall format of Chapter I to the new organizational structure and to provide an arrangement that will accommodate future regulatory issuances. Primary among such future regulatory issuances will be the consolidation, reorganization and reissuance of the hazardous materials regulations now appearing in 14 CFR Part 103, 46 CFR Part 146, and 49 CFR Parts 170 through 179. To facilitate this effort, a separate subchapter is being established in advance.

It also establishes a new Part 102 which describes the procedures applicable to the Bureau, including the Offices of Hazardous Materials Operations and Pipeline Safety Operations, in prescribing public rules and provides for appropriate participation by interested persons. All pending rule-making proceedings initiated by the Hazardous Materials Regulations Board under Part 170 procedures or by the Office of Pipeline Safety under Part 5 procedures will be continued by the Bureau under new Part 102 procedures.

The new Part 102 provides for general notices of proposed rule making, to be published in the FEDERAL REGISTER, except in cases where the Director finds that notice is impractical, unnecessary, or contrary to the public interest, and except for interpretive rules, general statements of policy, and rules relating to Bureau organization, procedure, or practices. The authority to conduct rulemaking proceedings and to issue final rules may be delegated to other officials in the Bureau. Delegations authorizing the Directors of Hazardous Materials Operations and Pipeline Safety Operations to conduct rule-making proceedings within their respective areas of response, but not including the issuance of final rules, are set forth in Appendix A of the new part.

The new part also provides for the consideration of petitions for rule making, petitions for reconsideration of adopted rules, and petitions for extension of time to comment on notices of proposed rule making.

The opportunity for an informal hearing is a required procedure with respect to certain rule-making functions administered by the Bureau. Even when they are not required by statute, hearings may be held as a supplementary fact-finding procedure, whenever it is considered necessary or desirable. Any hearing, whether or not required to be held by statute, will be nonadversary, with no formal pleadings and no adverse parties, and any resultant rule will not necessarily be based exclusively on the record of the hearing.

All final rules will be published in the FEDERAL REGISTER, unless, in accordance with section 552(a) of Title 5, United States Code, actual and timely notice has been given to all persons subject to it.

Since this amendment relates to Bureau organization, procedures, and practices, notice and public procedure thereon is unnecessary and it may be made effective in less than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations is amended as follows:

1. The caption of Chapter I is amended to read "Materials Transportation Bureau, Department of Transportation".

2. A new Subchapter A is established entitled "Office of the Director, Materials Transportation Bureau". This new Subchapter A begins with Part 100 and ends with Part 105.

3. A new Subchapter B is established entitled "Hazardous Materials". This new Subchapter B begins with Part 106 and ends with Part 169.

4. Existing Subchapter A is redesignated "Subchapter C". This redesignated Subchapter C begins with Part 170 and ends with Part 189.

5. Existing Subchapter B is redesignated "Subchapter D—Pipeline Safety".

PART 170—RULEMAKING PROCEDURES OF THE MATERIALS TRANSPORTATION BUREAU

§ 170.1–170.11 [Reserved]

§§ 170.21–170.35 [Revoked]

5. In Part 170, §§ 170.1 through 170.11 are revoked and reserved and §§ 170.21 through 170.35 are revoked.

6. A note is added following the heading for redesignated Subchapter C to read as follows:

NOTE: The Hazardous Materials Regulations Board was abolished, effective July 7, 1975, and its functions transferred to the Materials Transportation Bureau. Under a delegation of authority contained in 49 CFR 1.64 (40 FR 30821) the authorities previously exercised by the Hazardous Materials Regulations Board and several of the related authorities exercised by its individual members were delegated to the Director of the Materials Transportation Bureau. Accordingly, references to the Hazardous Materials Regulations Board in this subchapter should be read "Materials Transportation Bureau" and "Secretary, Hazardous Materials Board" should be read "Director, Materials Transportation Bureau".

8. Within new Subchapter A a new Part 102 is established to read as follows:

PART 102—RULEMAKING PROCEDURES

Subpart A—General

Sec.
102.1 Scope.
102.3 Delegations.
102.5 Regulatory dockets.
102.7 Records.
102.9 Where to file petitions.

Subpart B—Procedures for Adoption of Rules

102.11 General.
102.13 Initiation of rule making.
102.15 Contents of notices of proposed rule making.
102.17 Participation of interested persons.
102.19 Petitions for extension of time to comment.
102.21 Contents of written comments.
102.23 Consideration of comments received.
102.25 Additional rule-making proceedings.
102.27 Hearings.
102.29 Adoption of final rules.
102.31 Petitions for rule making.
102.33 Processing of petition.
102.35 Petitions for reconsideration.
102.37 Proceedings on petitions for reconsideration.

APPENDIX A

AUTHORITY: R.S. 4472(7) (46 U.S.C. 170 (7)); sec. 902(h)(1), Pub. L. 85-726, 72 Stat. 784 (49 U.S.C. 1472(h)(1)); sec. 3, Pub. L. 90-481, 82 Stat. 720 (49 U.S.C. 1672); sec. 105, Pub. L. 93-633, 88 Stat. 2157 (49 U.S.C. 1804); sec. 21(a), Pub. L. 93-627, 88 Stat. 2146 (33 U.S.C. 1520); (18 U.S.C. 834); (49 CFR 1.64).

Subpart A—General

§ 102.1 Scope.

This part prescribes general rule-making procedures for the issue, amendment, and repeal of regulations of the Materials Transportation Bureau of the Department of Transportation.

§ 102.3 Delegations.

For the purposes of this part, "Director" means the Director of the Materials Transportation Bureau or any of the following to whom he has delegated authority to conduct rulemaking proceedings:

(a) Director, Office of Hazardous Materials Operations.

(b) Director, Office of Pipeline Safety Operations.

§ 102.5 Regulatory dockets.

(a) Information and data considered relevant by the Director relating to rulemaking actions, including notices of proposed rule making; comments received in response to notices; petitions for rule making and reconsideration; denials of petitions for rule making and reconsideration; records of additional rule-making proceedings under § 102.25; and final regulations are maintained by the Materials Transportation Bureau at the Trans Point Building, 2100 2nd Street, SW, Washington, D.C. 20590.

(b) Any person may examine any docketed material at the offices of the Materials Transportation Bureau at any time during regular business hours after the docket is established, except material which the Director determines should be withheld from public disclosure under applicable provisions of any statute administered by the Director and section 552(b) of Title 5, United States Code, and may obtain a copy of it upon payment of a fee.

§ 102.7 Records.

Records of the Materials Transportation Bureau relating to rule-making proceedings are available for inspection as provided in section 552(b) of Title 5, United States Code, and Part 7 of the Regulations of the Office of the Secretary of Transportation (Part 7 of this title).

§ 102.9 Where to file petitions.

Petitions for extension of time to comment submitted under § 102.19, petitions for hearings submitted under § 102.27, petitions for rule making submitted under § 102.31, and petitions for reconsideration submitted under § 102.35 must be submitted to: Director, Materials Transportation Bureau, U.S. Department of Transportation, Trans Point Building, 2100 2nd Street, SW, Washington, D.C. 20590.

Subpart B—Procedures for Adoption of Rules

§ 102.11 General.

Unless the Director, for good cause, finds that notice is impracticable, unnecessary, or contrary to the public interest, and incorporates that finding and a brief statement of the reasons for it in the rule, a notice of proposed rule making is issued and interested persons are invited to participate in the rule-making proceedings with respect to each substantive rule.

§ 102.13 Initiation of rule making.

The Director initiates rule making on his own motion. However, in so doing, he may, in his discretion, consider the recommendations of other agencies of the United States or of other interested persons including those of any technical advisory body established by statute for that purpose.

§ 102.15 Contents of notices of proposed rule making.

(a) Each notice of proposed rule making is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the FEDERAL REGISTER or personally served, includes—

(1) A statement of the time, place, and nature of the proposed rule-making proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed regulation;

(4) A statement of the time within which written comments must be submitted; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

§ 102.17 Participation by interested persons.

(a) Any interested person may participate in rule-making proceedings by submitting comments in writing containing information, views or arguments.

(b) In his discretion, the Director may invite any interested person to participate in the rule-making proceedings described in § 102.25.

§ 102.19 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be received not later than 10 days before expiration of the time stated in the notice. It is requested, but not required, that three copies be submitted. The filing of the petition does not automatically extend the time for petitioner's comments. A petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted, it is granted to all persons, and it is published in the FEDERAL REGISTER.

§ 102.21 Contents of written comments.

All written comments must be in English. It is requested, but not required, that five copies be submitted. Any interested person must submit as part of his written comments all the material that he considers relevant to any statement of fact made by him. Incorporation of material by reference is to be avoided. However, if such incorporation is necessary, the incorporated material shall be identified with respect to document and page.

§ 102.23 Consideration of comments received.

All timely comments and the recommendations of any technical advisory body established by statute for the purpose of reviewing the proposed rule concerned are considered before final action is taken on a rule-making proposal. Late

filed comments are considered so far as practicable.

§ 102.25 Additional rule-making proceedings.

The Director may initiate any further rule-making proceedings that he finds necessary or desirable. For example, interested persons may be invited to make oral arguments, to participate in conferences between the Director or his representative and interested persons at which minutes of the conference are kept, to appear at informal hearings presided over by officials designated by the Director at which a transcript of minutes are kept, or participate in any other proceeding to assure informed administrative action and to protect the public interest.

§ 102.27 Hearings.

(a) If a notice of proposed rule making does not provide for a hearing, any interested person may petition the Director for an informal hearing. The petition must be received by the Director not later than 20 days before expiration of the time stated in the notice. The filing of the petition does not automatically result in the scheduling of a hearing. A petition is granted only if the petitioner shows good cause for a hearing. If a petition for a hearing is granted, notice of the hearing is published in the Federal Register.

(b) Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. Unless otherwise specified, hearings held under this part are informal, nonadversary, fact-finding proceedings, at which there are not formal pleadings or adverse parties. Any regulation issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

(c) The Director designates a representative to conduct any hearing held under this part. The General Counsel designates a member of his staff to serve as legal officer at the hearing.

§ 102.29 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of the General Counsel. The regulation is then submitted to the Director for his consideration. If the Director adopts the regulation, it is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

§ 102.31 Petitions for rule making.

(a) Any interested person may petition the Director to establish, amend, or repeal a regulation.

(b) Each petition filed under this section must—

(1) Set forth the text or substance of the regulation or amendment proposed, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(2) Explain the interest of the petitioner in the action requested; and

(3) Contain any information and arguments available to the petitioner to support the action sought.

§ 102.33 Processing of petition.

(a) *General.* Unless the Director otherwise specifies, no public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the Director determines that the petition contains adequate justification, he initiates rulemaking action under this Subpart B.

(c) *Denials.* If the Director determines that the petition does not justify rule making, he denies the petition.

(d) *Notification.* Whenever the Director determines that a petition should be granted or denied, the Office of the General Counsel prepares a notice of that grant or denial for issuance to the petitioner, and the Director issues it to the petitioner.

§ 102.35 Petitions for reconsideration.

(a) Any interested person may petition the Director for reconsideration of any regulation issued under this part. It is requested, but not required, that three copies be submitted. The petition must be received not later than 30 days after publication of the rule in the FEDERAL REGISTER. Petitions filed after that time will be considered as petitions filed under § 102.31. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests the consideration of additional facts, he must state the reason they were not presented to the Director within the prescribed time.

(c) The Director does not consider repetitious petitions.

(d) Unless the Director otherwise provides, the filing of a petition under this section does not stay the effectiveness of the rule.

§ 102.37 Proceedings on petitions for reconsideration.

(a) The Director may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event he determines to reconsider any regulation he may issue a final decision on reconsideration without further proceedings, or he may provide such opportunity to submit comment or information and data as he deems appropriate. Whenever the Director determines that a petition should be granted or denied, the Office of General Counsel prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and the Director issues it to the petitioner. The Director may consolidate petitions relating to the same rules.

(b) It is the policy of the Director to issue notice of the action taken on a petition for reconsideration within 90 days after the date on which the regulation in question is published in the FEDERAL REGISTER, unless it is found impracticable to take action within that time. In cases where it is so found and the delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the petitioner and published in the FEDERAL REGISTER.

APPENDIX A

Pursuant to § 102.3, the following officials of the Materials Transportation Bureau are authorized to conduct rule-making proceedings under this part, as specified in this appendix.

(a) The Director, Office of Hazardous Materials Operations, is authorized to conduct all rule-making proceedings, except the issuance of final rules and the grant or denial of petitions for reconsideration, under:

(1) Chapter 39 of Title 18, U.S. Code, as it relates to hazardous materials;

(2) R.S. 4472(7), 46 U.S.C. 170(7), except to the extent it relates to (i) ship's stores and supplies or (ii) the bulk transportation of hazardous materials which are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel without mark or count;

(3) Section 902(h)(1) of the Federal Aviation Act, as amended, 49 U.S.C. 1472(h)(1); and

(4) The Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq., except to the extent it relates to (i) ship's stores or supplies, (ii) the bulk transportation of hazardous materials which are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel without mark or count, or (iii) pipelines.

(b) The Director, Office of Pipeline Safety Operations, is authorized to conduct all rule-making proceedings, except issuance of final rules and the grant or denial of petitions for reconsideration, under:

(1) Chapter 39 of Title 18, U.S. Code, as it relates to pipelines;

(2) The Natural Gas Pipeline Safety Act of 1968, as amended, 49 U.S.C. 1671 et seq.;

(3) Section 21(a) of the Deepwater Port Act of 1974, 33 U.S.C. 1520(a); and

(4) The Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq., as it relates to pipelines.

Effective date: This amendment is effective July 23, 1975.

(18 U.S.C. 831-835, 33 U.S.C. 1520(a) (46 U.S.C. 170(7), 49 U.S.C. 1472(h)(1), 49 U.S.C. 1671 et seq., 49 U.S.C. 1801 et seq., 49 CFR 1.64.))

Issued in Washington, D.C., on July 23, 1975.

HERBERT H. KAISER, Jr.,
Acting Director,
Materials Transportation Bureau.

[FR Doc.75-19621 Filed 7-28-75;8:45 am]

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC-57; Notice No. 75-12]

PART 392—DRIVING OF MOTOR VEHICLES

PART 395—HOURS OF SERVICE OF DRIVERS

Sleeper Berths; Dual Occupancy

The Director of the Bureau of Motor Carrier Safety is revoking § 395.6, Sleeper berth, occupation, of the Federal Motor Carrier Safety Regulations (49 CFR 395.6) which deals with occupation of sleeper berths, and is establishing a new

section in Part 392, Driving of Motor Vehicles. Section 395.6 presently provides that "[no] sleeper berth shall be occupied by more than one person at any time." The new section, § 392.69, Sleeper berth, occupation, will adopt the § 395.6 language and add the words "* * * when the vehicle is in motion."

This final rulemaking action was begun on April 16, 1974, when the Director issued an advance notice of proposed rulemaking (39 FR 14517). In the Advance Notice, the Director indicated that he had received a number of requests to modify or revoke the absolute prohibition against dual occupancy of sleeper berths.

The Bureau received 15 written comments in response to the Advance Notice. The majority of the comments expressed support for permitting dual occupancy of sleeper berths in parked vehicles and on January 2, 1975, the Director issued a Notice of Proposed Rulemaking on Dual Occupancy (40 FR 2208) reflecting the comments to the Advance Notice. In the absence of convincing technical data, the Director proposed to adopt the bedding industry's standard for a sleeping surface designed for use by two people which is 53 inches (134.62 cm.) wide and in all other respects in conformance with § 393.76 of the Regulations.

The Director received 42 written comments in response to that notice of proposed rulemaking. Forty of the 42 comments expressed opposition to the 53 inch requirement. In light of practical as well as economical limitations, most of the commentators opposed any width restriction in appreciation of the fact that the vehicle would be stationary and parked in a safe place.

General Motors Corporation and Mack Trucks, Inc., were the only vehicle and/or sleeper berth manufacturers submitting comments. General Motors (GM) noted that a 53 inch berth would cause a tractor-trailer unit equipped with a 45' trailer (widely used) to exceed the 55 foot maximum overall length limit required in a majority of States. GM suggested that the Bureau adopt a 47 inch standard for a "three-quarter size" mattress. GM also noted that they have installed 40 inch width beds in their motor homes intended for dual occupancy and have no complaints from customers. Mack Trucks, Inc., stated that they did not forsee any problem in designing a 53 inch berth to fit present tractors if the market demanded it. They also stated that they could design an upper and lower type berth for two occupants, if desired. A manufacturer of mattresses recommended a 70 inch width instead of a 53 inch width to provide ample space for the natural movements required for complete relaxation. No supporting data was submitted.

The majority of comments were received from owner-operator husband and wife teams who are presently using sleeper-berth equipment with a width less than 53 inches when the vehicle is parked. These owner-operators are presently using their sleeper berth equipment in violation of § 395.6 of the Federal Motor Carrier Safety Regulations. The Bureau believes that most of these violations are unintentional. Owner-operators believe that the proposed width, which is in excess of that of the vast majority of sleeper-berths used by them, would impose a practical and economic hardship.

Since occupants are more likely to sleep in a parked vehicle than in a moving one, the Director is merely relaxing the sleeper berth occupation rule and limiting the present restriction against dual occupancy to those times when the vehicle is in motion. The proposed width requirement is not being adopted.

The Director is not aware of any safety-related problems in this area and if any should arise as a result of this rulemaking action, a reconsideration of these proceedings will be forthcoming.

In consideration of the foregoing, the Federal Motor Carrier Safety Regulations (subchapter B of Chapter III in Title 49, CFR) are amended as set forth below.

Effective date. This amendment is effective on October 1, 1975. However, immediate compliance with this amendment in lieu of the rule set forth in § 395.6 is authorized.

These amendments are issued under the authority of section 204 of the Interstate Commerce Act, (49 U.S.C. 304) section 6 of the Department of Transportation Act, (49 U.S..C 1655), and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 CFR 1.48 and 49 CFR 398.4, respectively.

Issued on July 18, 1975.

ROBERT A. KAYE,
Director, Bureau of Motor Carrier Safety.

1. A new § 392.69 is added to read as follows:

§ 392.69 Sleeper berth, occupation.

No sleeper berth shall be occupied by more than one person at any time when the vehicle is in motion.

2. In Part 395, § 395.6 is revoked and is now a reserved section.

§ 395.6 [Reserved]

[FR Doc.75-19593 Filed 7-28-75;8:45 am]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 1-18; Notice 11]

PART 571—MOTOR VEHICLE SAFETY STANDARDS

Control Location, Identification, and Illumination

This notice amends 49 CFR 571.101, Standard No. 101, Control Location, Identification and Illumination, to permit the identification of certain controls with symbols designated by the International Standards Organization (I.S.O).

On September 27, 1973, the NHTSA proposed (38 FR 16940) (Docket No. 1-18; Notice 10) to amend Standard No. 101 to permit the identification of certain controls with symbols slightly different from those currently permitted. Several, though not all, of the proposed symbols were I.S.O. symbols. Comments on the proposal were generally favorable, although most of the vehicle manufacturers favored the outright adoption of I.S.O. symbols. The NHTSA has concluded that the cost savings inherent in an internationally uniform symbol scheme are significant, and that the I.S.O. symbols should be adopted.

The final form of the I.S.O. symbols was not decided upon until several months after the proposal was issued, so the I.S.O. symbols for headlamps, taillamps, clearance lamps, and the windshield wiping system differ slightly from those printed in Notice 10. Because of the general agreement on the desirability of the I.S.O. symbols, and the need to give definitive guidance to manufacturers, this agency has concluded that further notice and opportunity to comment are unnecessary and not in the public interest.

To facilitate an orderly changeover to the I.S.O. symbols, the present amendment, effective immediately, allows manufacturers at their option to use either the symbols specified up to now in Standard No. 101 or newly-specified I.S.O. symbols. The NHTSA plans to issue a further proposal within the next year to make the I.S.O. symbols mandatory, including new symbols for the heating and/or air conditioning fan and a combined windshield wiper and washer.

In consideration of the foregoing, 49 CFR 571.101, Standard No. 101, is amended as follows:

§ 571.101 [Amended]

1. The second sentence of S4.2.1 is revised to read:

S4.2.1 * * * A control may, in addition, be identified by a symbol, but only a symbol shown in column 3 or column 4 shall be used.

2. Column 4 of Table 1 is redesignated "column 5."

3. A new column 4 is added to Table 1, to read:

Column 1	* * *	Column 4
*		Alternate Permissible Symbol
*		None
*		None
		None
		None
		None
Headlamps and Taillamps		 [4]
Vehicular Hazard Warning Signal		 [4]
Clearance Lamps		 [4]
		None
Windshield Wiping System		
Windshield Washing System		
*		None
*		None

4. A new footnote is added below footnote 3, to read:

[4] Framed areas may be filled.

5. The term "column 4" in the second sentence of S4.3 is changed to "column 5".

Effective date: Because the amendment allows an optional means of compliance, the NHTSA finds, for good cause shown, that an immediate effective date is in the public interest.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718, (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51)

Issued on July 23, 1975.

JAMES B. GREGORY,
Administrator.

[FR Doc.75-19673 Filed 7-28-75;8:45 am]

[Docket No. 74-10; Notice 17]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Emergency Air Brake Systems

This notice responds to six petitions for reconsideration of a recent amendment of Standard No. 121, Air brakes systems, 49 CFR 571.121. That amendment deleted as of September 1, 1976, the emergency brake option that permits automatic application of parking brakes in place of a modulated emergency brake system on trucks and buses (40 FR 2989, January 17, 1975). In addition, that notice standardized the operation of the emergency brake control, specified a minimum number of emergency brake applications and releases, and provided for the integrity of the towing vehicle braking system in the event of failure of the air lines to the towed vehicle. On the basis of information and arguments presented by several petitioners, the National Highway Traffic Safety Administration (NHTSA) hereby withdraws the amendment that specified a minimum number of emergency brake applications and releases.

None of the petitions for reconsideration objected to the NHTSA's deletion of automatic parking brake application as a means of providing emergency braking capability. There were no objections to the specification that the emergency brake system control be the same control as that for the service brake system. These provisions remain unchanged, and will become effective September 1, 1976.

The standard tests the emergency braking capability of a vehicle by introducing a "single failure in the service brake system." Bendix Corporation requested that this requirement be replaced by a requirement for emergency braking capability "with either circuit's reservoir at zero psi." Presumably Bendix is suggesting that the "split system" design found on today's air-braked trucks be tested by draining either side of the system. Standard No. 121 does not specify a particular type of emergency brake system and cannot therefore specify failing any particular component. The NHTSA believes a vehicle should be capable of making stable in-line stops within the specified distance with a failure in any hose or reservoir in the service brake system. For instance, a failure in the air hose to the right front wheel should not make it impossible for a driver to keep the vehicle within a 12 foot wide lane. The agency does intend to clarify the status of various air lines in powered vehicles, particularly towing vehicles, to answer questions raised by International Harvester and the State of California concerning service brake system failure. These clarifications will appear in an upcoming notice on parking brake systems.

International Harvester, Ford, Midland-Ross, and Bendix objected to the requirement of S5.7.3 that requires the emergency brake system to be capable of not less than two applications and releases, as determined by brake chamber air pressure of 60 psi or more during the pressure phase of operation, and brake chamber air pressure of not more than 1 psi during the pressure release phase of operations. The manufacturers (and the American Trucking Associations) were concerned that the specification of 1- to 60-psi values was design-restrictive and would force substantial redesign of vehicles before the existing new designs can be thoroughly tested. Some of the petitions questioned whether the test would be conducted statically or dynamically.

The NHTSA is concerned that manufacturers not be unduly burdened with modifications to their systems during the initial introduction period of the standard. The agency has regularly indicated in its correspondence that it is monitoring implementation of the standard to minimize disruption and costs while maintaining the standard's safety benefits. The maximum and minimum pressure values in question were specified simply as objective testing criteria and are not intended as design restrictions that fulfill a safety function.

In view of the redesign problems noted and their accompanying disruption, the NHTSA withdraws the application-and-release specification and will not reestablish it without further notice and opportunity to comment. (In answer to Bendix's question, it is noted that the 60 psi value in the pressure release phase was not intended to replace the "zero-

torque" criterion for release of spring brakes.)

Midland-Ross, International Harvester, and Ford expressed several objections to the three requirements of S5.7.4 and the related test conditions of S6.1.14. The requirements are intended to assure that a combination vehicle remains capable of emergency braking performance in the event of hose failure between the towed and towing vehicles, including failure of both hoses due to trailer breakaway.

Comments incorrectly assumed that the requirements specify modulation of the trailer braking system in the event of hose failure under S5.7.4 (b) and (c). In fact, section S5.7.4 does not require trailer braking requirements, but only specifies that a towing vehicle meet the enumerated requirements under certain conditions.

To eliminate confusion about the role of trailers in these tests, sections S5.7.4 (a) and (b) are hereby revised to make it clearer that the vented line(s) to the trailer are only test conditions under which the towing vehicle must demonstrate emergency braking stopping distance capability. To eliminate a separate source of confusion in section S5.7.4(a), which is intended to simulate trailer breakaway, the section is also revised to eliminate an incorrect requirement for testing with a failed control line and an intact trailer supply line.

Midland-Ross and International Harvester objected to the test conditions of S6.1.14, which underlie S5.7.4 (a) and (b). The S6.1.14 procedure is intended to simulate a trailer breakaway or, in the alternative, a failed control line on a loaded combination vehicle. International Harvester expressed the belief that five new tests were thereby added to the standard. It is now made clear that only one additional test of a single-unit vehicle capable of towing is required, and two additional tests of a truck tractor are required. These tests are conducted in the test sequence at steps 4(e) (loaded) and 6(e) (unloaded).

International Harvester questioned as unrealistic the criterion in S6.1.14 that specifies a 1-minute delay in braking following rupture of a brake line. The NHTSA recognizes that the towing vehicle protection system is expected to act in much less than 1 minute to protect the air pressure in the towing vehicle from the effects of a loss of air pressure in the towed vehicle. The 1-minute interval is intended only to permit adverse "testing-to-failure" of an inadequately designed system. As a practical matter, the NHTSA will test when air pressure is lowest during the 1-minute period.

Midland-Ross implied in its comments on S6.1.14 that the S5.7.4(a) test would be conducted with a trailer attached whose emergency brake system is activated during testing. As noted earlier, S5.7.4 applies only to a towing vehicle and only its brakes are tested. In S5.7.4 (a), no trailer is attached to the towing vehicle (simulating a brakeway). In S5.7.4(b), a trailer is attached (simulating a failure), but only tractor brake activation is permissible.

Midland-Ross expressed the belief that S5.7.4(c) requires modulation of the trailer brakes in the event of a failed air control or supply line. In fact, the section only requires that a towing vehicle be capable of modulating the air in the supply or control line following a single failure in the service brake system on the towing vehicle, but does not require modulation of the towed vehicle emergency brake system under any circumstances (including control line failure). The requirement ensures that a single failure in the truck itself will not prevent modulation of an unimpaired system from the towing vehicle protection system rearwards. A clarification has been added to limit the single failure to the service brake system of the towing vehicle, not including either of the air lines to the towed vehicle.

Because several modifications are being made to the requirements of S5.7 as previously published, the NHTSA is republishing the entire provisions of S5.7 as they will become effective September 1, 1976, although paragraphs S5.7, S5.7.1, S5.7.2, and S6.1.14 remain unchanged.

In consideration of the foregoing, § 571.121 is amended by revising S5.7 of Standard No. 121, and a new S6.1.14 is added to the test conditions effective September 1, 1976, to read as follows:

§ 571.121 Standard No. 121; Air Brake Systems (with amendments effective Jan. 1, 1975 and Mar. 1, 1975.

* * * * *

S5.7 *Emergency brake system-trucks and buses.* Each vehicle shall be equipped with an emergency brake system which, under the conditions of S6.1, conforms to the requirements of S5.7.1 through S5.7.3. The emergency brake system may be a part of the service brake system or incorporate portions of the service brake and parking brake systems.

S5.7.1 *Emergency brake system performance.* When stopped six times for each combination of weight and speed specified in S5.3.1.1 on a road surface with a skid number of 75 with a single failure in the service brake system of a part designed to contain compressed air or brake fluid (except failure of a common valve, manifold, brake fluid housing, or brake chamber housing), the vehicle shall stop at least once in not more than the distance specified in Column 3 of Table II, measured from the point at which movement of the service brake control begins, without any part of the vehicle leaving the roadway, except that a truck-tractor tested at its unloaded vehicle weight plus 500 pounds shall stop at least once in not more than the distance specified in Column 4 of Table II.

S5.7.2 *Emergency brake system operation.* The emergency brake system shall be applied and released, and be capable of modulation, by means of the service brake control.

S5.7.3 *Towing vehicle emergency brake requirements.* In addition to meeting the other requirements of S5.7, a vehicle designed to tow another vehicle equipped with air brakes shall—

(a) In the case of a truck-tractor in the unloaded condition and a single unit truck which is capable of towing an air-brake equipped vehicle and is loaded to gross vehicle weight rating, be capable of meeting the requirements of S5.7.1 by operation of the service brake control only, with the trailer air supply line and air control line from the towing vehicle vented to the atmosphere in accordance with S6.1.14;

(b) In the case of a truck-tractor loaded to gross vehicle weight rating, be capable of meeting S5.7.1 by operation of the service brake control only, with the air control line from the towing vehicle vented to the atmosphere in accordance with S6.1.14; and

(c) Be capable of modulating the air in the supply or control line to the trailer by means of the service brake control with a single failure in the towing vehicle service brake system as specified in S5.7.1.

* * * * *

S6.1.14 In testing the emergency braking system of towing vehicles under S5.7.4(a) and S5.7.4(b), the hose(s) is vented to the atmosphere at any time not less than 1 second and not more than 1 minute before the emergency stop begins, while the vehicle is moving at the speed from which the stop is to be made and any manual control for the towing vehicle protection system is in the position to supply air and brake control signals to the vehicle being towed. No brake application is made from the time the line(s) is vented until the emergency stop begins and no manual operation of the parking brake system or towing vehicle protection system occurs from the time the line(s) is vented until the stop is completed.

* * * * *

Effective date: September 1, 1976.

(Sec. 103, 119 Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51).

Issued on July 23, 1975.

JAMES B. GREGORY,
Administrator.

[FR Doc. 75-19675 Filed 7-28-75;8:45 am]

[Docket No. 74-1; Notice 3]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Power-Operated Window Systems

The purpose of this notice is to amend Standard No. 118, Power-Operated Window Systems, 49 CFR 571.118, to permit the operation of power windows under certain conditions when the ignition is not in the "on" position.

On September 23, 1974, the agency published a notice (39 FR 34062) proposing to allow the operation of power windows, when the key that controls the vehicle's engine is in the off position or is removed from the lock, only in circumstances where (1) only muscular

force is used, or (2) a key-locking system on the vehicle's exterior is activated, or (3) a door that has no frame meeting the upper edge of the closed window is opened a specified amount and a switch separate from the normal power window switch is activated.

Nine comments were submitted to the docket, all of which approved of the basic proposal to allow operation of the power windows when the vehicle engine is not running. General Motors, who suggested the proposal as it was published, supported its adoption. However, most of the commenters objected to the proposed provision that a separate switch be required to operate a window when the door is open to a degree sufficient to permit a ball the size of a child's head to pass between the top edge of the fully closed window and the vehicle's roof rail. The objection was based on a contention that the separate switch provision was design restrictive and not necessary from a safety standpoint. According to the comments, required use of a separate switch for activation of the windows when the doors are opened would not assure a higher level of safety than use of the normal power activation switch.

The NHTSA finds merit in commenter's arguments. It is the considered opinion of the agency that the absence of a separate switch requirement will have no effect on the safety of the power-operated window system since no switch would be capable of activation unless the vehicle's door were opened to the specified distance. For this reason the proposed separate switch requirement is deleted. Manufacturers will thus be free to install whatever type of activation system they wish, as long as the criteria of S3(c) are satisfied.

In addition, the description of the locations between which the test ball must fit appears to need clarification. It is the agency's intention that the ball be capable of passing between the upper rear corner of the fully closed window and the vehicle's roof rail. Therefore, the term "trailing edge" in S3(c) is changed to "upper rear corner."

In consideration of the foregoing, § 571.118 is amended by revising S3. of Standard No. 118, *Power-operated window systems* to read as follows:

§ 571.118 Standard No. 118, Power-operated window systems.

* * * * *

S3. *Requirements* When the key that controls activation of the vehicle's engine is in an off position or is removed from the lock, no power-operated window or partition shall be movable except—

(a) By muscular force unassisted by a power source within the vehicle;

(b) Upon activation by a key-locking system on the exterior of the vehicle; or

(c) In the case of a door that does not have a frame that meets the upper edge of the window in its closed position, by activation of a switch that is energized only when the door is opened wide enough to permit a ball 8 inches in diameter to pass between the upper rear corner of the window in its fully raised position and the vehicle's roof rail.

Effective date: Because this amendment relieves a restriction and imposes no additional burden on any person, it is found for good cause shown that an immediate effective date is in the public interest.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51)

Issued: July 23, 1975.

JAMES B. GREGORY,
Administrator.

[FR Doc.75-19674 Filed 7-28-75;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 1033—CAR SERVICE

[Amdt. No. 4 Fifth Revised SO No. 1043]

Hopper Cars

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 23 day of July, 1975.

Upon further consideration of Fifth Revised Service Order No. 1043 (38 FR 18659, 35001; 39 FR 24373; 40 FR 4658), and good cause appearing therefor:

It is ordered, That: Fifth Revised Service Order No. 1043 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

§ 1033.1043 Regulations for return of hopper cars.

* * * * *

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1976, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1975.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; (49 U.S.C. 1, 12, 15, and 17 (2)). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-19684 Filed 7-28-75;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Certain National Wildlife Refuges

The following special regulation is issued and is effective on July 29, 1975.

§ 33.5 Special Regulations; sport fishing; for individual wildlife refuge areas.

NEBRASKA

CRESCENT LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Crescent Lake National Wildlife Refuge, Nebraska, is permitted on Crane and Island Lakes only on the areas designated by signs as open to fishing. These open areas, comprising about 800 acres, are delineated on maps available at refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Federal Center, P.O. Box 25486, Denver, Colorado 80225. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from January 1 through December 31, 1976.

(2) Boats propelled with poles, oars, paddles, or electric motors only may be used for fishing.

(3) No person shall use live minnows or fish for bait, nor have in possession any live minnows or seine or net for capturing minnows.

(4) Overnight camping is not permitted.

(5) Open fires are not permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, and are effective through December 31, 1976.

NORTH PLATTE NATIONAL WILDLIFE REFUGE

Sport fishing on the North Platte National Wildlife Refuge, Nebraska is permitted only on the areas designated by signs open to fishing. This open area, comprising 3,300 acres, is delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

(1) The open season for sport fishing on the refuge extends from January 15, 1976 through September 30, 1976, inclusive.

(2) Boats, motorboats, and other floating craft may be used.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50,

Part 33, and are effective through October 30, 1976.

RONALD L. PERRY,
Refuge Manager, Crescent Lake National Wildlife Refuge, Ellsworth, Nebraska.

JULY 18, 1975.

[FR Doc.75-19586 Filed 7-28-75;8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 4]

PART 404—FEDERAL OLD AGE, SURVIVORS AND DISABILITY INSURANCE (1950.....)

Subpart D—Old-Age, Disability, Dependents' and Survivors Insurance Benefits; Period of Disability

WIDOW'S, WIDOWER'S, AND MOTHER'S DURATION OF ENTITLEMENT, CHILD'S SIMULTANEOUS ENTITLEMENT ON MORE THAN ONE EARNINGS RECORD, WIDOW AND WIDOWER'S BENEFIT INCREASE AND MISCELLANEOUS AMENDMENTS

On February 7, 1975, there was published in the FEDERAL REGISTER (40 FR 5789), a notice of proposed rulemaking with proposed amendments to Subpart D, Regulations No. 4. On March 19, 1975, a separate notice of proposed rulemaking with proposed amendments, distinct from those covered in the previously mentioned notice of proposed rulemaking, was published in the FEDERAL REGISTER March 19, 1975 (40 FR 12514). Due to the proximity of the proposed amendments' positions in Subpart D, we have combined the amendatory material into one document to facilitate the final rulemaking process.

The proposed amendments reflect provisions of sections 102, 103, 107, 110, and 114 of Pub. L. 92-603, and a correction in the provisions regarding termination of entitlement of a spouse by a purported marriage. These include the following revisions:

(1) The maximum monthly benefit amount to which a widow or widower may be entitled is 100 percent of the deceased wage earner's primary insurance amount. Prior to enactment of Public Law 92-603, the highest monthly benefit amount was limited to 82½ percent of the deceased wage earner's primary insurance amount.

(2) The widow or widower's monthly benefit amount may be subject to a reduction if the deceased wage earner received a benefit prior to his reaching age 65. Section 404.330(b)(3) of these proposed amendments discusses the applicability of the provision.

(3) If no one else other than a widow or a widower is entitled to monthly benefits based on the deceased wage earner's earnings, such widow or widower is guaranteed no less than $84.50 reduced, if necessary, for months of entitlement prior to age 62.

(4) An individual may have his old-age insurance benefit increased on account of delayed retirement. The delayed retirement provisions are contained in § 404.305a.

(5) A nondisabled widower may now receive benefits at age 60. Prior to enactment of Public Law 92-603, such an individual had to be at least age 62 to be eligible for monthly benefits.

(6) Prior to enactment of Public Law 92-603, a divorced wife, a divorced widow, and a surviving divorced mother had to meet certain dependency requirements in order to be eligible for monthly benefits. The proposed amendments to these regulations, reflecting the changes in the law, remove these dependency requirements.

(7) The entitlement of a disabled widow will ordinarily terminate with the third month after cessation of disability if she has not attained age 65. Prior to enactment of Public Law 92-603, such benefits terminated unless the widow had attained age 62 in such third month after cessation of disability.

(8) The entitlement of a disabled widower will ordinarily terminate with the third month after cessation of disability if he has not attained age 65. Prior to enactment of Public Law 92-603 such benefit terminated unless the widower had attained age 62 in such third month after cessation of disability.

(9) A widower's entitlement will not be terminated by remarriage if he has attained age 60 at the time of such remarriage. Before enactment of Public Law 92-603 the specified age was 62. A conforming change is made as to the age at which he will be entitled to a smaller benefit (50 percent of his deceased spouse's primary insurance amount) following the remarriage.

(10) A child entitled on more than one earnings record will receive a benefit based on a lower primary insurance amount if it results in a larger child's benefit and it would not result in a lesser benefit for any other person entitled on the earnings records involved. Prior to enactment of Public Law 92-603 such a child was limited to receipt of benefits based on the earnings record with the highest primary insurance amount.

(11) Sections 404.329(a)(4) and (c)(4), and 404.336(a)(9) and (d)(9) of the regulations are being revised to conform to the provisions of section 216(h)(1)(B) of the Social Security Act which specify that a widow whose entitlement was based on a purported marriage would have her benefits terminated if another woman was found to be a legal widow and entitled to either mother's or widow's benefits. All of these amendments are effective for monthly benefits payable after December 1972.

Interested persons were given the opportunity to submit, within 30 days of the publication of the notice of proposed rulemaking, data, views or arguments with regard to the proposed changes. The comment period has expired and no comments were received. Accordingly, the proposed amendments are hereby adopted without change and are set forth below.

(Secs. 202, 205, 1102 of the Social Security Act as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 42 U.S.C. 402, 405, 1302.)

Effective date. These amendments shall be effective July 29, 1975 and shall be effective with respect to monthly benefits payable for months after December 1972.

(Catalog of Federal Domestic Assistance Program No. 13.802, Social Security—Disability Insurance, 13.803, Social Security—Retirement Insurance, 13.805, Social Security—Survivors Insurance.)

Dated: July 2, 1975.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: July 23, 1975.

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

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.305 is revised to read as follows:

§ 404.305 Old-age insurance benefits; rate of benefit.

The amount of the old-age insurance benefit to which an individual is entitled for any month is, except as provided in § 404.113a, equal to his primary insurance amount (see section 215(a) of the Act) for such month, subject to reduction under section 202(q) of the Act or subject to increase as provided in § 404.305a.

2. A new § 404.305a is added to read as follows:

§ 404.305a Increase in old-age insurance benefit amount on account of delayed retirement.

(a) *In general.* Effective with old-age insurance benefits payable for months beginning after 1972, an individual may be entitled to a delayed retirement credit which will increase the amount of his old-age insurance benefit, if:

(1)(i) The first month of entitlement to the old-age insurance benefit is no earlier than the month in which he attains age 65; or

(ii) The old-age insurance benefit at age 65 is not reduced under section 202(q) of the Act; and

(2) Such benefit is not based on a primary insurance amount determined under section 215(a)(3) of the Act. (See paragraph (f) of this section.)

(b) *Delayed retirement credit.* The amount of the delayed retirement credit is 1/12 of 1 percent of the individual's old-age insurance benefit (before any increase under this section) multiplied by the number of increment months (determined in accordance with paragraphs (c) and (d) of this section) to which he is entitled.

(c) *Increment months.* The number of increment months is equal to the total number of months which:

(1) Have elapsed in the period beginning with the month in which the individual attained age 65 or (if later),

January 1971 and ending with the month immediately prior to the month in which he attained age 72, and

(2) With respect to which:

(i) He was fully insured as defined in §§ 404.108–404.113, and

(ii) He was not entitled to an old-age insurance benefit or suffered deductions under section 203(b) or 203(c) of the Act in amounts equal to the amount of such benefit.

(d) *When increment months are determined and effective date of increase.* For purposes of applying the delayed retirement credit provisions, a determination will be made under paragraph (c) of this section for each year, beginning with 1972, of the total number of an individual's increment months through the year for which the determination is made. The total so determined shall be applicable to the individual's old-age insurance benefits (before any increase under this section) beginning with benefits for January of the year following the year for which the determination is made. In the case of an individual who attains age 72 after 1972, the total number of increment months will be determined for the period ending with the month immediately before the month in which he attains age 72 and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

(e) *Benefits amounts affected.* The increase resulting from the delayed retirement credit does not affect the individual's primary insurance amount; it is applied only to his old-age insurance benefit. The increase payable to the individual does not apply to auxiliary benefits nor, after death, to survivors benefits nor does it affect the family maximum. The increase will be applied to the individual's old-age insurance benefit even if the family maximum is thereby exceeded.

(f) *Use of special minimum primary insurance amount.* If the individual's regular primary insurance amount as determined under section 215(a)(1) of the Act is lower than the special minimum primary insurance amount as determined under section 215(a)(3) of the Act but the regular primary insurance amount yields a higher old-age insurance benefit under the delayed retirement provision, the regular primary insurance amount will be used to establish the old-age insurance benefit for the individual. However, the special minimum primary insurance amount will be used for auxiliary benefits and the family maximum.

3. Section 404.313 is amended by revising paragraph (a)(3) to read as follows:

§ 404.313 Wife's insurance benefits; condition of entitlement.

(a) *Conditions of entitlement after August 1965.* The wife (as defined in § 404.1103) and every divorced wife (as defined in § 404.1105(a)) of an individual entitled to old-age or disability insurance benefits is entitled to wife's insurance benefits if she:

* * * * *

(3) In the case of a divorced wife:

(i) Is not married; and

(ii) With respect to entitlement to benefits for months prior to January 1973, at the time specified in paragraph (b) of this section, was receiving at least one-half of her support from such individual (see § 404.350), or was receiving substantial contributions from such individual pursuant to a written agreement (see § 404.351(a)), or there was in effect a court order for substantial contributions (see § 404.351(c)) to her support from such individual; and

* * * * *

4. Section 404.328 is amended by revising paragraph (a) to read as follows:

§ 404.328 Widow's insurance benefits; conditions of entitlement.

(a) *Conditions of entitlement after August 1965.* The widow (as defined in § 404.1104) and every surviving divorced wife (as defined in § 404.1105(b)) of an individual who died fully insured is entitled to widow's insurance benefits if she:

(1) Is not married (except as provided in paragraph (d) of this section); and

(2) (i) Has filed application for widow's insurance benefits (see Subpart G of this part); or

(ii) For months prior to January 1973, was entitled after attainment of age 62 to wife's insurance benefits on the basis of the wages and self-employment income of such individual for the month preceding the month in which he died; or

(iii) For months after December 1972, was entitled to wife's insurance benefits on the basis of the wages and self-employment income of such individual for the month preceding the month in which he died provided that:

(A) She has attained age 65, or

(B) She is not entitled to either old-age or disability benefits; or

(iv) Was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which:

(A) Prior to January 1973, she attained age 62, or

(B) After December 1972, she attained age 65; and

(3) (i) Has attained age 60, or

(ii) For benefits for months after January 1968, but only on the basis of an application filed in or after January 1968, has attained age 50 but is under age 60 and (A) is under a disability as defined in section 223(d) of the Act which began during the period specified in paragraph (e)(1) of this section, and (B) has been under such disability through the waiting period as defined in paragraph (e)(2) of this section where such period is required; and

(4) Is not entitled to old-age insurance benefits or is entitled to an old-age insurance benefit which is less than:

(i) For months prior to January 1973, 82½ percent of the primary insurance amount of such deceased individual; or

(ii) For months after December 1972, the primary insurance amount of such deceased individual; and

(5) With respect to entitlement to benefits for months prior to January 1973, in the case of a surviving divorced wife who was not entitled to a wife's insurance benefit on the basis of the earnings record of such individual for the month preceding the month in which he died, at the time specified in paragraph (b) of this section,

(i) She was receiving at least one-half of her support from such individual (see § 404.350), or

(ii) She was receiving substantial contributions from such individual pursuant to a written agreement (see § 404.351(a)), or

(iii) there was in effect a court order for substantial contributions to her support from such individual (see § 404.351(c)).

* * * * *

5. Section 404.329 is amended by revising paragraphs (a)(4), (a)(6), and (c)(4) to read as follows:

§ 404.329 Widow's insurance benefits; duration of entitlement.

(a) * * *

(4) In the case of a woman entitled to widow's insurance benefits based on a purported marriage (see § 404.1101(c)(2)) to the deceased individual, another woman is certified for entitlement to widow's or mother's insurance benefits based on such deceased individual's earnings record and such other woman is the widow (or is deemed to be the widow) of the deceased individual under the provisions of section 216(h)(1)(A) of the Act; or

* * * * *

(6) In the case of a woman entitled to benefits prior to age 60, the third month after her disability ceases provided that in such third month she has not attained:

(i) age 65 if such month is after December 1972, or

(ii) age 62 if such month is before January 1973.

* * * * *

(c) * * *

(4) In the case of a woman entitled to widow's insurance benefits based on a purported marriage (see § 404.1101(c)(2)) to the deceased individual, another woman is certified for entitlement to widow's or mother's insurance benefits based on such individual's earnings record and such other woman is the widow (or is deemed to be the widow) of the deceased individual under the provisions of section 216(h)(1)(A) of the Act; or

* * * * *

6. Section 404.330 is amended by revising paragraphs (a) and (b) to read as follows:

§ 404.330 Widow's insurance benefits; rate of benefit.

(a) *For months prior to January 1973.* (1) *Basic benefit rate.* Except as provided in paragraphs (a)(2), (b), and (c) of this section, the amount of the widow's insurance benefit for any month prior to January 1973 is equal to 82½ percent of the primary insurance amount of the de-

ceased individual upon whose earnings record such benefit is based. (See § 404.113a(c) for benefit rate under transitional insured status provision and § 404.352 for minimum survivor's insurance benefit rate.)

(2) *Benefit rate; entitlement prior to age 62.* If a woman becomes entitled to widow's insurance benefits for months prior to January 1973 before attainment of age 62, the amount of such benefit for each such month is equal to 82½ percent of the primary insurance amount of the deceased individual upon whose earnings record such benefit is based reduced in accordance with the provisions of section 202(q)(1) of the Act.

(b) *For months after December 1972.* (1) *Basic benefit rate.* Except as provided in paragraphs (a), (b)(2), (b)(3), and (c) of this section, the amount of the widow's insurance benefit for any month after December 1972 is equal to the primary insurance amount of the deceased individual upon whose earnings record such benefit is based. (See § 404.113a(c) for benefit rate under transitional insured status provision and § 404.352 for minimum survivor's insurance benefit rate.)

(2) *Benefit rate; entitlement prior to age 65.* If a woman becomes entitled to widow's insurance benefits (for any month after December 1972) before attainment of age 65, the amount of such benefit for each such month is equal to the primary insurance amount of the deceased individual upon whose earnings records such benefit is based reduced in accordance with the provisions of section 202(q)(1) of the Act.

(3) *Benefit rate; deceased wage earner entitled to reduced old-age insurance benefits prior to death.* Where a widow's benefit reduced under paragraph (b)(2) of this section is greater than 82½ percent of the primary insurance amount and the benefit rate to which the deceased wage earner would have been entitled if he were still living is lower than the rate described in paragraph (b)(2) of this section, the widow will receive the higher of:

(i) 82½ percent of the deceased wage earner's primary insurance amount, or

(ii) The benefit rate to which the deceased wage earner would have been entitled if he were still living.

* * * * *

7. Section 404.331 is amended by revising paragraphs (a)(3) through (7) and (c)(1) to read as follows:

§ 404.331 Widower's insurance benefits; conditions of entitlement.

(a) *Conditions of entitlement.* A man is entitled to widower's insurance benefits if:

* * * * *

(3)(i) He has attained age 60 (age 62 for months prior to January 1973), or

(ii) For benefits for months after January 1968, but only on the basis of an application filed in or after January 1968, has attained age 50 but is under age 60 (age 62 for months prior to January 1973) and (A) is under a disability as defined in section 223(d) of the Act which began during the period specified in paragraph (c)(1) of this section, and (B) has been under such disability throughout the waiting period as defined in paragraph (c)(2) of this section where such period is required; and

(4) He has not remarried since the death of his wife, except that if he remarries after attaining age 60 (age 62 for months prior to January 1973) the marriage is deemed not to have occurred for purposes of determining if he is entitled to widower's insurance benefits for months after August 1965 provided that he was entitled to such benefits for the month of August 1965 or an application for such benefits was filed after June 1965; and

(5)(i) He has filed an application (see Subpart G of this part) for widower's insurance benefits; or

(ii) was entitled to husband's insurance benefits based on his wife's earnings for the month before the month in which she died, and for monthly benefits payable after December 1972, and

(A) Has attained age 65, or

(B) Is not entitled to either retirement or disability benefits.

(6) He was, at a time specified in § 404.334, receiving at least one-half of his support (see § 404.350) from his wife, except as provided in paragraph (b) of this section, and within a 2-year period specified in § 404.334(c) submitted evidence that he was receiving such support; and

(7) He is not entitled to an old-age insurance benefit which equals or exceeds the amount of the widower's insurance benefits determined in accordance with paragraphs (a)(1) or (b)(1) of § 404.333.

* * * * *

(c) *Widower's entitlement based on disability.* (1) *When disability must begin.* For the purposes of paragraph (a)(3)(ii) of this section a widower must be under age 60 (age 62 for months prior to January 1973) and under a disability as defined in section 223(d) of the Act which began before the month he attained age 60 (age 62 for months prior to January 1973) or if earlier before the close of the 84th month following the latest of:

(i) The month in which the wage earner died, or

(ii) The month in which a previous entitlement to widower's insurance benefits on the basis of the earnings record of such individual terminated because his disability had ceased.

* * * * *

8. Section 404.332 is amended by revising paragraphs (a)(3), (a)(5), and (b)(2) to read as follows:

§ 404.332 Widower's insurance benefits; duration of entitlement.

(a) * * *

(3) He becomes entitled to an old-age insurance benefit which is equal to or exceeds the amount of the widower's insurance benefit as determined in accordance with § 404.333 (a) or (b); or

* * * * *

(5) In the case of a man entitled to widower's insurance benefits prior to age 60, the third month after his disability had ceased provided that in such third month he has not attained:

(i) age 65, if such month is after December 1972, or

(ii) age 62, if such month is before January 1973.

(b) * * *

(2) A widower's entitlement to widower's insurance benefits is not terminated by reason of his remarriage:

(i) after age 62, for months prior to January 1973, or

(ii) after age 60, for months after December 1972, to a woman not entitled to any of the benefits described in paragraph (b)(1) of this section. However, beginning with the month in which such marriage occurs and each month thereafter prior to termination of such marriage, the amount of the widower's benefit is determined in accordance with § 404.333(c). (This subparagraph is applicable to benefits for months after August 1965, but in the case of an individual who was not entitled to widower's insurance benefit for August 1965, only on the basis of an application filed after June 1965.)

9. Section 404.333 is revised to read as follows:

§ 404.333 Widower's insurance benefits; rate of benefit.

(a) *For months prior to January 1973.*—(1) *Basic benefit rate.* Except as provided in paragraphs (a)(2), (b), and (c) of this section the amount of the widower's insurance benefit for any month prior to January 1973 is equal to 82½ percent of the primary insurance amount of his deceased wife upon whose earnings record such benefit is based. (See § 404.352 for minimum survivor's insurance benefit rate.)

(2) *Benefit rate; entitlement prior to age 62.* If a man becomes entitled to widower's insurance benefits (for any month prior to January 1973) before attainment of age 62, the amount of such benefit for each such month is equal to 82½ percent of the primary insurance amount of his deceased wife upon whose earnings record such benefit is based reduced in accordance with the provisions of section 202(q)(1) of the Act.

(b) *For months after December 1972.*—(1) *Basic benefit rate.* Except as provided in paragraphs (a), (b)(2), and (c) of this section, the amount of the widower's insurance benefit for any month after December 1972 is equal to the primary insurance amount of the deceased individual upon whose earnings record such benefit is based. (See § 404.352 for minimum survivor's insurance benefit rate.)

(2) *Benefit rate; entitlement prior to age 65.* If a man becomes entitled to widower's insurance benefits (for any month after December 1972) before attainment of age 65, the amount of such benefit for each such month is equal to the primary insurance amount of the deceased individual upon whose earnings record such benefit is based reduced in accordance with the provisions of section 202(q)(1) of the Act.

(3) *Benefit rate; deceased wage earner entitled to reduced old-age insurance benefits prior to death.* Where a widower's benefit reduced under paragraph (b)(2) of this section is greater than 82½ percent of the primary insurance amount and the benefit rate to which the deceased wage earner would have been entitled if she were still living is lower than the rate described in paragraph (b)(2) of this section, the widower will receive the higher of:

(i) 82½ percent of the deceased wage earner's primary insurance amount, or

(ii) The benefit rate to which the deceased wage earner would have been entitled if she were still living.

(c) *Effect of remarriage.* If a widower:

(1) After age 62, for months prior to January 1973, or

(2) After age 60, for months after December 1972, marries a woman not entitled to wife's, widow's, mother's, or parent's insurance benefits or child's (after attainment of age 18) insurance benefits, the amount of the widower's insurance benefit for any month beginning with the month in which such marriage occurs and for each month thereafter through the month prior to the month the marriage is terminated, is equal to one-half of the primary insurance amount of the deceased wife upon whose earnings record the widower's insurance benefit is based. For benefits for months after January 1968 and before January 1970, such benefit is equal to one-half of the primary insurance amount of such deceased individual or $105, whichever is the smaller amount. (This paragraph is applicable to benefits for months after August 1965, but in the case of an individual who was not entitled to a widower's insurance benefit for August 1965 only on the basis of an application filed after June 1965.)

10. Section 404.335 is amended by revising paragraph (a)(6) to read as follows:

§ 404.335 Mother's insurance benefits; conditions of entitlement.

(a) *Conditions of entitlement after August 1965.* The widow and every surviving divorced mother as defined in § 404.1105(c) of an individual who died fully or currently insured is entitled to mother's insurance benefits if she:

* * * * *

(6) In the case of a surviving divorced mother—

(i) The child referred to in subparagraph (2) of this paragraph is her son, daughter, or legally adopted child, and

(ii) The benefits referred to in such subparagraph are payable on the basis of such individual's earnings record, and

(iii) With respect to entitlement for months prior to January 1973, she was receiving at least one-half of her support from such individual (see § 404.350), or was receiving substantial contributions from such individual pursuant to a written agreement (see § 404.351(a)), or there was in effect a court order for substantial contributions to her support from such individual (see § 404.351(c)) at the time of his death, or if he had a period of disability which did not end before the month in which he died, at the time such period began.

* * * * *

11. Section 404.336 is amended by revising paragraphs (a)(9) and (d)(9) to read as follows:

§ 404.336 Mother's insurance benefits; duration of entitlement.

(a) * * *

(9) In the case of a woman entitled to mother's insurance benefits based on a purported marriage (see § 404.1101(c)(2)) to the deceased individual, another woman is certified for entitlement to mother's or widow's insurance benefits based on such deceased individual's earnings record and such other woman is the widow (or is deemed to be the widow) of the deceased individual under the provisions of section 216(h)(1)(A) of the Act.

* * * * *

(d) * * *

(9) In the case of a widow entitled to a mother's insurance benefit based on a purported marriage (see § 404.1101(c)(2)) to the deceased individual, another woman is certified for entitlement to mother's or widow's insurance benefits based on such deceased individual's earnings record and such other woman is the widow (or is deemed to be the widow) of the deceased individual under the provisions of section 216(h)(1)(A) of the Act.

* * * * *

12. Section 404.350 is amended by revising paragraph (a) to read as follows:

§ 404.350 "One-half support" defined.

(a) *Applicability.* One of the requirements for entitlement to a husband's, widower's, or parent's insurance benefit under sections 202(c)(1)(C), 202(f)(1)(D), and 202(h)(1)(B)(i) of the Act, respectively, is that the person claiming such benefit was receiving at least one-half support from the insured individual at a specified time. (For exceptions to this requirement in the case of husband's or widower's insurance benefits see §§ 404.316(c) and 404.331(b).) Under the Social Security Amendments of 1965 (Pub. L. 89-97), a requirement for entitlement to a wife's insurance benefit as a divorced wife, a widow's insurance benefit as a surviving divorced wife, or a mother's insurance benefit as a surviving divorced mother is that, at a specified time, she was receiving at least one-half support from the insured individual, or she was receiving substantial contributions from such individual (pursuant to a written agreement), or there was in effect a court order for substantial contributions to her support from such individual. Pub. L. 92-603 removed these support requirements for entitlement to benefits as a divorced wife, a surviving divorced wife, and a surviving divorced mother effective with monthly benefits payable after December 1972. Under section 202(g)(1)(F) of the Act, prior to the 1965 amendments, one of the requirements for entitlement to a mother's insurance benefit as a former wife divorced (now designated as a surviving divorced mother) was that, at a specified time, she was receiving from her deceased former husband (pursuant to agreement or court order) at least one-half of her support. One-half support may be required in some cases to establish dependency of a child on a stepfather, stepmother, adopting father, or adopting mother and (under the law in effect prior to the Social Security Amendments of 1967 (Pub. L. 90-248)) to establish dependency of a child on a natural or adopting mother.

* * * * *

13. Section 404.351 is amended by revising paragraphs (a) and (c) to read as follows:

§ 404.351 Agreement, court order, and substantial contributions defined.

(a) *Agreement for substantial contributions after August 1965 and prior to January 1973.* For purposes of section 202(b)(1)(D), 202(e)(1)(D), and 202(g)(1)(F)(I)(II) of the Act, as in effect for months September 1965 through December 1972, the term "written agreement" means an agreement signed by the former husband providing for substantial contributions by him for the claimant's support. It must be in effect at the applicable time but it need not be legally enforceable. "Substantial contributions pursuant to a written agreement" means contributions (as defined in § 404.350(d)) that are regular and sufficient to constitute a material factor in the cost of the claimant's support. Generally, the claimant must actually be receiving the contributions at the applicable time. However, if the former husband had been making such contributions toward the claimant's support, but, prior to the applicable time, was either forced to stop making such contributions, or to decrease the amount of his contributions because of circumstances beyond his control (such as illness or unemployment), it may be determined that he was making substantial contributions at the applicable time if the former husband would have continued the contributions if he could and his failure to do so did not last for more than 9 months (either consecutive or intermittent) of the 12-month period ending with the applicable time.

* * * * *

(c) *Court order for substantial contributions after August 1965 and prior to January 1973.* For purposes of sections 202(b)(1)(D), 202(e)(1)(D), and 202(g)(1)(F)(I)(III) of the Act, as in effect for months September 1965 through December 1972, the term "court order for substantial contributions" means any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the claimant's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

* * * * *

14. Section 404.352 is revised to read as follows:

§ 404.352 Minimum monthly survivor's insurance benefit amount.

(a) *General.* When only one individual is entitled to a survivor's insurance benefit for any month, the amount of such monthly survivor's insurance benefit, before any reduction under § 404.353, or section 202(q) of the Act, shall be not less than:

(1) $93.80 for months after May 1974;
(2) $90.50 for months after February 1974 and before June 1974;
(3) $84.50 for months after August 1972 and before March 1974;
(4) $70.40 for months after December 1970 and before September 1972;
(5) $64 for months after December 1969 and before January 1971;
(6) $55 for months after January 1968 and before January 1970;
(7) $44 for months after December 1964 and before February 1968;
(8) $40 for months after July 1961 and before January 1965.

(b) *Sole surviving widow(er)'s monthly benefit.* Effective January 1973, a widow or widower who is the sole survivor entitled to benefits will not receive less than $84.50 reduced for months of entitlement prior to age 62.

15. Section 404.353 is amended by revising paragraph (d) to read as follows:

§ 404.353 Simultaneous entitlement to more than one type of benefit.

* * * * *

(d) *Child's insurance benefits.* A child may, for any month, be entitled to a child's insurance benefit on more than one individual's earnings if all the conditions for entitlement described in § 404.320 are met with respect to each claim. If two or more children could upon application be entitled to child's insurance benefits based on the earnings of more than one individual, all of such children entitled to benefits based on the earnings of one individual will (without the necessity of filing application) be deemed entitled to child's insurance benefits (if otherwise eligible) based on all earnings records with respect to which at least one of such children has filed application. In any case in which a child's entitlement to more than one child's insurance benefit is established for a month, such child shall be entitled only to the child's insurance benefit for such month which is based on the earnings of the individual who has the highest primary insurance amount; except that, for months after December 1972, such child's insurance benefit shall be the highest benefit to which such child could be entitled under § 404.322 (without the application of § 404.403) or § 404.409 if entitlement to such benefit would not result in any other person receiving a lower benefit (after the application of § 404.403) than such other person would have received if such child were entitled based on the earnings of the individual with the highest primary insurance amount.

* * * * *

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[Regulations No. 4, 16]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-)

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED (1974-)

Disability Rights and Benefits and Determinations of Disability or Blindness

On January 11, 1974, there was published in the FEDERAL REGISTER (39 FR 1624) a notice of proposed rule making with proposed Subpart I of Regulations No. 16 relating to the criteria for making determinations of disability or blindness under title XVI of the Social Security Act, as amended by section 301 of the Social Security Amendments of 1972 (Pub. L. 92-603), approved October 30, 1972.

These proposed regulations provided: (1) The definitions of disability and blindness under title XVI of the Act, (2) title XVI eligibility requirements with respect to disability or blindness for State welfare recipients who received, for December 1973, disability or blindness benefits under a State plan, (3) evaluation criteria for determining disability or blindness, (4) evidentiary requirements, (5) evaluation of work activities as they relate to the issue of disability, and (6) criteria for continuing disability evaluations.

Subsequently, on September 11, 1974, there was published in the FEDERAL REGISTER (39 FR 32757) a notice of proposed rule making with the proposed amendments to Subpart P of Regulations No. 4 and Subpart I of Regulations No. 16 relating to an increase in the amount of monthly earnings in the earnings guidelines for determining, in the absence of evidence to the contrary, ability to engage in substantial gainful activity. With respect to both of the aforementioned publications in the FEDERAL REGISTER, interested parties were given 30 days in which to submit data, views, and arguments.

Six letters of comments were received in response to the proposed Subpart I of Regulations No. 16 relating to the criteria for making determinations of disability or blindness. There follows a discussion of these comments and the disposition thereof.

Two writers contended that the interpretation accorded to inability to engage in substantial gainful activity in § 416.902 and, specifically, the requirement that impairments must result in a "lack of ability to perform significant functions as moving about, handling objects, hearing, speaking, reasoning, and understanding" is so restrictive as to effectively deny needed assistance to individuals and, thus, defeat the purpose of the Supplemental Security Income legislation. They recommend individualized determinations of impairment severity based on specific employment opportunities rather than on the ability to handle objects, etc. Both writers also raised questions regarding the geographic concept of available work; one stated that if a person is to be excluded because "work" exists in several regions of the country, it seems unreasonable to expect indigents to be able to relocate to regions where such work is available.

In determinations of disability under title XVI, the law provides that an individual shall be determined to be under a disability only if physical or mental impairments which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques prevent him from engaging in substantial gainful activity. Accordingly, there is no basis for a finding of disability under title XVI of the Social Security Act if an individual's capacity to perform his past or other work is not precluded by an "impairment" affecting such significant work functions as moving about, handling objects, hearing, speaking, reasoning, or understanding, as suggested by the writer. Section 416.902(b) specifically provides for individualized determinations of whether the individual can be reasonably expected to engage in substantial gainful activity in light of his impairment, vocational background, age, education, and the incidence of such work in the economy.

The term "work which exists in the national economy" has been especially defined in the law to mean work which exists in significant numbers either in the region where the individual in question resides or in several regions of the country. The purpose of the "national economy" test is unrelated to the question of where an individual should seek employment. This distinction is expressed in the report of the Committee on Ways and Means (H.R. Rpt. No. 90-544, 90th Cong., 1st Sess., 30 (1967)) and in the report of the Committee on Finance (S. Rpt. No. 90-744, 90th Cong., 1st Sess., 49 (1967)) which states:

> It is, and has been, the intent of the statute to provide a definition of disability which can be applied with uniformity and consistency throughout the Nation, without regard to where a particular individual may reside, to local hiring practices or employer preferences, or to the state of the local or national economy.

Although this concept regarding the "national economy" test was originally designed for the title II disability program, it expressly carried over to title XVI section 1614(a)(3)(B)). The Committee reports make clear that title XVI criteria for determining disability should parallel those of the title II program.

The same writers commented that the reliance by the Social Security Administration upon physicians in its employ to evaluate the evidence when there is an issue as to whether an individual's impairment is medically the equivalent of an impairment listed in the Appendix to Subpart I is subject to question. It was suggested that the section should be broadened to allow at least two physicians, one selected by the applicant and another selected by the Social Security Administration, to evaluate the evidence.

This suggestion assumes that the determination of medical equivalence is an adversary procedure. This is not the case. The requirement in the regulations that

the medical judgment of a physician, designated by the Secretary, be included in the determination of medical equivalency is intended to make it clear that such a determination is not only based on sound medical documentation but upon the expertise of physicians, since only physicians have the medical knowledge and technical competency to make such a complex judgment. Furthermore, it must be emphasized that the entire concept of medical equivalence is designed to work in the applicant's favor since without it a medical allowance could only be based on the meeting of precise Listing criteria. Moreover, conditions which constitute neither a listed impairment nor the medical equivalent thereof may still be found to be disabling if they do, in fact, prevent an individual from engaging in any substantial gainful activity.

One writer commented that a more precise definition of the term "justifiable cause" should be provided in § 416.907 to insure the proper interpretation of justifiable cause for failure to follow prescribed treatment. We acknowledge that the writer's point is well taken and we are, in fact, in the process of developing examples to illustrate "justifiable cause" which we plan to incorporate into the regulations. However, we believe that the public should have an opportunity to comment on such examples before they are published as final regulations. Accordingly, it would be inappropriate to include this change in the final regulations at this time.

Another writer commented that in those instances where the Social Security Administration makes a less favorable decision overruling the State agency decision, the applicant should be advised in writing of the State agency determination and the basis for the Social Security Administration's decision. In addition, the writer indicated that it is questionable whether the Social Security Administration should be able to overrule a favorable State agency decision and that an adverse determination based solely on the record without further inquiry violates the integrity of the decision making process.

When a State agency makes a determination of disability, the claimant receives written notification of the State agency's decision and has this information available to him should the Social Security Administration on subsequent review arrive at a less favorable finding. In that event, since the individual has already been notified of his eligibility and put in payment status, he is informed in writing of the basis for the revision of the favorable decision and is offered the opportunity for an evidentiary hearing before benefit payments are stopped. The Secretary's right to modify or reverse (even on the same evidence) a favorable decision made by the State agency in his behalf is the ultimate tool he uses to assure nationwide uniformity of the application of national policy and thus enhance, rather than violate, the integrity of the decision making process.

Concern was expressed by one writer that there is no indication in § 416.924 that the social security district office will be able to provide for transportation costs incurred by applicants in obtaining medical evidence of their disability.

We have expanded § 416.924 in reply to this inquiry. A new paragraph (c) has been added to this section to include the information that an applicant will not be responsible for any transportation costs incurred in securing medical evidence needed to support his claim of disability.

In addition, two writers stated that where an evaluation has been made of disability based on criteria similar to those of the Social Security Administration, such evaluation should be acceded to by the Social Security Administration. In this regard, the writer urged that any determination of disability under title II automatically be used to establish disability for supplemental security income purposes.

The criteria for making determinations of disability under Supplemental Security Income for the Aged, Blind, and Disabled (title XVI) are promulgated in sections 1614(a) (2) and (3) of the Social Security Act. These are the same as the criteria under title II (section 216(i)(1)) of the same Act. Therefore, a favorable decision of disability under title II of the Act may be adopted to establish disability for suplemental security income eligibility purposes, as the writer suggested.

Since a decision of any other governmental agency is based on different criteria, it is not determinative of the question for supplemental security income purposes. The other agency's decision is, however, not disregarded; rather, the evidence (medical signs, symptoms, laboratory findings) which that agency relied on is considered by the Social Security Administration in making the supplemental security income disability decision.

One writer commented that the phrase "good cause" is not defined in § 416.927.

We agree that the concept of "good cause" as it applies to the failure or refusal of an individual to present himself for a consultative examination should be defined if it remains in the regulations. However, in such situations, the basis for finding the claimant not to be disabled would more appropriately be that the evidence does not support a finding of disability. Therefore, we are presently giving consideration to the question of whether there is a need to retain this concept. Either to eliminate the concept, however, or to further elaborate on the meaning of the phrase "good cause" would constitute a substantive change in regulations upon which the public should have an opportunity to comment. Therefore, a change is not included in the final regulations at this time.

The same writer objected to the part of § 416.932(a) which states that "work which does not in itself constitute substantial gainful activity may, nevertheless, indicate the existence of a residual capacity of such individual to engage in substantial gainful activity." It is felt that this provision would result in pushing onto the general assistance rolls persons who are capable of some minimal work around the house but are, in fact, unemployable.

The statement that work which in itself does not constitute substantial gainful activity may nevertheless indicate the existence of a residual capacity of such individual to engage in substantial gainful activity is not intended to be, in itself, a criterion for denial or cessation of benefits. Its purpose is to distinguish the issue of ability to engage in substantial gainful activity from the issue of whether work activity constitutes substantial gainful activity. If the individual's work activities do not constitute substantial gainful activity but are such that they indicate a greater capability than is being demonstrated, medical and vocational considerations must be taken into account to determine the issue of ability to engage in substantial gainful activity.

Two writers maintained that reference to sheltered workshops should be deleted from § 416.932(e) and § 416.934 (a) since by definition the majority of individuals who participate in sheltered employment are disabled.

It is recognized that impaired individuals who engage in sheltered employment are generally less productive than unimpaired workers in commercial employment and that, typically, they are limited to lower than average earnings in a sheltered environment where special adjustments are made for the handicapped to a degree not found in outside employment. For this reason, when handicapped workers in sheltered employment have earnings of $200 or less per month, it is presumed that they are not engaging in substantial gainful activity regardless of whether the work is comparable to that of unimpaired workers (§ 416.934(c)). (See below for discussion of revised earnings amounts for the purpose of determining ability to engage in substantial gainful activity.) Similarly, if average monthly earnings are more than $200, the evaluation guides specifically emphasize the need to fully consider the possibility of a subsidy. However, the fact that an organization hiring handicapped individuals receives a subsidy would not necessarily establish that a particular employee is being paid a subsidy. Whether the work of a particular individual constitutes substantial gainful activity must be determined by the individual's productivity rather than by the financial condition or motivations of the employer. Moreover, to completely exempt employees of sheltered workshops from the work provisions would be unfair to similarly impaired individuals who derive their earnings from non-sheltered employment. It should be noted that the concept of substantial gainful activity does not apply to statutory blindness under title XVI.

One writer contended that the policy expressed in § 416.933 also appeared to be designed in a manner which would reduce the number of persons eligible for supplemental security income benefits on the basis of a disability.

While the time spent in work may or may not tend to show ability to engage in substantial gainful activity for the disabled individual, the determination as to whether the work constitutes substantial gainful activity must also consider the nature of the duties performed, the skills and experience required to do the job, productivity, and any other factors that relate to the value of the services. Thus, in the context of the proposed regulations, this section is intended only to explain that the time spent in work is an important, but not necessarily controlling, factor in the evaluation of work activity.

Another writer recommended substituting the term "health" for the term "medical" in §§ 416.902–416.939 in those contexts referring to (1) the findings necessary to establish disability or blindness, (2) the types of examinations which may be required, and (3) the specialist performing the required examination. The intent is to clarify that optometrists' reports may, in accordance with recent amendments (Pub. L. 93–66), be used to determine whether an individual is or is not statutorily blind.

Section 416.903(a) states that "to be statutorily blind, as defined in § 416.-901(d), an individual need only meet the test of blindness as so defined." This means that an individual, to become eligible for payments on the basis of statutory blindness, must establish that he has a central visual acuity of 20/200 or less in the better eye with best correction, or a limitation in visual fields such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. To establish whether or not this degree of loss is present, § 416.-924(a)(3) states that measurement of visual acuity or fields may be supplied by either a physician specializing in eye diseases or by an optometrist. Accordingly, the regulations are, without alteration, in conformity with section 214 of Public Law 93–66 which states that "* * * in determining, for the purposes of this title whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select * * *" The regulations as they were previously written permitted the use of an optometrist's report; however, to remove any doubt about the use of such reports § 416.903 has been expanded (see § 416.903(c)).

One writer contended that requiring comments in triplicate is an undue burden which precludes some individuals from participation in the rule making process.

The requirement that comments be submitted in triplicate is to facilitate the processing of such comments. Where fewer copies are received, there is an internal delay caused by the necessity to reproduce the required copies. An additional problem may arise if the quality of the copy received is such that duplicate copies are difficult or impossible to read. One of the three copies is kept at Social Security's Office of Public Affairs in Washington, D.C., for public inspection; the second is used as a control to assure that the final regulations are responsive to the comments; and the third is sent to the component responsible for writing the regulation.

Two writers commented on the omission from Section 12.04 of the proposed Listing of Impairments of the reference to "irreversible organ damage" in the evaluation of claims involving drug addiction or alcoholism. One writer took exception to this omission and the other writer endorsed it.

Reference to "irreversible organ damage" in the Listing of Impairments in the appendix to Subpart P of the title II regulations (Part 404 of this chapter) was included to present only one aspect of a situation in which a drug addict or alcoholic might be found "disabled" and was not intended to represent the only basis for such a finding. In determining whether a drug addict or alcoholic is disabled, it is, in fact, also necessary to consider whether any other Listing is met or equaled, or whether disability may be established on the basis of an impairment of lesser severity in conjunction with appropriate vocational factors.

This particular Listing criterion dealing with irreversible organ damage in connection with drug addiction and alcoholism has, however, been subject to considerable misunderstanding. The most common misunderstanding has been that irreversible organ damage was a requisite to the allowance of any claim involving drug addiction or alcoholism and was interpreted as a bar to finding drug addicts and alcoholics disabled. Consequently, in order to avoid such misunderstandings, specific reference to "irreversible organ damage" has been omitted from Section 12.04 of the Appendix to the title XVI regulations. In addition, to make clear that the presence of a condition diagnosed as addiction to alcohol or drugs will not, by itself, be the basis for finding that an individual is or is not under disability, a clarifying statement to that effect can be found in § 416.906(d) of the regulations.

The writer who endorsed the modification also provided suggestions with respect to general procedures for evaluating disability where drug addiction or alcoholism is involved. Specifically, the writer urged that disability applications be treated on their individual merits through comprehensive multiphasic screening and work-ability clinics rather than on a "hit or miss" diagnosis by a physician. Where sufficient evidence is not avialable for a determination, additional evidence may be obtained, including evidence obtained through "comprehensive multiphasic screening and workability clinics, where appropriate."

This writer further recommended that a recipient's cash payments be temporarily suspended for up to 3 months at the discretion of the involved social worker where such recipient is receiving benefits on the basis of disability attributable to alcoholism and resumes his consumption of alcohol. Further, section 1611(e)(3)(A) specifies that an individual who is medically determined to be a drug addict or alcoholic must undergo appropriate treatment for his condition (if available) and must comply with the terms and requirements of such treatment in order to be eligible for benefits. Therefore, while such individual's established eligibility creates a right to benefits which may be made conditional by the Statute creating that right, it cannot be done simply "at the social worker's discretion", as recommended.

Also, § 416.901(b)(2) pertaining to eligibility for payments as a disabled conversion recipient has been modified to incorporate the provision in section 9 of Public Law 93–233 that the individual shall be considered disabled for supplemental security income purposes if he has received aid on the basis of disability under a State plan for at least 1 month prior to July 1973, in addition to the prior requirements that he be disabled as defined under a State plan as in effect for October 1972 and that he has received aid under such plan (on the basis of disability) for December 1973, so long as he is continuously disabled as so defined. This provision does not apply to the statutorily blind.

In response to the proposed amendments to Subpart P of Regulations No. 4 and Subpart I of Regulations No. 16 relating to an increase in the amount of monthly earnings in the earnings guidelines for determining, in the absence of evidence to the contrary, ability to engage in substantial gainful activity, five letters of comments were received.

There follows a discussion of these comments and the disposition thereof.

Two writers recommended that the earnings levels set forth in § 404.1534 and § 416.934 be adjusted to the various levels of State supplementation under title XVI. It was stated that the use of an absolute dollar amount operates as a work disincentive because the amount of an individual's benefit may exceed the proposed level of earnings deemed to be substantial gainful activity.

The use of an earned income test with a fixed level of earnings deemed to represent substantial gainful activity is consistent with Congressional intent. Since the 1967 Amendments to the Social Security Act reflect Congressional endorsement of this concept by expressly authorizing the Secretary to prescribe the criteria for substantial gainful activity, it seems clear that the Secretary would not be expected to make major changes in this concept without prior Congressional approval. Moreover, in enacting title XVI, Congress directed that the title II guidelines be followed for determining whether an individual is disabled. A further consideration in the use of a fixed level of earnings for determining substantial gainful activity is the fact that adjusting the earnings level to the various levels of State supplementation under title XVI would result in different

standards of eligibility for disability benefits from State to State. This would not be in accord with the concept of a nationally uniform definition of disability which is inherent in the disability programs under both title II and title XVI.

Another writer expressed the opinion that an earnings level of $200 is not realistic in light of current inflationary trends. Concern was expressed that disability beneficiaries whose benefits are terminated on the basis of these regulations will be unable to support themselves on their earnings, thereby requiring other assistance programs to fill the gap.

The concept of "substantial gainful activity" is a measure of the claimant's ability to work. It is not intended as a measure of whether the individual's earnings provide him with a subsistence level income. Thus, the proposed increase in the substantial gainful activity guides is based on changes that have occurred in the general earnings levels in the national economy in recent years.

One writer objected to the proposed provision regarding earnings between $130 and $200 on the grounds that, because the Social Security Administration has discretion to decide that a person who has earnings in this range is able to engage in substantial gainful activity, persons who can only do occasional part-time work may be found ineligible for benefits.

The policy implementing this amendment provides that an individual whose earnings average from $130 to $200 a month will not be considered engaged in substantial gainful activity unless (1) his work is comparable to that of unimpaired individuals in his community engaged in similar occupations as their means of livelihood, taking into account the time, energy, skill and responsibility involved in the work; or (2) his work, although significantly less than that done by unimpaired individuals, is nevertheless reasonably worth over $200 a month according to pay scales in his community. Thus, this provision of the regulations reflects the belief that where a person performs the same work as that done by unimpaired individuals, his work may be inconsistent with disability even though his earnings are below the level normally deemed to be substantial gainful activity; and that an individual performing services clearly worth over $200 a month according to the pay scales in his community should be determined to be engaging in substantial gainful activity even if he is paid less.

One writer wanted to go on record in support of the proposed amendments to §§ 404.1534 and 416.934.

Accordingly, with the aforementioned changes, the proposed amendments are adopted as set forth below.

(Secs. 205, 223, 1102, 1614, and 1631, Social Security Act, as amended, 53 Stat. 1368, as amended, 70 Stat. 815, as amended; 49 Stat. 647, as amended, 86 Stat. 1471, 86 Stat. 1475; (42 U.S.C. 1302, 1382c, and 1383.))

Effective date. These amendments shall be effective July 29, 1975.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program: Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance.)

Dated: June 16, 1975.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: July 23, 1975.

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

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Paragraphs (b), (c), and (d) of § 404.1534 are revised to read as follows:

§ 404.1534 Evaluation of earnings from work.

* * * * *

(b) *Earnings at a monthly rate in excess of $200.* An individual's earnings from work activities averaging in excess of $200 a month shall be deemed to demonstrate his ability to engage in substantial gainful activity unless there is affirmative evidence that such work activities themselves establish that the individual does not have the ability to engage in substantial gainful activity under the criteria in §§ 404.1532 and 404.1533 and paragraph (a) of this section.

(c) *Earnings at a rate of $130 to $200 a month.* Where an individual's earnings from work activities average between $130 and $200 a month, consideration of the amount of his earnings together with the other circumstances relating to his work activities (see §§ 404.1532 and 404.1533), the medical evidence relating to his impairment or impairments, and other factors (see § 404.1502) shall determine whether such individual is able to engage in substantial gainful activity. However, in the case of an individual working in a sheltered workshop (such as a workshop especially organized for disabled individuals) or comparable facility, whose activities are limited by his impairment so that his earnings average $200 a month or less, such activities and such earnings ordinarily would not establish the ability to engage in substantial gainful activity.

(d) *Earnings at a monthly rate of less than $130.* Earnings from work activities as an employee which average less than $130 a month do not show that the individual is able to engage in substantial gainful activity. However, an evaluation of the work performed (see § 404.1532) may establish that the individual is able to engage in substantial gainful activity, regardless of the amount of his average monthly earnings.

* * * * *

2. 20 CFR Part 416 is amended by adding at the beginning of Subpart I new §§ 416.901–416.939 to read as follows:

Subpart I—Determination of Disability or Blindness

Sec.

416.901 Disability and blindness; general.
416.902 Evaluation of disability for individuals age 18 or over.
416.903 Evaluation of statutory blindness.
416.904 Evaluation of disability of a child under age 18.
416.905 Determining medical equivalence.
416.906 Listing of Impairments in Appendix.
416.907 Failure to follow prescribed treatment.
416.920 Determinations of disability or statutory blindness.
416.923 Evidence of disability or statutory blindness.
416.924 Medical and other evidence.
416.925 Determination of disability or blindness by nongovernmental organization or other governmental agency.
416.926 Conclusion by physician regarding individual's disability or statutory blindness.
416.927 Purchased medical examinations.
416.928 Evidence of continuation of disability or statutory blindness.
416.929 Place and manner of submitting evidence.
416.930 Furnishing of medical evidence.
416.931 Responsibility to give notice of event which may effect a change in disability or blindness status.
416.932 Evaluation of work activities.
416.933 Time spent in work.
416.934 Evaluation of earnings from work.
416.936 Period of trial work.
416.937 Limitations on eligibility to period of trial work.
416.938 Recovery from impairment while working.
416.939 Cessation of disability and statutory blindness.

* * * * *

Appendix Listing of Impairments.

Subpart I—Determination of Disability or Blindness

§ 416.901 Disability and blindness; general.

(a) *Scope of subpart.* This Subpart I establishes the standards for determining disability and blindness for purposes of determining eligibility to benefits under the Supplemental Security Income program under title XVI of the Social Security Act, as amended by Public Law 92-603.

(b) *Disability defined.* An individual is disabled for purposes of this part if:

(1) He is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity); or

(2) He is permanently and totally disabled as defined under a State plan approved under title XIV or XVI of the Act as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973, and for at least one month prior to July 1973 so

long as he is continuously disabled as so defined.

(c) *Physical or mental impairment defined.* A physical or mental impairment is an impairment which results from anatomical, physiological or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. Statements of the applicant, including his own description of his impairment (symptoms) are, alone, insufficient to establish the presence of a physical or mental impairment.

(d) *Blindness defined.* An individual is "blind" (hereafter referred to as statutory blindness) for purposes of this part if:

(1) He has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having central visual acuity of 20/200 or less; or

(2) He is blind as defined under a State plan approved under title X or title XVI of the Act as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973 so long as he is continuously blind as so defined.

§ 416.902 Evaluation of disability for individuals age 18 or over.

(a) Whether or not an impairment in a particular case constitutes a disability, as defined in § 416.901(b)(1), is determined from all the facts of that case. Primary consideration is given to the severity of the individual's impairment. Consideration is also given to such other factors as the individual's age, education and work experience. Medical considerations alone can justify a finding that the individual is not under a disability where the only impairment is a slight neurosis, slight impairment of sight or hearing, or other slight abnormality or a combination of slight abnormalities. On the other hand, medical considerations alone (including physiological and psychological manifestations of aging) can, except where other evidence rebuts a finding of "disability," e.g., the individual is actually engaging in substantial gainful activity, justify a finding that the individual is under a disability where his impairment is one that meets the duration requirement in § 416.901(b)(1), and is listed in the appendix to this Subpart I, or the Social Security Administration determines his impairment (or combined impairments) to be medically the equivalent of a listed impairment (see § 416.905).

(b) Conditions which constitute neither a listed impairment nor the medical equivalent thereof likewise may be found disabling if they do, in fact, prevent the individual from engaging in any substantial gainful activity. Such an individual, however, shall be determined to be under a disability only if his physical or mental impairment or impairments are the primary reason for his inability to engage in substantial gainful activity. In any such case it must be established that his physical or mental impairment or impairments are of such severity, i.e., result in such lack of ability to perform significant functions as moving about, handling objects, hearing, speaking, reasoning, and understanding, that he is not only unable to do any previous work he may have done or work commensurate with any such previous work, in the amount of earnings and utilization of capacities but cannot, considering his age, education, and work experience, if any, engage in any other kind of substantial gainful work (see § 416.934) which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For the purposes of the preceding sentence, work "exists in the national economy" with respect to any individual, when such work exists in significant numbers either in the region where such individual lives or in several regions of the country. Thus, isolated jobs of a type that exist only in very limited number or in relatively few geographic locations shall not be considered to be "work which exists in the national economy" for purposes of determining whether an individual is under a disability; an individual is not denied benefits on the basis of the existence of such jobs. Accordingly, where an individual remains unemployed for a reason or reasons not due to his physical or mental impairment but because he is unsuccessful in obtaining work he could do; or because work he could do does not exist in his local area; or because of the hiring practices of employers, technological changes in the industry in which he has worked, or cyclical economic conditions; or because there are no job openings for him or he would not actually be hired to do work he could otherwise perform, the individual may not be considered under a disability as defined in § 416.901(b)(1).

(c) Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor is not working and is no longer able to perform such labor because of a significant impairment or impairments and considering his age, education, and vocational background is unable to engage in lighter work, such individual may be found to be under a disability. On the other hand, a different conclusion may be reached where it is found that such individual is working or has worked despite his impairment or impairments (except where such work is sporadic or is medically contra-indicated) depending upon all the facts in the case. In addition, an individual who was doing heavy physical work at the time he suffered such impairment might not be considered unable to engage in any substantial gainful activity if the evidence shows that he has the training or past work experience which qualifies him for substantial gainful work in another occupation consistent with his impairment, either on a full-time or a reasonably regular part-time basis.

Example. A 60-year-old miner, with a fourth grade education, after a lifelong history of arduous physical labor alleged that he was disabled because of arthritis of the spine, hips, and knees and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent him from performing his usual work or any other type of arduous physical labor. His vocational background does not disclose either through performance or by similarly persuasive evidence that he has skills or capabilities needed to do lighter work which would be readily transferable to another work environment. Under these circumstances, he may be found to be disabled.

(d) When used in this section for evaluating "disability" as defined in § 416.901(b)(1), the term "age" refers to chronological age and the extent to which it affects the individual's capacity to engage in work in competition with others. An individual unemployed primarily because of age, however, shall not be deemed unable to engage in substantial gainful activity by reason of a medical impairment.

(e) When used in this section for evaluating "disability" as defined in § 416.901(b)(1), the term "education" is used in the following sense: Education and training are factors in determining the employment capacity of an individual. Lack of formal schooling, however, is not necessarily proof that the individual is an uneducated person. The kinds of responsibilities he carried when working may indicate ability to do more than unskilled work, even though his formal education has been limited.

§ 416.903 Evaluation of statutory blindness.

(a) To be statutorily blind, as defined in § 416.901(d), an individual need only meet the test of blindness as so defined. Such condition need not be expected to result in death or to have lasted or be expected to last for a continuous period of not less than 12 months. Also, the individual need not be unable to engage in substantial gainful activity. However, where a statutorily blind individual is engaging in substantial gainful activity, his earnings must be considered under the income and resources provisions of this part (Subparts K and L, respectively) to determine whether or not he exceeds the limitations on income or resources for benefits under this part.

(b) Where an individual has a visual impairment that is determined not to meet the definition of statutory blindness (see § 416.901(d)), such visual impairment, along with any other physical or mental impairments he may have, shall be evaluated under § 416.902 or § 416.904, as appropriate, to determine whether he is disabled as defined in § 416.901(b)(1)).

(c) In determining, for the purpose of this section, whether an individual is statutorily blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select.

§ 416.904 Evaluation of disability of a child under age 18.

Disability shall be deemed to exist for a child under age 18 under § 416.901(b)(1) if the child is not engaging in substantial gainful activity, and if:

(a) His impairment or impairments meet the durational requirements in § 416.901(b)(1), and are listed in the appendix to this Subpart I; or

(b) His impairment or impairments are not listed in the appendix to this Subpart I but singly or in combination meet the durational requirement in § 416.901(b)(1) and are determined by the Social Security Administration, with appropriate consideration of the particular effect of disease processes in childhood, to be medically the equivalent of a listed impairment (see § 416.905).

§ 416.905 Determining medical equivalence.

(a) An individual's impairment or impairments shall be determined to be medically the equivalent of an impairment listed in the Appendix to this Subpart I, only if the medical findings with respect thereto are at least equivalent in severity and duration to the listed findings of the listed impairment.

(b) Any decision with respect to disability made under the criteria in § 416.901(b) as to whether an individual's impairment or impairments are medically the equivalent of an impairment listed in the Appendix to this Subpart I, shall be based on medical evidence demonstrated by medically acceptable clinical and laboratory diagnostic techniques, including a medical judgment furnished by one or more physicians designated by the Social Security Administration, relative to the question of medical equivalence. A "physician designated by the Social Security Administration" shall include a physician in the employ of or engaged for this purpose by the Social Security Administration or State agency authorized to make determinations of disability.

§ 416.906 Listing of Impairments in Appendix.

(a) With respect to § 416.901(b)(1), the Listing of Impairments in the Appendix to this Subpart I describes, for each of the major body systems, impairments which:

(1) Are of a level of severity which can justify a finding that the individual is disabled, except where other evidence rebuts such a finding; and

(2) Are expected to result in death or to last for a continuous period of not less than 12 months.

(b) Each section is preceded by a general introduction containing definitions of key concepts used in that section. Certain specific medical findings, some of which are identified as essential in establishing a diagnosis or in confirming the existence of an impairment for the purpose of this Listing, are also cited in the narrative introduction. Where the medical findings essential to support a diagnosis are not specified in the introduction or elsewhere in the Listing, the diagnosis must, nonetheless, be established on the basis of medically acceptable clinical and laboratory diagnostic techniques. For certain of the listed categories, only a pathophysiologic diagnosis is required. Following the introduction in each section, the requisite level of severity of impairment is specified under "Category of Impairments" by one or more sets of medical findings. The medical findings consist of symptoms, signs, and laboratory findings. For the purposes of this Subpart I, the following definitions apply:

(1) "Symptoms" are the claimant's own description of his physical or mental impairment.

(2) "Signs" are anatomical, physiological or psychological abnormalities which are demonstrable, apart from the claimant's symptoms, by medically acceptable clinical and diagnostic techniques. Psychiatric signs are medically demonstrable phenomena apart from the claimant's symptoms, indicating specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality.

(3) "Laboratory findings" are manifestations of anatomical, physiological, or psychological phenomena which are demonstrable by the use of medically acceptable laboratory diagnostic techniques which extend or replace the perceptiveness of the senses, including chemical tests, electrophysiologic or roentgenologic studies and psychological tests.

(c) An impairment shall not be considered to be one listed in the appendix to this Subpart I solely because it has the name of a listed impairment. To be considered a listed impairment, it must also have such attendant findings as are recited in the Listing for the impairment.

(d) The presence of a condition diagnosed or defined as addiction to alcohol or drugs will not by itself be the basis for a finding that an individual is or is not under a disability. As with any other condition, the determination as to disability in such instances shall be based on symptoms, signs and laboratory findings.

§ 416.907 Failure to follow prescribed treatment

(a) For purposes of determining whether disability under § 416.901(b)(1) exists, an individual's impairment must also be expected to result in death or to have lasted or be expected to last for a continuous period of not less that 12 months. However, for purposes of determining whether statutory blindness exists under § 416.910(d)(1), duration is not a requirement of eligibility.

(b) An individual with a disabling impairment under § 416.901(b)(1) which is amenable to treatment that could be expected to restore his ability to work shall be deemed to be under a disability if he is undergoing therapy prescribed by his treatment sources but his impairment has nevertheless continued to be disabling or can be expected to be disabling for at least 12 months.

(c) An individual who meets the requirement for statutory blindness under § 416.901(d)(1) which is amenable to treatment that could be expected to restore his sight to a condition which no longer meets this definition shall be deemed statutorily blind if he is undergoing therapy prescribed by his treatment sources but his blindness nevertheless continues.

(d) An individual disabled or statutorily blind who willfully fails to follow such prescribed treatment cannot by virtue of such failure be found to be disabled or statutorily blind under the provisions of this Subpart I. Willful failure does not exist where there is justifiable cause for the failure to follow prescribed treatment.

§ 416.920 Determinations of disability or statutory blindness.

(a) *By State agencies.* In any State which has entered into an agreement with the Social Security Administration providing therefor, determinations as to whether an individual is under a disability or is blind (as defined in § 416.901), as to the date the disability or statutory blindness began, and as to the date the disability or statutory blindness ceases, shall be made by the State agency or agencies designated in such agreement on behalf of the Secretary with respect to all individuals in such State, or with respect to such class or classes of individuals in the State as may be designated in the agreement.

(b) *By the Social Security Administration.* Determinations as to whether an individual is under a disability, as to the date disability or statutory blindness began (as defined in § 416.901), and as to the date disability or statutory blindness ceases, shall be made by the Social Security Administration on behalf of the Secretary with respect to individuals in any State which has not entered into an agreement, or any class or classes of individuals not designated in such an agreement.

(c) *Review by the Social Security Administration of State agency determination.* The Social Security Administration may review a State agency determination and/or redetermination that an individual is disabled or blind in accordance with §§ 416.901(b)(1) and 416.901(d)(1) or as provided by the definition of the applicable State plan (see §§ 416.901(b)(2) and 416.901(d)(2)). As a result of such review, the Social Security Administration may revise the State's determination or redetermination so as to make it more or less favorable, as appropriate.

§ 416.923 Evidence of disability or statutory blindness.

An individual who has filed application for benefits under this Part 416 on the basis of disability or statutory blindness shall submit medical or other evidence showing the nature and extent of such individual's impairment or impairments during the time he alleges he was under a disability or statutorily blind. Statements of the individual, including his own description of his impairment (symptoms), are alone insufficient to establish the existence or severity of a physical or mental impairment. Upon request, the applicant shall also submit

evidence as to his education and training, work experience, daily activities both prior to and after the alleged date of onset of disability, efforts to engage in gainful employment or self-employment, and any other pertinent evidence showing the effect of his impairment or impairments on his ability to engage in any substantial gainful activity during the time he alleges he was under a disability.

§ 416.924 Medical and other evidence.

(a) Medical evidence of an individual's mental or physical impairment shall include:

(1) A report signed by a duly licensed physician; or

(2) A copy of, or abstract from, the medical records, if any, of a hospital, clinic, institution or sanatorium, or public or private agency, duly certified by the custodian of such record or by any employee of the Social Security Administration or the Veterans' Administration authorized to make certifications of any such evidence, or any employee of a State agency authorized to make such certifications; or

(3) Other evidence of probative value. Medical reports, copies of medical records or other medical evidence submitted to substantiate an allegation that an individual is under a disability or is statutorily blind shall include reports of clinical findings (such as the individual's medical history, physical or mental status examinations or both), laboratory findings, diagnoses, and treatment prescribed and response; in cases involving visual impairments, evidence shall include the measurement of visual acuity and visual fields reported by a physician skilled in diseases of the eye or an optometrist whichever the individual may select.

(b) Except where the claim is based on statutory blindness, evidence specified in paragraph (a) of this section shall also describe the individual's capacity to perform significant functions such as the capacity to sit, stand, or move about, travel, handle objects, hear or speak, and, in cases of mental impairment, the ability to reason or to make occupational, personal or social adjustments. The clinical and laboratory findings shall be sufficiently comprehensive and detailed to permit the making of independent determinations by the Social Security Administration or by a State agency as to the nature and limiting effects of the individual's physical or mental impairment or impairments for the period in question, his ability to engage in physical and mental activities, and the probable duration of such impairment.

(c) The applicant will not be responsible for costs incurred in securing medical evidence, including the cost of transportation necessary to obtain such evidence.

§ 416.925 Determination of disability or blindness by nongovernmental organization or other governmental agency.

The decision of any nongovernmental organization or any other governmental agency that an individual is, or is not, disabled or blind for purposes of any contract, schedule, regulation, or law shall not be determinative of the question of whether or not an individual is under a disability or is statutorily blind for the purposes of this part.

§ 416.926 Conclusion by physician or other person regarding individual's disability or statutory blindness.

The function of deciding whether or not an individual is under a disability or is statutorily blind for purposes of this Part 416 is the responsibility of the Social Security Administration. A statement by a physician or other person that an individual is, or is not, "disabled" or "blind," "permanently disabled or blind," "totally disabled," or "totally blind," "totally and permanently disabled or blind," "unable to work," or a statement of similar import, being a conclusion upon the ultimate issue to be decided by the Social Security Administration, shall not be determinative of the question of whether or not an individual is under a disability or is statutorily blind. The weight to be given such person's statement depends on the extent to which it is supported by specific and complete clinical findings and is consistent with other evidence as to the severity and, where pertinent, probable duration of the individual's impairment or impairments.

§ 416.927 Purchased medical examinations.

Upon reasonable notice of the time and place thereof, any individual applying for or in receipt of benefits under this part on the basis of disability or statutory blindness shall present himself for and submit to physicial or mental examinations or tests, at the expense of the Social Security Administration, by a physician or other professional or technical source designated by the Social Security Administration or the State agency authorized to make determinations as to disability or statutory blindness. If any such individual fails or refuses to present himself for any examination or tests, such failure or refusal unless the Administration determines that there is good cause therefor, shall be a basis for determining that such individual is not under a disability or is not statutorily blind. Religious or personal scruples against medical examination or test shall not excuse an individual from presenting himself for a medical examination or test.

§ 416.928 Evidence of continuation of disability or statutory blindness.

An individual who has been determined to be disabled or statutorily blind under this part, upon reasonable notice, shall, if requested to do so, present himself for and submit to examinations or tests in accordance with § 416.927 and shall submit medical and other evidence necessary for the purpose of determining whether such individual continues to be under a disability or statutorily blind.

§ 416.929 Place and manner of submitting evidence.

Evidence in support of an application for benefits on the basis of disability or statutory blindness under this part, shall be filed in the manner and at the place or places prescribed in Subpart C of this part, or where appropriate, at the office of a State agency authorized under agreement with the Social Security Administration to make determinations as to disability or statutory blindness, or with an employee of such State agency authorized to accept such evidence at a place other than such office.

§ 416.930 Furnishing of medical evidence.

An individual shall not be determined to be under a disability or to continue to be under a disability or statutorily blind unless he cooperates in furnishing available medical evidence which is pertinent to his claim and which would assist the Social Security Administration in the processing of his application for benefits under this part.

§ 416.931 Responsibility to give notice of event which may effect a change in disability or blindness status.

An individual who is entitled to benefits under this part on the basis of disability or blindness shall notify the Social Security Administration promptly (see Subpart G of this part) if:

(a) His condition improves; or

(b) If disabled, he engages in any work activity or there is an increase in the amount of such activity or his earnings therefrom.

§ 416.932 Evaluation of work activities.

(a) *In general.* If an individual, who is not statutorily blind, performed work during any period in which he alleges that he was under a disability as defined in § 416.901(b), the work performed may demonstrate that such individual has ability to engage in substantial gainful activity. If the work performed establishes that an individual is able to engage in substantial gainful activity, he is not under a disability. However, any services rendered during a trial work period (see § 416.936) shall be deemed not to have been rendered by an individual in determining whether his disability has ceased in a month during such period. Work which does not in itself constitute substantial gainful activity, may nevertheless indicate the existence of a residual capacity of such individual to engage in substantial gainful activity. Thus, an individual who utilizes work skills or abilities on a limited basis may not be under a disability if he is capable of increased utilization of such work skills or abilities.

(b) *Substantial gainful activity defined.* Substantial gainful activity refers to work activity that is both substantial and gainful. Substantial work activity involves the performance of significant physical or mental duties, or a combination of both, productive in nature. Gainful work activity is activity for remuneration or profit (or intended for profit, whether or not a profit is realized) to the individual performing it or to the persons, if any, for whom it is performed, or of a nature generally performed for remuneration or profit. In order for work activity to be substantial, it is not necessary that it be performed on a full-time basis; work activity performed on a

part-time basis may also be substantial. It is immaterial that the work activity of an individual may be less, or less responsible, or less gainful, than that in which he was engaged before the onset of his impairment.

(c) *Nature of the work.* The performance of duties involving skill, experience or responsibility, or contributing substantially to the operation of an enterprise, is evidence tending to show that an individual has the ability to engage in substantial gainful activity.

(d) *Adequacy of performance.* The adequacy of an individual's performance of assigned work is also evidence as to whether or not he has ability to engage in substantial gainful activity. The satisfactory performance of assignments may demonstrate ability to engage in substantial gainful activity, while an individual's failure, because of his impairment, to perform ordinary or simple tasks satisfactorily without supervision or assistance beyond that usually given other individuals performing similar work, may constitute evidence of an inability to engage in substantial gainful activity. "Made work," that is, work involving the performance of minimal or trifling duties which make little or no demand on the individual and are of little or no utility to his employer, or to the operation of a business, if self-employed, does not demonstrate ability to engage in substantial gainful activity.

(e) *Special employment conditions.* Work performed under special conditions of employment which take account of the employee's impairment (for example, work in a sheltered workshop or in a hospital by a patient) may, nonetheless, provide evidence of skills and abilities that demonstrate an ability to engage in a substantial gainful activity, whether or not such work in itself constitutes substantial gainful activity.

(f) *Activities in carrying on a trade or business.* Supervisory, managerial, advisory or other significant personal services rendered by a self-employed individual demonstrate an ability to engage in substantial gainful activity.

(g) *Other considerations of work activities.* Earnings from work activities discussed in this section, including earnings from activities performed during a period of trial work, must also be considered under the income and resource provisions of this part (Subparts K and L of this part) to determine whether or not an individual exceeds the limitations on income or resources for benefits under this part.

§ 416.933 Time spent in work.

If the time that an individual spends in work activities is comparable to the time customarily spent by individuals without impairment in similar work activities as a regular means of livelihood, his ability to work for such periods constitutes evidence tending to show an ability to engage in substantial gainful activity. Moreover, where an individual, because of his impairment, is unable to spend as much time in work activities as is customarily spent by individuals without impairment in similar work, but such individual is able to perform significant duties on a part-time basis, his ability to work on a part-time basis also tends to show an ability to engage in substantial gainful activity.

§ 416.934 Evaluation of earnings from work.

(a) *General.* Where an individual who claims to be disabled engages in work activities, the amount of his earnings from such activities may establish that the individual has the ability to engage in substantial gainful activity. Generally, activities which result in substantial earnings would establish ability to engage in substantial gainful activity; however, the fact that an individual's activities result in earnings which are not substantial does not establish the individual's inability to engage in substantial gainful activity. Where an individual is forced to discontinue his work activities after a short time because his impairment precludes continuing such activities, his earnings would not demonstrate ability to engage in substantial gainful activity. Also a mentally handicapped individual who performs simple tasks subject to close and continuous supervision would not have demonstrated ability to engage in substantial gainful activity solely on the basis of the rate of his remuneration for such activity. Extraordinary expenses incurred by an individual in connection with his employment and because of his impairment (e.g., the nature of the impairment requires special transportation) shall be deducted, to the extent that such expenses exceed what would be his work-related expenses if he were not impaired, in computing the value of his earnings for the purpose of determining his ability to engage in substantial gainful activity. Expenses for medication or equipment which the individual requires whether or not he works would not, of course, be work-related. Earnings received by an employee which are not attributable to his work activity are not considered in determining his ability to engage in substantial gainful activity. Thus, where an individual engages in work activity as an employee under special conditions (see § 416.932), only earnings attributable to the individual's productivity, as distinguished from a subsidy related to other factors (e.g., his financial needs), are considered in determining his ability to perform substantial gainful activity. The fact, however, that a sheltered workshop or comparable facility may operate at a deficit and receive some charitable contributions or governmental aid would not necessarily establish that a particular employee of the workshop is not earning the amounts paid to him. An individual's earnings, including any amounts which are excluded under this subsection for the purpose of determining his ability to engage in substantial gainful activity, may also be further considered under the income eligibility provisions of §§ 416.215ff.

(b) *Earnings at a monthly rate in excess of $200.* An individual's earnings from work activities averaging in excess of $200 a month shall be deemed to demonstrate his ability to engage in substantial gainful activity in the absence of evidence to the contrary.

(c) *Earnings at a rate of $130 to $200 a month.* Where an individual's earnings from work activities average between $130 and $200 a month, consideration of the amount of his earnings together with the other circumstances relating to his work activities (see §§ 416.932 and 416.933), the medical evidence relating to his impairment or impairments, and other factors (see § 416.902) shall determine whether such individual is able to engage in substantial gainful activity. However, in the case of an individual working in a sheltered workshop (such as a workshop especially organized for disabled individuals) or comparable facility, whose activities are limited by his impairment so that his earnings average $200 a month or less, such activities and such earnings ordinarily would not establish the ability to engage in substantial gainful activity.

(d) *Earnings at a monthly rate of less than $130.* Earnings from work activities as an employee which average less than $130 a month do not show that the individual is able to engage in substantial gainful activity. However, an evaluation of the work performed (see § 416.932) may establish that the individual is able to engage in substantial gainful activity, regardless of the amount of his average monthly earnings.

(e) *Factors considered where individual is self-employed.* The earnings or losses of a self-employed individual often reflect factors other than the individual's work activities in carrying on his trade or business. For example, a business may have a small income or may even operate at a loss even though the individual performs sufficient work to constitute substantial gainful activity. Thus, less weight is given to such small income or losses in determining a self-employed individual's ability to engage in substantial gainful activity, and greater weight is given to such factors as the extent of his activities and the supervisory, mangerial, or advisory services rendered by him (see § 416.932).

§ 416.936 Period of trial work.

(a) *General.* Any services rendered by a disabled individual entitled to benefits under this Part 416 during a period of trial work shall, nevertheless, be deemed not to have been rendered for the purpose of determining whether such individual's disability ceased during such period of trial work (see § 416.938). Services rendered within a period of trial work may be considered, however, in determining whether an individual's disability ceased at any time after the expiration of such period of trial work.

(b) *Duration.* A period of trial work for any individual shall begin with the month in which the individual becomes eligible for benefits under this Part 416 based on a disability as defined in § 416.901(b): *Provided*, That such period (see § 416.937) shall not begin earlier than January 1974 or before the month in which application is filed for such benefits, and shall end with the close

of whichever of the following calendar months is earlier:

(1) The ninth month (whether or not consecutive), beginning on or after the first day of such period, in which the individual renders any services, or

(2) The month in which the individual's disability (as defined in § 416.901 (b)) ceases, as determined without regard to work performed during the period of trial work.

(c) *Meaning of "services".* When used in this section, "services" means any activity, even though not substantial gainful activity, which is performed by an individual in employment during a period of trial work for remuneration or gain, or which is determined to be of a type normally performed for remuneration or gain. Work performed without remuneration merely as a therapeutic measure or purely as a matter of training, or work usually performed in daily routine around the home or in self-care, is not considered "services."

(d) *Effects of ineligibility for Supplemental Security Income cash benefits where a disabled person fails to meet other eligibility factors during a period of trial work.* Services performed by an individual who, although still disabled, may become ineligible for Supplemental Security Income cash benefits for other reasons shall nevertheless be counted towards his period of trial work, if he should reapply for benefits. In instances of this nature, the months of ineligibility will be evaluated for trial work period purposes upon reestablishment of eligibility for cash benefits under this part as though said eligibility had not been interrupted.

(e) *Blind recipients.* The trial work period provision described in this section is not applicable in the case of eligibility based on statutory blindness as defined in § 416.901(d).

§ 416.937 Limitations on eligibility to period of trial work.

An individual is not eligible for more than one period of trial work in any one period of eligibility which is based on disability. However, an individual will be granted a trial work period for each period of eligibility which is based on disability unless he has had a previous period of trial work while eligible for benefits on the basis of the same disability. For the purposes of this section, a period of eligibility which is based on disability is the time elapsing from an individual's first month of eligibility for benefits under this part based on a disability through the second month following the month in which disability was determined to have ceased.

§ 416.938 Recovery from impairment while working.

An individual's disability may be found to have ceased at any time within a period of trial work (see § 416.936) if it is determined on the basis of evidence (other than evidence that the individual performed services during such time) that the individual has recovered from his physical or mental impairment to the extent that he is no longer prevented by his impairment or impairments from engaging in substantial gainful activity.

§ 416.939 Cessation of disability or statutory blindness.

(a) In the case of an individual entitled to benefits on the basis of disability, as defined in § 416.901(b)(1), disability shall be determined to have ceased in the earlier of the following:

(1) the month in which the impairment, as established by the medical or other evidence, is no longer of such severity as to prevent him from engaging in any substantial gainful activity, or

(2) the month in which the individual's earnings from work activities demonstrate that he has regained his ability to engage in substantial gainful activity.

(b) In the case of an individual entitled to benefits on the basis of blindness, as defined in § 416.901(d)(1), blindness shall be determined to have ceased in the month in which such individual's impairment improves to the point where it no longer constitutes statutory blindness as defined in § 416.901(d)(1).

(c) In the case of an individual entitled to benefits on the basis of disability or blindness as defined in §§ 416.901(b)(2) and 416.901(d)(2), respectively, disability or blindness shall be determined to have ceased in the month in which such disability or blindness is determined to have ceased under the criteria that apply in the appropriate State plan, or the month in which disability or blindness is determined to have ceased under paragraph (a) or (b) of this section, as appropriate, whichever is later.

(d) In any case, where the individual is requested to furnish necessary medical or other evidence or to present himself for a necessary physical or mental examination by a date specified in the request, and the individual fails to comply with such request, disability or statutory blindness may be found to have ceased in the month within which the date for compliance falls unless the Social Security Administration determines that there is good cause for such failure.

3. 20 CFR Part 416 is amended by adding an appendix at the end of Subpart I to read as follows:

APPENDIX

LISTING OF IMPAIRMENTS

Sec.

1.00 Musculoskeletal System.
2.00 Special Sense Organs.
3.00 Respiratory System.
4.00 Cardiovascular System.
5.00 Digestive System.
6.00 Genito-Urinary System.
7.00 Hemic and Lymphatic System.
8.00 Skin.
9.00 Endocrine System.
10.00 Multiple Body Systems.
11.00 Neurological.
12.00 Mental Disorders.
13.00 Neoplastic Diseases—Malignant.

1.00 MUSCULOSKELETAL SYSTEM

A. Functional loss may be due to an anatomical loss or to a loss of use of a part due to deformity, adhesions, defective innervation, or other pathology. Pain may be an important factor in causing functional loss, but it must be associated with relevant abnormal findings. Evaluations of musculoskeletal impairments should be supported where applicable by detailed descriptions of ranges of motion, status of the musculature and any sensory, reflex or circulatory deficits and pertinent X-ray findings.

B. Major joints as used herein refer to hip, knee, ankle, shoulder, elbow or wrist and hand. (Wrist and hand considered together as one major joint.)

C. The measurements of restricted motion and ankylosis are based on the technic of measurements described in "Guides to the Evaluation of Permanent Impairment Extremities and Back" by the Committee on Rating of Mental and Physical Impairment, Special Edition, JAMA, February 15, 1958.

1.01 CATEGORY OF IMPAIRMENTS, MUSCULOSKELETAL

1.02 *Rheumatoid arthritis.* With:

A. History of joint pain and swelling in two or more major joints and morning stiffness persistent on activity; and

B. Signs of joint enlargement or effusion, and motion limitation with periarticular muscle wasting in two or more major joints; and

C. X-ray evidence of abnormality of a major joint (i.e., osteoporosis or decalcification or narrowing of joint space) and one of the following:

1. Anatomical deformity in one major joint, such as joint subluxation, contracture, bony or fibrous ankylosis, joint instability, ulnar deviation, or hyperextension, with resultant limitation of motion; or

2. Positive serologic test for rheumatoid factor; or

3. Elevated sedimentation rate (Wintrobe) greater than 20 mm. per hour in females or 10 mm. per hour in males; or

4. Positive C-reactive protein; or

5. Polymorphonuclear leukocytosis in synovial fluid aspirate; or

6. Characteristic histologic changes in biopsy of synovial membrane or subcutaneous nodule.

1.03 *Neurogenic arthropathy (e.g., Charcot) affecting at least one major weight-bearing joint or one major joint in each of the upper extremities.* With:

A. Instability or subluxation; and

B. Associated loss of sensory modalities in appropriate distribution.

1.04 *Hypertrophic (osteo or degenerative), gouty, infectious or traumatic arthritis.* With:

A. History of pain and stiffness in the involved joints; and

B. X-ray evidence of joint space narrowing with osteophytosis (exostosis) or bony destruction with erosions and cysts, or subluxation, or ankylosis of involved joints and one of the following:

1. Abduction of both arms at shoulders restricted to less than 90 degrees; or

2. Ankylosis (fibrous or bony consolidation or fixation) of hip at less than 20 degrees or more than 30 degrees of flexion, measured from neutral position; or

3. Ankylosis or fixation of knee at more than 10 degrees from neutral position; or

4. Limitation of flexion of both hips to 50 degrees or less from neutral position (including ankylosis of both hips at any angle); or

5. Limitation of flexion of both knees to 30 degrees or less from the neutral position (including ankylosis of both knees at any angle); or

6. Combined involvement of single hip and knee in contralateral extremity, with impairment in each as in 4 or 5 above; or

7. Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint (hip, knee, ankle, or tarsal region) and return to full weight-bearing status did not occur, or is not expected to occur within 12 months of onset of disability; or

8. X-ray evidence of lumbar spine abnormalities as in B above with motion of dorsolumbar spine limited to 5 degrees or less from neutral position and impairment of single hip or knee as in 4 or 5 above.

1.05 *Disorders of spine.* With:

A. Fracture of vertebra, residuals of. With cord involvement with appropriate sensory and motor loss; or

B. Generalized osteoporosis with pain, limitation of back motion, paravertebral muscle spasm, and compression fracture of a vertebra; or

C. Ankylosis or fixation of cervical or dorsolumbar spine at 30 degrees or more of flexion measured from the neutral position and one of the following:

1. Calcification of the anterior and lateral ligaments as shown by X-ray; or

2. Bilateral ankylosis of sacroiliac joints and abnormal apophyseal articulations as shown by X-ray.

1.06 *Tuberculosis of the spine or any major joint.* Active.

1.07 *Nerve root compression syndrome (due to any cause).* With:

A. Pain and motion limitation in back or neck; and

B. Cervical or lumbar nerve root compression as evidenced by appropriate radicular distribution of sensory, motor, and reflex abnormalities.

1.08 *Osteomyelitis (demonstrated by X-ray).* A. Pelvis, vertebra, femur, tibia or a major joint of an upper or lower extremity, with persistent activity or occurrence of at least 2 episodes in the 6 months since onset of disability manifested by local or systemic signs or laboratory findings (e.g., heat, redness, swelling, drainage, leucocytosis, or increased sedimentation rate); or

B. With multiple localizations and systemic manifestations such as anemia (hematocrit of 30 percent or less) or amyloid changes.

1.09 *Amputation of; or anatomical deformity of (i.e., loss of major function due to degenerative changes associated with vascular or neurological deficits, traumatic loss of muscle mass or tendons and X-ray evidence of bony or fibrous ankylosis at an unfavorable angle, joint subluxation or instability).* A. Both hands; or

B. Both feet; or

C. One hand and one foot.

1.10 *Amputation of lower extremity (at or above the tarsal region).* A. Hemipelvectomy or hip disarticulation; or

B. Evaluate an amputation associated with peripheral vascular disease or diabetes mellitus under the criteria in § 4.13 or § 9.08; or

C. Inability to use prosthesis effectively, without other assistive devices, due to:

1. Vascular disease; or

2. Neurological complications (e.g., loss of position sense); or

3. Stump complications persisting, or expected to persist, for at least 12 months from onset of disability; or

4. Disorder of contralateral lower extremity causing mobility restriction.

1.11 *Fracture of femur, tibia, tarsal bone or pelvis.* With solid union not evident on X-ray and return to full weight-bearing status did not occur, or is not expected to occur, within 12 months of onset.

1.12 *Fractures and/or soft tissue injuries of an upper extremity.* A. With non-union of a fracture of the shaft of the humerus, radius, or ulna under continuing surgical management directed toward restoration of functional use of the extremity and such function was not restored or expected to be restored within 12 months after onset; or

B. Requiring a series of staged surgical procedures within 12 months after onset for salvage and/or restoration of major function of the extremity, and such major function was not restored or expected to be restored within 12 months after onset; or

C. After maximum benefit from surgical therapy has been achieved (i.e., there have been no significant changes in physical findings and/or X-ray findings for any 6-month period after the last definitive surgical procedure), the residual of fractures and/or soft tissue injuries of an upper extremity should be evaluated under the criteria in § 1.09 when associated with residual impairment of another extremity.

2.00 Special Sense Organs

A. *Causes of disability.* Disease or injury of the special sense organs may produce disability by reduction of the ability to see or hear. Loss of central vision results in inability to distinguish detail and prevents reading and fine work. Loss of peripheral vision restricts the ability of an individual to move about freely. Loss of hearing impairs ability to communicate with others by misinterpretation of ideas and orders and results in lack of awareness to danger. The extent of impairment of sight or hearing should be determined by visual or auditory testing.

B. *Central visual acuity.* A loss of central visual acuity may be caused by impaired distant and/or near vision. However, for an individual to meet the level of severity described in § 2.02 and 2.04 only the remaining central visual acuity for distance of the better eye with best correction using the Snellen test chart may be used. Correction obtained by special visual aids (e.g., contact lenses) will be considered only if the individual has the ability to wear such aids.

C. *Field of vision.* Disability due to loss of peripheral vision may result if there is contraction of the visual fields. The contraction may be either symmetrical or irregular. For the phakic eye (the eye with a lens), the extent of the remaining visual field will be determined by usual perimetric methods, utilizing a 3 mm. white disc target at a distance of 330 mm. under illumination of not less than 7 foot-candles. For the aphakic eye (the eye without a lens), the visual field must be determined by utilizing a 6 mm. white disc at a distance of 330 mm. without corrective lenses.

Field measurements must be accompanied by notated field charts, a description of the type and size of the target and the test distance. If corrective lenses have been used, this fact must be stated.

D. *Muscle function.* Paralysis of the third cranial nerve producing ptosis, paralysis of accommodation, and dilation and immobility of the pupil may cause significant visual impairment. When all the muscles of the eye are paralyzed, including the iris and ciliary body (total ophthalmoplegia), the condition is disabling provided it is bilateral. A finding of disability based primarily on impaired muscle function must be supported by a report of an actual measurement of ocular motility.

E. *Visual efficiency.* Loss of visual efficiency may be caused by disease or injury resulting in a reduction of central visual acuity and/or visual field. The visual efficiency of one eye is the product of the percentage of central visual efficiency and the percentage of visual field efficiency. (See Tables No. 1 and 2, § 2.09).

F. *Special situations.* Aphakia represents a visual handicap in addition to the loss of central visual acuity. The term monocular aphakia would apply to an individual who has had the lens removed from one eye, and who still retains the lens in his other eye or to an individual who has only one eye which is aphakic. The terms binocular aphakia would apply to an individual who has had both lenses removed. In cases of binocular aphakia, the central visual efficiency of the better eye will be accepted as 75 percent of its value. In cases of monocular aphakia, where the better eye is aphakic, the central visual efficiency will be accepted as 50 percent of its value. (If an individual has binocular aphakia, and the central visual acuity in the poorer eye can be corrected only to 20/200, or less, the central visual efficiency of the better eye will be accepted as 50 percent of its value.)

Ocular symptoms of systemic disease may or may not produce a disabling visual impairment. These manifestations should be evaluated as part of the underlying disease entity by reference to the particular body system involved.

G. *Deafness.* Deafness should be evaluated in terms of the person's ability to hear and distinguish speech. The degree of functional hearing loss is that loss of hearing and discrimination for speech which is not restorable by a hearing aid. Loss of hearing may be determined with an audiometer or by other appropriate auditory testing. Discrimination for speech may be determined with a speech audiometer or a hearing aid and the use of phonetically balanced word lists (e.g., the PB–50's prepared at Harvard University or the W–22 recordings developed by the Central Institute for the Deaf). These special test lists consist of words selected so that the frequency of speech sounds in the group is the same as the frequency of the same sounds in an average vocabulary of conventional American English.

2.01 Category of Impairments, Special Sense Organs

2.02 *Impairment of central visual acuity.* Remaining vision in the better eye after best correction is 20/200 or less.

2.03 *Contraction of visual fields.* A. To 10 degrees or less from the point of fixation; or

B. So the widest diameter subtends an angle no greater than 20 degrees; or

C. To 20 percent or less visual field efficiency.

2.04 *Loss of visual efficiency.* Visual efficiency of better eye after best correction, 20 percent or less. (The percent of remaining visual efficiency = the product of the percent of remaining central visual efficiency and the percent of remaining visual field efficiency.)

2.05 *Complete homonymous hemianopsia.*

2.06 *Total bilateral ophthalmoplegia.*

2.07 *Meniere's Syndrome. Severe,* with frequent and typical attacks, vertigo, deafness, and cerebellar gait.

2.08 *Hearing impairments (not correctible by a hearing aid).* Manifested by:

A. Absence of air and bone conduction in both ears (auditory perception of not more than one pure tone at high volume will be considered as absence of air and bone conduction); or

B. No more than 40 percent discrimination for speech (ability to hear and understand no more than 40 out of 100 words of special test lists of words using a speech audiometer or hearing aid).

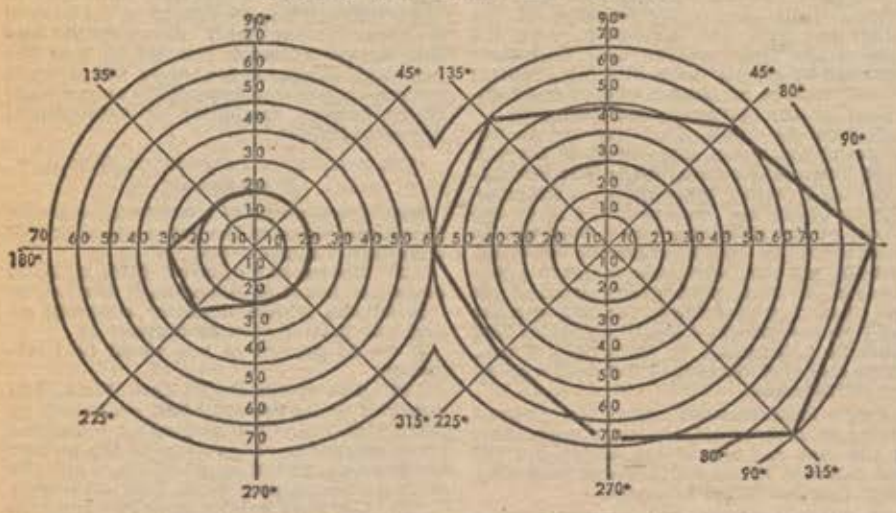
2.09 *Tables*

TABLE No. 1—PERCENTAGE OF CENTRAL VISUAL EFFICIENCY CORRESPONDING TO CENTRAL VISUAL ACUITY NOTATIONS FOR DISTANCE IN THE PHAKIC AND APHAKIC EYE (BETTER EYE)

Snellen		Percent central visual efficiency		
English	Metric	Phakic [1]	Aphakic Monocular [2]	Aphakic Binocular [3]
20/16	6/5	100	50	75
20/20	6/6	100	50	75
20/25	6/7.5	95	47	71
20/32	6/10	90	45	67
20/40	6/12	85	42	64
20/50	6/15	75	37	56
20/64	6/20	65	32	49
20/80	6/24	60	30	45
20/100	6/30	50	25	37
20/125	6/38	40	20	30
20/160	6/48	30	----------	22
20/200	6/60	20	----------	----------

Column	Use
[1] Phakic	1. A lens is present in both eyes.
	2. A lens is present in the better eye and absent in the poorer eye.
	3. A lens is present in one eye and the other eye is enucleated.
[2] Monocular	1. A lens is absent in the better eye and present in the poorer eye.
	2. The lenses are absent in both eyes however, the central visual acuity in the poorer eye after best correction is 20/200 or less.
	3. A lens is absent from one eye and the other eye is enucleated.
[3] Binocular	1. The lenses are absent from both eyes and the central visual acuity in the poorer eye after best correction is greater than 20/200.

TABLE No. 2—CHART OF VISUAL FIELD SHOWING EXTENT OF NORMAL FIELD AND METHOD OF COMPUTING % OF VISUAL FIELD EFFICIENCY



LEFT EYE (O.S.) RIGHT EYE (O.D.)

1. Diagram of right eye illustrates extent of normal visual field as tested on standard perimeter at 3/330 (3 mm. white disc at a distance of 330 mm.) under 7 foot-candles illumination. The sum of the eight principal meridians of this field total 500 degrees.

2. The percent of visual field efficiency is obtained by adding the number of degrees of the eight principal meridians of the contracted field and dividing by 500. Diagram of left eye illustrates visual field contracted to 30 degrees in the temporal and down and out meridians and to 20 degrees in the remaining six meridians. The percent of visual field efficiency of this field is: $6\times20+2\times30=180\div500=0.36$ or 36 percent remaining visual field efficiency, or 64 percent loss.

3.00 RESPIRATORY SYSTEM

A. Cause of disability: The disability produced by respiratory disease usually results from chronic recurrent infection, communicability or from pulmonary insufficiency or a combination of these factors.

B. Pulmonary tuberculosis is a communicable disease and disability is determined primarily on the basis of activity of the disease. Individuals with "inactive" or "quiescent" disease are not considered to be under a disability on the basis of tuberculosis, whereas individuals with "active" tuberculosis are considered to be under a disability.

Those individuals who meet the criteria described in § 3.08 for pulmonary tuberculosis will be found to have a disabling impairment which is expected to last for a period of at least 12 months. Proposed or accomplished surgery will not militate against such a finding. Impairment of pulmonary function due to extensive pulmonary tuberculosis should be evaluated under the appropriate listing.

Documentation. The clinical activity of pulmonary tuberculosis (i.e., active, inactive, or quiescent) and the criteria which describe the extent of the pulmonary lesion on roentgenogram (i.e., minimal, moderate, or far advanced) are defined in the National Tuberculosis Association's publication, "Diagnostic Standards and Classification of Tuberculosis." Tuberculosis will be considered to be present only when Mycobacterium tuberculosis has been demonstrated by a culture, or by guinea pig inoculation, of a specimen(s) from sputum, gastric aspirate, pleural fluid, or lung tissue. A "positive" culture is a culture in which colonies of M. tuberculosis are present. The date of a culture is the date of specimen collection. If the date of collection is unknown, it will be assumed that the specimen was collected 6 weeks prior to the date of the report of the culture. Where specimens have not been cultured or reported monthly, the intervening specimen(s) will be considered to have been negative, if a current specimen is negative. Suspected or questionable cavitary disease identified on the basis of a conventional PA 14 x 17 film will be considered to be non-cavitary.

C. *Pathological atypical mycobacteria.* Pulmonary infection caused by these organisms will be considered under the same criteria as for M. tuberculosis except that specimens obtained by gastric aspiration are not acceptable. The pathogenic atypical mycobacteria are contained in Runyon Groups I, III, and IV. The scotochromogens in Group II are not considered pathogens. A report of one to 10 colonies on culture will not be considered as a "positive" culture. The presence of sporadic positive cultures of atypical mycobacteria occurring after disease caused by M. tuberculosis has been established does not denote reactivation of pulmonary tuberculosis.

D. *When a respiratory impairment is episodic in nature,* as may occur in complications of bronchiectasis and mycotic infections of the lung, the frequency of severe episodes is the criterion for determining level of impairment.

E. *Cor pulmonale.* Chronic cor pulmonale as used in § 3.11 refers to a condition in which the right ventricle is enlarged as a consequence of a primary respiratory disease. Therefore, the clinical diagnosis of the respiratory disorder must be established by history, physical findings and chest X-ray. Right ventricular enlargement or outflow tract prominence may be difficult to detect on routine PA film, particularly in the presence of chronic obstructive airway disease. Consequently, lateral and oblique films or chest fluoroscopy should be obtained, unless cardiac enlargement is established by the PA film as per § 4.02.

F. *Documentation of pulmonary insufficiency.* Spirometric studies for evaluation under Tables I, II, and IV must be expressed in liters or liters per minute. The reported maximum voluntary ventilation (MVV) or maximum breathing capacity (MBC) and one second forced expiratory volume (FEV_1) should represent the largest of at least three attempts. The MVV or the MBC reported should represent the observed value and should not be calculated from FEV_1. The appropriately labeled spirometric tracing, showing distance per second on the abscissa and the distance per liter on the ordinate, must be incorporated in the file. The paper speed to record the FEV_1 should be sufficiently fast for measurement of volume to the nearest 0.1 liter. The height of the individual must be

recorded. Studies should not be performed during or soon after an acute respiratory illness. If wheezing is present on auscultation of the chest, studies must be performed following administration of nebulized bronchodilator. A statement should be made as to the individual's ability to understand the directions, and cooperate in performing the test.

3.01 CATEGORY OF IMPAIRMENTS, RESPIRATORY

3.02 *Chronic obstructive airway disease (chronic bronchitis, chronic asthmatic bronchitis or pulmonary emphysema with or without abnormal X-ray findings).* With:

Spirometric evidence of airway obstruction demonstrated by MVV and FEV_1 both equal to, or less than, the values specified in Table I, corresponding to the applicant's height.

TABLE I

Height (inches)	MVV (MBC) equal to or less than	and	FEV_1 equal to or less than
	L./Min.		*L.*
57 or less	32		1.0
58	33		1.0
59	34		1.0
60	35		1.1
61	36		1.1
62	37		1.1
63	38		1.1
64	39		1.2
65	40		1.2
66	41		1.2
67	42		1.3
68	43		1.3
69	44		1.3
70	45		1.4
71	46		1.4
72	47		1.4
73 or more	48		1.4

3.03 *Bronchial asthma, allergic or atopic (not due primarily to heart disease or bronchial infection).* Evaluate under the criteria in § 3.02.

3.04 *Diffuse pulmonary fibrosis (sarcoidosis, Hamman-Rich Syndrome, idiopathic interstitial fibrosis, and similar diffuse fibroses substantiated by chest X-ray or tissue diagnosis. This category does not include cases of bronchitis or emphysema with incidental scarring or scattered parenchymal fibrosis on X-ray).* With:

A. Total vital capacity equal to, or less than, values specified in Table II below corresponding to the applicant's height.

TABLE II

Height (inches)	*V.C. equal to or less than (L.)*
57 or less	1.2
58	1.3
59	1.3
60	1.4
61	1.4
62	1.5
63	1.5
64	1.6
65	1.6
66	1.7
67	1.7
68	1.8
69	1.8
70	1.9
71	1.9
72	2.0
73 or more	2.0

or

B. Diffusing capacity of the lungs for carbon monoxide less than 6 ml./mm. Hg./min. (steady-state methods) or less than 9 ml./mm. Hg./min. (single-breath methods) or less than 30 percent of predicted normal. (All methods-actual values and predicted normal for the method used should be reported); or

C. Arterial oxygen saturation at rest and simultaneously determined arterial pCO_2 equal to, or less than, the values specified in Table III.

TABLE III

Arterial pCO_2 and	*Arterial O_2 saturation equal to or less than (percent)*
30 mm. Hg. or below	93
31 mm. Hg	93
32 mm. Hg	92
33 mm. Hg	92
34 mm. Hg	91
35 mm. Hg	91
36 mm. Hg	90
37 mm. Hg	89
38 mm. Hg	88
39 mm. Hg	88
40 mm. Hg. or above	87

3.05 *Other restrictive ventilatory disorders (e.g., kyphoscoliosis, thoracoplasty, pulmonary resection).* With:

Total vital capacity equal to, or less than, values specified in Table IV corresponding to the applicant's height.

TABLE IV

Height (inches)	*V.C. equal to or less than (L.)*
59 or less	1.0
60	1.1
61	1.1
62	1.1
63	1.1
64	1.2
65	1.2
66	1.2
67	1.3
68	1.3
69	1.3
70 or more	1.4

3.06 *Pneumonconiosis (demonstrated by X-ray evidence).* With:

A. Nodular or focal fibrosis (non-conglomerative). Evaluate under the criteria for chronic obstructive airway disease in § 3.02; or

B. Interstitial or disseminated fibrosis or conglomerative disease. Evaluate under the criteria for pulmonary fibrosis in § 3.04; or

C. Where A and B are mixed or cannot be differentiated—evaluate under the criteria in § 3.02 or § 3.04.

3.07 *Bronchiectasis (demonstrated by radio-opaque material).* With:

A. Episodes of acute bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) occurring at least once every 2 months; or

B. Impairment of pulmonary function due to extensive disease should be evaluated under the criteria for chronic obstructive airway disease in § 3.02 or where extensive fibrosis is evident on chest film, under the criteria for pulmonary fibrosis in § 3.04.

3.08 *Pulmonary tuberculosis (caused by M. tuberculosis or pathogenic atypical mycobacteria).* With:

A. Positive culture (or positive guinea pig inoculation) of specimen obtained more than 3 months following onset of disability; or

B. Serial X-ray evidence of increasing extent of lesion more than 3 months following onset of disability; or

C. Far-advanced disease with cavitation and positive culture (or positive guinea pig inoculation) of specimen obtained at any time following onset of disability; or

D. Impairment of pulmonary function due to extensive disease should be evaluated under the criteria in § 3.02, § 3.04, or § 3.05.

3.09 *Mycotic infection of lung.* With:

A. Culture of specific organisms from sputa and serial X-ray evidence of increasing or decreasing extent of lesion, both occurring more than 3 months following onset of disability; or

B. Culture of specific organisms from sputa at any time following onset of disability and current X-ray evidence of a lesion and episodes of hemoptysis occurring at least once every 2 months; or

C. Impairment of pulmonary function due to extensive disease should be evaluated under the criteria in § 3.02, § 3.04, or § 3.05.

3.10 *Organic loss of speech.* With:

A. Laryngectomy or stenosis of the larynx or paralytic aphonia provided there is inability to produce, by the use of some other anatomical part, speech which can be heard, understood, and sustained; or

B. Central nervous system lesion resulting in severe sensory or motor aphasia paralleling the speech impairment under A above.

3.11 *Cor pulmonale.* With:

A. Congestive heart failure. Evaluate under the criteria in § 4.02; or

B. Right-sided congestive failure as evidenced by peripheral edema and liver enlargement and right ventricular enlargement or outflow tract prominence on X-ray or fluoroscopy.

3.12 *Bronchopleural fistula (persistent).* With empyema.

4.00 CARDIOVASCULAR SYSTEM

A. *Regardless of the cause of heart disease,* disability results from one of two principal consequences of the disease. One is congestive heart failure and the other is ischemia or death of heart muscle. In diseases of the arteries and veins, disability may result from impairment of the vasculature in the central nervous system, eyes, kidneys and extremities. The criteria for evaluating both heart and vascular disorders are expressed in terms of symptoms, signs and laboratory findings.

B. *Congestive heart failure* is considered in the listing under one category regardless of the etiology producing the heart failure (e.g., arteriosclerotic, hypertensive, rheumatic, pulmonary, congenital, or syphilitic heart disease). Congestive heart failure is not considered to be established for the purpose of § 4.02 unless there is evidence at some point in time of signs of vascular congestion such as hepatomegaly, peripheral or pulmonary edema as well as other appropriate findings.

C. *Hypertensive vascular disease* produces disability when it causes complications in one or more of the four main end organs; i.e., the heart, the brain, the kidneys, and the eyes (retinas). This may occur singly or in combination and to varying degrees in the different end organs.

D. *Angina pectoris.* The complaint of chest pain, which is considered to be of cardiac origin, must be associated with abnormal laboratory findings. Thus chest pain, by itself, in the absence of corroborative evidence is insufficient to warrant a finding of disability. Angina pectoris, as used herein, is considered to be substernal pain precipitated by effort and relieved by rest or nitroglycerin, described as crushing, squeezing burning, pressing, or an equivalent thereof. Excluded are sharp, sticking, or ryhthmic pains.

E. *Electrocardiographic evidence* is best presented in the form of the actual tracings. Where an electrocardiogram (ECG) is obtained at the expense of the Administration, the tracing must be incorporated in the file. In those cases where an ECG has not been obtained at the expense of the Administration, an interpretation alone is not sufficient and a detailed description of the ECG abnormalities must be given.

When a resting ECG is normal and an ECG exercise test is indicated, it should be performed according to a technique such as the one described in Master, A.M., and Rosenfeld, I.: "Exercise Electrocardigraphy as an Esti-

mate of Cardiac Function", *Diseases of the Chest*, 51:347, 1967. The criteria in § 4.07 are based upon the Master and Rosenfeld technique are not determinative. However when the Master and Rosenfeld techniques will be used to determine that the criteria in § 4.07 are not met. Negative results from techniques other than the Master and Rosenfeld technique are not determinatve. However when some other standardized ECG exercise test has been performed, adequately described abnormal test results will be considered equivalent to meeting the criteria described in § 4.07. Where the ECG exercise test is obtained at the expense of the Administration, the tracings must be made a part of the file and must be adequately marked as to the lead and duration of time elapsed from performance of the exercise. The report should contain the number of trips indicated, the number of trips actually completed, and the time spent doing the exercise. If the exercise test could not be completed in the required period of time, the circumstances should be described.

F. *Surgical procedures in heart disorders.* The amount of function restored and the time required to effect improvement in an individual treated by heart surgery varies considerably with the nature and extent of the disorder prior to surgery, the type of surgery involved and many other individual factors. If the criteria described for heart disease are met, proposed heart surgery will not militate against a finding of disability. If insufficient time has elapsed to assess whether impairment of requisite severity persists after surgery, severity of the impairment will be determined by preoperative findings.

4.01 CATEGORY OF IMPAIRMENTS, CARDIOVASCULAR SYSTEM

4.02 *Congestive heart failure (see § 4.00B)* with:

A. Cardio-thoracic ratio of 55 percent or greater, or equivalent enlargement of the transverse diameter of the heart, as shown on teleroentgenogram (6-foot film); or

B. Extension of the cardiac shadow (left-ventricle) to the vertebral column on lateral chest roentgenogram and total of S in V_1 or V_2 and R in V_5 or V_6 of 35 mm. or more on ECG; or

C. ECG showing QRS duration less than 0.12 second and R or S mm. or more in V_1 and R/S of 1.0 or more in V_1 and transition zone (decreasing R/S) left of V_1 with one of the following:

1. Enlargement of the left atrium as evidenced by a double shadow on a PA chest roentgenogram; or

2. Distortion of the barium-filled esophagus.

4.03 *Hypertensive vascular disease (apply this section if diastolic pressure are consistently in excess of 100 mm. Hg.).* With:

A. Hypertensive retinopathy evidenced by hemorrhages, or cotton wool patches, with reduction in the caliber of the arterioles and arteriovenous crossing defects (or papilledema); or

B. Impaired renal function as described under the criteria in § 6.02; or

C. Cerebrovascular damages as described under the critera in § 11.04; or

D. Congestive heart failure as described under the criteria in § 4.02; or

E. Angina pectoris as described under the criteria in § 4.06, § 4.07, or § 4.08.

4.04 *Myocardial infarction associated with consistent ECG abnormalities (or consistent abnormalities of serum enzymes).* And one of the following:

A. Chest discomfort on effort, relieved by rest or nitroglycerin; or

B. Another documented myocardinal infarction within 6 months following the previous infarction.

4.05 *Persistent heart block or recurrent arrhythmia, as evidenced by ECG (in absence of digitalis) with cardiac syncope.*

4.06 *Angina pectoris (as defined in § 4.00D), associated with resting ECG abnormalities, in the absence of digitalis (in the presence of digitalis, the predigitalis ECG should be evaluated).* Showing one of the following:

A. Depression of the ST segment to more than 0.5 mm. in any of leads I, II, aVL, aVI, V_1 to V_6; or

B. Elevation of ST segment to 2 mm. or more in any of leads I, II, III, V_4, V_5, or V_6; or

C. Inversion of T-wave to 5.0 mm. or more in any 2 leads except leads III, aVR, V_1 and and V_2; or

D. Inversion of T-wave to 1.0 mm. or more in any of leads I, II, aVL, V_5, to V_6, AND R-wave of 5.0 mm. or more in lead aVL and R-wave greater than S-wave in lead aVF; or

E. Second or third degree heart block; or

F. Left bundle branch block as evidenced by QRS duration of 0.12 second or more in leads I, II, or III and R peak duration 0.06 second or more (in absence of myocardial infarction) in leads I, AVL, V_5, or V_6.

4.07 *Angina pectoris (as defined in § 4.00D) associated with standardized ECG exercise test abnormalities (see § 4.00E) in the absence of digitalis (in the presence of digitalis, the predigitalis ECG should be evaluated),* showing one of the following:

A. Development of depression of ST segment to more than 0.5 mm. which lasts for at least 0.12 seconds and appears in at least 2 consecutive complexes in any lead; or

B. Development of bundle branch block.

4.08 *Chest discomfort on effort relieved by rest or nitroglycerin.* With:

A. Obstruction or narrowing of coronary vessels observed on angiography obtained independent of social security disability evaluation; or

B. Heart enlargement as described under the criteria in § 4.02.

4.09 *Rheumatic or syphilitic heart disease.* With:

A. Congestive heart failure as described under the criteria in § 4.02; or

B. Chest discomfort on effort relieved by rest or nitroglycerin as described under the criteria in § 4.08; or

C. Chest discomfort on effort, relieved by rest or nitroglycerin, and one of the ECG abnormalities described under the criteria in § 4.06 or § 4.07; or

D. Heart block or recurrent arrhythmias as described under the criteria in § 4.05; or

E. Cerebrovascular damage as described under the criteria in § 11.04.

4.10 *Cor pulmonale.* With:

A. Heart enlargement as described under the criteria in § 4.02; or

B. Right sided congestive failure as evidenced by peripheral edema and liver enlargement and right ventricular enlargement, or outflow tract prominence, on X-ray or fluoroscopy.

4.11 *Aneurysm of aorta or branches (demonstrated by X-ray evidence).* With:

A. Congestive heart failure as described under the criteria in § 4.02; or

B. Chest discomfort (with or without effort); or

C. Repeated bleeding due to aneurysmal erosion; or

D. Syncope.

4.12 *Chronic venous insufficiency, lower extremity.* With chronic obstruction of the deep venous return, superficial varicosities, recurrent ulceration, and extensive brawny edema.

4.13 *Arteriosclerosis obliterans or thrombo-angiitis obliterans.* With:

A. Intermittent claudication with absence of peripheral arterial pulsations below the femoral artery or failure of visualization of a major peripheral artery on arteriogram; or

B. Amputation at or above the tarsal region due to peripheral vascular disease.

5.00 DIGESTIVE SYSTEM

A. *Diseases and disorders of the digestive system* resulting in disability usually do so because of interference with nutrition, multiple recurrent inflammatory lesions, or complications of disease; such as, fistulae, abscesses, or recurrent obstruction.

B. *Malnutrition or weight loss from gastrointestinal disorders.* When the primary disorder of the digestive tract has been established (e.g., entero-colitis, chronic pancreatitis, post gastrointestinal resection, etc.), the resultant interference with nutrition will be considered under the criteria in § 5.08. This will apply whether the weight loss is due to a primary or secondary malabsorption or malassimilation syndrome or due to decreased caloric intake. However, weight loss not due to disease of the divestive tract but associated with psychiatric disorders should be evaluated under the appropriate listing for the underlying psychiatric disorder.

C. A colostomy or ileostomy does not impose marked restriction of activity if the individual is able to maintain adequate nutrition and function of the stoma.

5.01 CATEGORY OF IMPAIRMENTS, DIGESTIVE SYSTEM

5.02 *Loss of tongue (whole or part).* With:

A. Weight loss or malnutrition as described under the criteria in § 5.08; or

B. Inability to communicate by speech.

5.03 *Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray or endoscopy).* With weight loss or malnutrition as described under the criteria in § 5.08.

5.04 *Peptic ulcer including residuals or complications (demonstrated by X-ray).* With:

A. Postoperative recurrent ulceration; or

B. Fistula formation; or

C. Recurrent obstruction demonstrated by X-ray; or

D. Weight loss or malnutrition as described under the criteria in § 5.08.

5.05 *Cirrhosis of liver.* With:

A. Ascites, not attributable to other causes, which has been demonstrated by abdominal paracentesis or is associated with serum albumin of 3.0 Gm./100 ml. or less; or

B. Serum bilirubin of 2.5 mg./100 ml. or greater or bile in urine (either finding on repeated examinations); or

C. Esophageal varices, demonstrated by X-ray or endoscopy, with a documented history of bleeding attributed to these varices or performance of either a shunt operation or application of varices; or

D. Hepatic coma documented by findings from hospital records.

5.06 *Ulcerative colitis (demonstrated by*

5.06 *Ulcerative colitis (demonstrated by endoscopy or barium enema study).* With:

A. Recurrent bloody stools on repeated examinations and complicated by systemic manifestations; e.g., arthritis, iritis, recurrent fever, or jaundice; or

B. Bowel perforation with abscess or fistula formation; or

C. Recurrent enteritis after total colectomy; or

D. Weight loss or malnutrition as described under the criteria in § 5.08.

5.07 *Regional enteritis (demonstrated by operative findings or small bowel study).* With:

A. Partial intestinal obstruction; or

B. Abscess or fistula formation; or

C. Weight loss or malnutrition as described under the criteria in § 5.08.

5.08 *Malnutrition (caused by a gastrointestinal impairment resulting from mal-*

absorption, malassimilation, or decreased caloric intake). With:

A. Weight equal to or less than the values specified in Tables I or II; or

B. Weight greater than the values specified in Tables I or II but equal to or less than the values specified in Tables III or IV and one of the following abnormal test findings:

1. Fat in stool of 7 Gm. or greater per 24-hour stool specimen or decreased absorption of radioactive iodine-labeled fat; or

2. Nitrogen in stool of 3 Gm. or greater per 24-hour stool specimen or decreased absorption of radioactive labeled protein; or

3. Abnormally low D-xylose tolerance test in absence of impaired renal function; or

4. Serum carotene of 45 mcg./100 ml. or less; or

5. Serum calcium of 8.5 mg./100 ml. or less; or

6. Serum albumin of 3.0 Gm./100 ml. or less; or

7. Hematocrit of 34 percent or below in males or 30 percent or below in females.

Tables of weight reflecting malnutrition scaled according to height and sex—To be used only in connection with § 5.08.

TABLE I—MEN

Height (in.) [1]	Weight (lbs.)
61	90
62	92
63	94
64	97
65	99
66	102
67	106
68	109
69	112
70	115
71	118
72	122
73	125
74	128
75	131
76	134

TABLE II—WOMEN

Height (in.) [1]	Weight (lbs.)
58	77
59	79
60	82
61	84
62	86
63	89
64	91
65	94
66	98
67	101
68	105
69	107
70	110
71	114
72	117
73	120

TABLE III—MEN

Height (in.) [1]	Weight (lbs.)
61	95
62	98
63	100
64	103
65	106
66	109
67	112
68	116
69	119
70	122
71	126
72	129
73	133
74	136
75	139
76	143

TABLE IV—WOMEN

Height (in.) [1]	Weight (lbs.)
58	82
59	84
60	87
61	89
62	92
63	94
64	97
65	100
66	104
67	107
68	111
69	114
70	117
71	121
72	124
73	128

[1] Height measured without shoes.

6.00 GENITO-URINARY SYSTEM

A. *Cardiac or other complications* associated with renal disorders may be evaluated according to the appropriate body system listing.

B. *Permanent urinary diversion.* It may be necessary to permanently alter the normal course of outflow of urine when disease or trauma destroys portions of the urinary tract. In these cases, evaluation should take into consideration the underlying medical condition as well as the method used in establishing urinary diversion. Significant complications that might result after permanent urinary diversion are in the area of renal impairment such as progressive hydronephrosis.

6.01 CATEGORY OF IMPAIRMENTS, GENITO-URINARY SYSTEM

6.02 *Impairment of renal function, due to any cause (e.g., hypertensive vascular disease, nephritis, nephrolithiasis, polycystic disease, ureteral obstruction, etc.).* With repeated abnormal renal function tests showing:

A. BUN of 30 mg./100 ml. or greater (or equivalent elevation of NPN, blood urea, or creatinine); or

B. Creatinine clearance equal to or less than 60 liters/24 hours (42 ml./min.).

6.03 *Removal or functional loss of one kidney.* Evaluate existing disease in the remaining kidney under the criteria in § 6.02.

6.04 *Permanent urinary diversion (e.g., suprapubic cystostomy (uretero-intestinal diversion, cutaneous ureterostomy, etc.).* With progressive bilateral hydronephrosis.

6.05 *Tuberculosis of the genito-urinary tract.* With:

A. Positive culture of M. tuberculosis more than 3 months following onset of disability; or

B. Increasing extent of lesion on cystoscopy or serial pyelography more than 3 months following onset of disability.

7.00 HEMIC AND LYMPHATIC SYSTEM

A. *Cause of disability.* Disability based upon anemia results from inadequate oxygenation of tissues caused by a reduction of the oxygen-carrying capacity of the blood. Hematologic defects can also result in defective hemostatic mechanisms with hemorrhage into such functional components as the brain or major joints or thrombosis of the vascular supply of vital organs. Formation of tumors may cause compression of vital structures or erosion of bone. Deposits of breakdown products of the blood cells may cause impairment of hepatic or renal function, joint deformity, or formation of cholelithiasis with subsequent bile duct obstruction. Where involvment of other organ systems has occurred as a result of hematologic disease, these impairments should be evaluated under the criteria for the appropriate sections.

Red blood cells may be replaced by blood transfusion, but in some diseases this elevation of hematocrit is only transient. A contemplated splenectomy should not, in itself, militate against a finding of disability expected to last at least 12 months.

The level of laboratory findings cited in the categories; i.e., hematocrit, serum bilirubin, reticulocyte and blood platelet count, should reflect the values reported on more than one examination. A single laboratory finding will not suffice to meet the level described.

7.01 CATEGORY OF IMPAIRMENTS, HEMIC AND LYMPHATIC SYSTEM

7.02 *Chronic anemia (manifested by hematocrit of 30 percent or less).* Evaluate the resulting impairment or the primary disorder under the criteria for the affected body system.

7.03 *Hemolytic anemia (due to any cause).* Manifested by hematocrit of 30 percent or less with:

A. Serum bilirubin of 1.5 mg/100 ml. or greater; or

B. Reticulocyte count of 4 percent or greater.

7.04 *Paroxysmal nocturnal hemoglobinuria.* With hematocrit of 30 percent or less and persistent hemolysis or recurrent crisis.

7.05 *Hemoglobinopathies (e.g., sickle cell disease, thalassemia).* With hematocrit of 30 percent or less and at least one major hemolytic crisis within the 6 months following the onset of disability with a further recorded drop in hematocrit.

7.06 *Purpuras (e.g., idiopathic thrombocytopenic purpuras).* With:

A. Persistent purpura and at least one major spontaneous hemorrhage from a body orifice within the 6 months following the onset of disability; or

B. Blood platelet count of 40,000/cu. mm. or less.

7.07 *Hereditary telangiectasia.* With frequent major hemorrhages from body orifices.

7.08 *Coagulation defects (e.g., deficiency of antihemophilic factor (AHF), plasma thromboplastic component (PTC), plasma thromboplastin antecedent (PTA) or of fibrinogen).* With frequent episodes of spontaneous hemorrhage and hemarthrosis of one major joint with deformity.

7.09 *Polycythemia (secondary and primary manifested by hematocrit of 55 percent or more in males or 50 percent or more in females).* Evaluate the resulting impairment under the criteria for the affected body system.

7.10 *Chronic bone marrow failure (aplastic anemia, myelofibrosis, myeloid metaplasia, myelopthisic anemia, etc.).* With:

A. Persistant hematocrit 30 percent or less; or

B. Recurrent hemorrhagic manifestations; or

C. Blood platelet count of 40,000/cu. mm. or less; or

D. Spleen enlarged to iliac crest.

7.11 *Acute leukemias.* With appropriate findings on peripheral blood smear or bone marrow examination.

7.12 *Chronic leukemias.* With:

A. Persistent hematocrit of 30 percent or less; or

B. Recurrent hemorrhagic manifestations; or

C. Blood platelet count of 40,000/cu. mm. or less; or

D. Massive organ enlargement (e.g., nodes, spleen, or liver) unreduced by prescribed therapy; or

E. Recurrent fever (100° F. or above orally).

7.13 *Lymphomas and multiple myeloma.* Evaluate under the criteria for neoplastic diseases in § 13.00.

7.14 *Macroglobulinemia (diagnosis confirmed by ultracentrifugation or immunoelectrophoresis).* With frequent hemorrhages from body orifices.

8.00 Skin

Conditions of the skin, including disfiguring scars and repugnant skin disease, will not ordinarily be found in themselves to be disabling. Some skin conditions, such as the ulcerations and eczemas associated with severe varicose veins, or the disfiguring and repugnant skin lesions of certain types of dermatitis, are significant as manifestations of the underlying condition. Large areas of skin surface are sometimes destroyed by severe burns with consequent scarring and disfigurement. Eventually, factors of contractures and deformities play a significant role in determining functional capacities, and these, in turn, should be evaluated under the criteria in the Musculoskeletal System. (§ 1.00ff.)

8.01 CATEGORY OF IMPAIRMENTS, THE SKIN

8.02 *Exfoliative dermatitis (generalized).* In grave and protractive types.

8.03 *Pemphigus.* Evaluate under the criteria in § 8.02.

9.00 Endocrine System

A. *Cause of disability.* Disability is caused by overproduction or underproduction of hormones resulting in strctural and/or functional changes in the body. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

9.01 CATEGORY OF IMPAIRMENTS, ENDOCRINE

9.02 *Thyroid disorders.* With:

A. Progressive exophthalmos as measured by exophthalmometry; or

B. Evaluate the resulting impairment under the criteria for the affected body system.

9.03 *Hyperparathyroidism.* With:

A. Generalized decalcification of bone on X-ray study and elevation of plasma calcium to 11 mg./100 ml. or greater; or

B. Evaluate the resulting impairment according to the listing under the affected body system.

9.04 *Hypoparathyroidism.* With:

A. Severe recurrent tetany; or

B. Recurrent generalized convulsions; or

C. Evaluate lenticular cataracts under the criteria in § 2.00ff.

9.05 *Neurohypophyseal insufficiency (diabetes insipidus).* With persistent urine specific gravity of 1.005 or below and dehydration.

9.06 *Hyperfunction of the adrenal cortex.* Evaluate the resulting impairment under the criteria for the affected body system.

9.07 *Adrenal cortical insufficiency (Addison's disease).* With recurrent episodes of circulatory collapse manifested by hypotensive episodes.

9.08 *Diabetes mellitus.* A. When diabetes exists with other physical or mental impairments, evaluate under the criteria for the appropriate body systems; or

B. Diabetes with one of the following (not covered under existing body system listing):

1. Neuropathy with moderate motor deficit in two extremities; or

2. Acidosis occurring at least on the average of once every two months, documented by appropriate blood chemical tests (pH or pCO_2 or bicarbonate levels); or

3. Amputation at, or above, the tarsal region due to diabetic necrosis or peripheral vascular disease; or

4. Opthamologic findings of:

a. Retinitis proliferans; or

b. Rubeosis iridis; or

c. Venous distention and capillary pattern distortion with hemorrhages or exudates.

10.00 Multiple Body Systems

Introduction. The impairments included in this section usually involve more than a single body system. For the categories of miliary tuberculosis and tuberculous adenitis, the existence of tubercle bacilli must be established in accordance with the criteria in § 3.00B.

10.01 CATEGORY OF IMPAIRMENTS, MULTIPLE BODY SYSTEMS

10.02 *Hansen's disease (leprosy).* As active disease or consider as "under a disability" while hospitalized.

10.03 *Polyarteritis or periateritis nodosa (established by biopsy).* With signs of generalized arterial involvement.

10.04 *Disseminated lupus erythematosus (established by a positive LE preparation or biopsy).* With frequent exacerbations demonstrating involvement of renal or cardiac or pulmonary or gastrointestinal or central nervous systems.

10.05 *Scleroderma or progressive systemic sclerosis (the diffuse or generalized form).* With:

A. Advanced limitation of use of hands due to sclerodactylia or limitation in other joints; or

B. Visceral manifestations of digestive, cardiac, or pulmonary impairment.

10.06 *Miliary tuberculosis.* With:

A. Demonstration of tubercle bacilli—more than 3 months following the onset of disability; or

B. Evaluate the residual impairment under the criteria for the affected body system.

10.07 *Tuberculous adenitis* With:

A. Demonstration of tubercle bacilli more than 3 months following the onset of disability; or

B. Other evidence of increasing extent of lesion more than 3 months following the onset of disability.

11.00 Neurological

A. *Epilepsy.* Epilepsy must be substantiated by at least one detailed description of a typical seizure, preferably one observed and reported by a physician. Testimony of reliable lay persons may be acceptable for description of seizures only if professional observation is not available. Documentation of epilepsy should include an electroencephalogram (EEG). The severity of the impairment will be determined according to the frequency, duration, and sequelae of seizures. Where adequate seizure control is obtained only with unusually large doses of medication, consideration will be given to any impairment resulting from the side effects of this medication.

B. *Brain tumors.* The diagnosis in malignant brain tumor should be established under the criteria described in § 13.00B, for Neoplastic Diseases.

11.01 CATEGORY OF IMPAIRMENTS, NEUROLOGICAL

11.02 *Epilepsy—major motor seizures (grand mal or psychomotor) substantiated by EEG, occurring more frequently than once a month in spite of prescribed treatment.* With:

A. Diurnal episodes (loss of consciousness and convulsive seizure); or

B. Nocturnal episodes which show residuals interfering with activity during the day.

11.03 *Epilepsy—minor motor seizures (petit mal or psychomotor) substantiated by EEG, occurring more frequently than once weekly in spite of prescribed treatment.* With:

A. Alteration of awareness or loss of consciousness; and

B. Transient postical manifestations of unconventional or antisocial behavior.

11.04 *Cerebrovascular accident.* With one of the following more than 4 months Post-OVA:

A. Sensory or motor asphasia resulting in ineffective speech or communication; or

B. Pseudobulbar palsy; or

C. Moderate motor deficit in two extremities; or

D. Ataxia affecting two extremities substantiated by appropriate cerebellar signs or proprioceptive loss.

11.05 *Brain tumors.* A. Malignant gliomas (astrocytoma—Grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, or primary sarcoma; or

B. Evaluate astrocytoma (Grades I and II), pituitary tumors, oligodendroglioma, ependymoma, clivus chordoma, and benign tumors under the criteria in § 11.02, § 11.03, or § 11.-04A, C or D.

11.06 *Paralysis agitans (Parkinson's disease).* With tremor, rigidity, and impairment of mobility (e.g., festination).

11.07 *Cerebral palsy.* With:

A. IQ of 69 or less; or

B. Abnormal behavior patterns, such as destructiveness or emotional instability; or

C. Significant interference in communication due to speech, hearing, or visual defect; or

D. Moderate motor deficit in two extremities.

11.08 *Spinal cord lesions, due to any cause. With modeate motor loss in two* extremities.

11.09 *Multiple sclerosis.* With:

A. Moderate motor deficits in two extremities; or

B. Atayia substantiated by approprite cerebellar signs or proprioceptive loss.

11.10 *Amyotrophic lateral sclerosis or syringomyelia.* With:

A. Bulbar signs; or

B. Moderate motor (or sensory, if applicable) deficit in two extremities.

11.11 *Anterio poliomyelitis.* With:

A. Flexion contractures as described under the criteria in § 1.09; or

B. Respiratory distress or dysphagia; or

C. Moderate motor weakness in two extremities.

11.12 *Myasthenia gravis.* With:

A. Difficulty in speaking or swallowing while on prescribed therapy; or

B. Motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed therapy.

11.13 *Muscular dystrophy.* With:

A. Waddling or incoordinate gait; or

B. Flexion deformities of both lower extremities; or

C. Weakness or paralysis of muscles of shoulder girdle or of neck, with abduction of both arms at shoulder restricted to less than 90 degrees.

11.14 *Peripheral neuropathies.* With moderate motor deficit in two extremities.

11.15 *Tables dorsalis.* With:

A. Tabetic crises occurring more frequently than once monthly; or

B. Unsteady, broad-based, or ataxic gait substantiated by appropriate posterior column signs; or

C. Charcot joint as described under the criteria in § 1.03.

11.16 *Subacute combined cord degeneration (pernicious anemia).* With:

A. Moderate motor deficit in two extremities; or

B. Unsteady, broad-based, or ataxic gait substantiated by appropriate posterior column signs.

11.17 *Degenerative diseases (Huntington's chorea, Friedreich's ataxia, spino-cerebellar degenerations).*

12.00 MENTAL DISORDERS

Introduction. For the purpose of the social security program, mental disorders will be considered in three group entities: organic brain syndromes, functional disorders, and mental deficiency.

DISCUSSION OF MENTAL DISORDERS

A. *Organic brain syndromes* are disorders caused by, or associated with, impairment of brain tissue.

Acute brain syndromes are mentioned for explanatory purposes only since their duration is too short to assume adjudicative significance. They are temporary and reversible conditions with favorable prognosis and no significant residuals. They are short-lived and self-limited. Occasionally, an acute brain syndrome may progress into a chronic brain syndrome.

Chronic brain syndromes result from persistent, more or less irreversible diffuse impairment of cerebral tissue function. They are usually permanent and may be progressive. They may be accompanied by psychotic or neurotic reactions superimposed on the organic brain pathology. The degree of impairment may range from mild to severe.

The individual's personal appearance and behavior at the time of the examination, his daily activities, interests, and habits generally reflect the severity of the impairment and are, therefore, very important in the evaluation process.

B. *Functional mental disorders* are characterized by demonstrable mental abnormalities without demonstrable structural changes in the brain tissue.

Psychotic disorders. Mood disorders (involutional psychotic, manic-depressive, psychotic depressive reactions) and thought disorders (schizophrenic and paranoid reactions) are characterized by varying degrees of personality disorganization and accompanied by a corresponding degree of inability to maintain contact with reality (e.g., hallucinations, delusions).

Nonpsychotic disorders (psychophysiologic, psychoneurotic and personality disorders).

Psychophysiologic autonomic and visceral disorders (e.g., cardiovascular, gastrointestinal, genitourinary, musculoskeletal, respiratory). In these disorders, the normal psysiological expression of emotions is exaggerated by chronic emotional tensions, eventually leading to a disruption of the autonomic regulatory system, resulting in various visceral disorders. If the condition persists, it may lead to demonstrable structural changes (e.g., peptic ulcer, bronchial asthma, dermatitis).

Psychoneurotic disorders (anxiety reaction, neurotic-depressive reaction, conversion reaction, dissociative reaction, obsessive-comgross falsifications of reality such as observed pusive reaction, phobias). There are no in the psychoses in the form of hallucinations or delusions. Psychoneuroses are characterized by reactions to deep-seated conflicts and are classified by the defense mechanisms the individual employs to stave off the threat of emotional decompensation (e.g., anxiety, depression, conversion, obsessive-compulsive or phobic mechanisms). Anxiety or depression occurring in connection with overwhelming external situations (i.e., situational reactions) are self-limited, and the symptoms generally recede when the situational stress diminishes.

Personality disorders (inadequate, schizoid, cyclothymic, paranoid personalities, emotional instability, passive-aggressive and passive-dependent behavior; compulsive personality; antisocial behavior, sexual deviations, addictions). These disorders or defects in personality structure are often characterized by lifelong patterns of inadequate or socially unacceptable behavior.

C. *Mental deficiency* denotes a lifelong disorder characterized by below-average intellectual endowment as measured by standard intelligence (IQ) tests and associated with impairment in one or more of the following areas: learning, maturation, and social adjustment.

The following paragraphs discuss evidence required in cases involving mental deficiency:

1. In mental deficiency, the degree of impairment should be determined primarily on the basis of the IQ and the medical report. Intelligence tests should be administered and interpreted by a qualified psychologist or psychiatrist using standardized intelligence tests such as the Wechsler Adult Intelligence Scale (WAIS). In special circumstances, nonverbal performance tests, such as the Raven Progressive Matrices or the Arthur Point Scale, may be substituted. However, identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual function. Therefore, it may be necessary to convert the IQ to the percentile rank of the general population in order to determine the actual degree of impairment reflected by the IQ score. In communities where a qualified psychologist or psychiatrist is not readily available, an intelligence test administered by a vocational rehabilitation counselor or a specially trained person associated with a local school system may be accepted, particularly when other findings are also consistent with extremely low intellectual capacity.

2. In cases where, in the opinion of the psychological examiner, the nature of the individual's performance is such that testing, as described above, is precluded or cannot otherwise be obtained, medical reports specifically describing the level of intellectual, social, and physical function should be obtained. Actual observations by district office or State agency personnel, reports from educational institutions, information furnished by public welfare agencies or other reliable, objective sources should be considered as additional evidence.

D. *Documentation.* The severity of a mental psychiatric disorder should be evaluated on the basis of psychiatrists' reports, hospital reports, psychologists' reports and descriptions of daily activities.

Confinement in an institution does not establish that an impairment is severe. Also, release from an institution does not establish improvement. The severity and duration of the impairment is determined by the medical evidence.

In some cases, the results of standard psychological tests, such as the Wechsler Adult Intelligence Scale (WAIS) and the Minnesota Multiphasic Personality Inventory (MMPI), may be of considerable value in making a differential diagnosis and in establishing the severity of the impairment. To provide full documentation, the psychological report should include key data on which the report was based, such as MMPI profiles, WAIS subtest scores, etc.

12.01 CATEGORY OF IMPAIRMENTS, MENTAL

12.02 *Chronic brain syndromes.* Documented by mental status examination (supported, if necessary, by the results of appropriate, standardized psychological tests) establishing deterioration in intellectual functioning and manifested by marked restriction of daily activities and constriction of interests and deterioration in personal habits and seriously impaired ability to relate to other people and persistence of one of the following:

A. Marked memory defect for recent events; or

B. Impoverished, slowed, perseverative thinking, with confusion or disorientation; or

C. Labile, shallow, or coarse affect.

12.03 *Functional psychotic disorders (mood disorders, schizophrenic reactions, paranoid reactions).* Manifested by marked restrictions of daily activities and constriction of interests and seriously impaired ability to relate to other people, and persistence of one of the following:

A. Depression (or elation); or

B. Agitation; or

C. Psychomotor disturbances; or

D. Hallucinations or delusions; or

E. Autistic or other regressive behavior; or

F. Inappropriateness of affect; or

G. Illogical association of ideas.

12.04 *Functional nonpsychotic disorders (psychophysiologic, psychoneurotic and personality disorders, drug addiction and alcoholism).* Manifested by marked restriction of daily activities and constriction of interests and deterioration in personal habits and seriously impaired ability to relate to other people and persistence of one of the following:

A. Demonstrable structural changes mediated through psychophysiological channels (e.g., duodenal ulcer); or

B. Recurrent and persistent periods of anxiety, with tension, apprehension, and interference with concentration and memory; or

C. Persistent depressive affect with insomnia, loss of weight, and suicidal ideation; or

D. Phobic or obsessive ruminations with inappropriate, bizarre or disruptive behavior; or

E. Compulsive, ritualistic behavior; or

F. Persistent functional disturbance of vision, speech, hearing or use of a limb with demonstrable structural or trophic changes; or

G. Long-lasting, habitual, and inappropriate patterns of behavior manifested by one of the following:

1. Seclusiveness and autistic thinking; or

2. Antisocial or amoral behavior (including pathologic sexuality) manifested by: (a) inability to learn from experience and inability to conform with accepted social standards, leading to repeated conflicts with society or authority and (b) by psychopathology documented by mental status examination and the results of appropriate, standardized psychological tests; or

3. Pathologically inappropriate suspiciousness or hostility manifested by psychopathology documented by mental status examination and the results of appropriate, standardized psychological tests.

12.05 *Mental deficiency.* As manifested by:

A. Severe mental and social incapacity as evidenced by marked dependence upon others for personal needs (e.g., bathing, washing, dressing, etc.) and inability to understand the spoken word and inability to avoid physical danger (fire, cars, etc.) and inability to follow simple directions and inability to read, write, and perform simple calculations; or

B. IQ of 49 or less (see § 12.00C1); or

C. IQ of 50 to 69, inclusive (see § 12.00C1) and:

1. Inability to perform routine, repetitive tasks; or

2. A physical or other mental impairment resulting in restriction of function.

13.00 NEOPLASTIC DISEASES—MALIGNANT

A. *Introduction.* The determination of the level of severity resulting from cancer is made from a consideration of the site of the lesion, the histogenesis of the tumor, the extent of involvement, the apparent adequacy and response to therapy (surgery, irradiation, hormones, chemotherapy), and the magnitude of the posttherapeutic residuals.

Significant posttherapeutic residuals, not specifically included in the category of impairments for malignant neoplasms, should be evaluated according to the affected body system.

B. *Documentation.* The diagnosis of cancer should be established on the basis of symptoms, signs and laboratory findings. The site of the primary, recurrent and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen. The evidence should include also a recent report directed especially at revealing evidence of local or regional recurrence, soft part of skeletal metastasis and significant posttherapeutic residuals.

C. *Evaluation.* Usually, when the cancer consists only of a local lesion with metastasis to the regional lymph nodes which apparently has been completely excised, imminent recurrence or metastasis is not anticipated. Exceptions are noted in sections 13.03, 13.05B, 13.09D, 13.10A, 13.11A–F, 13.17C, 13.22A–B, and 13.24A.

Local or regional recurrence after radical surgery or pathological evidence of incomplete excision by radical surgery are to be equated with unresectable lesions and, for the purpose of our program may be evaluated as "inoperable." These situations are usually followed by severe impairment within 6 months to 1 year. A severe impairment may usually be determined to exist, because the curtailment of activities is imminent.

Local or regional recurrence after incomplete excision of a localized, completely resectable tumor is not to be equated with recurrence after radical surgery.

When a cancer has metastasized beyond the regional lymph nodes the impairment is severe and usually terminates fatally within a short time despite palliative therapy. Exceptions are partially hormone-dependent tumors; isotope-sensitive metastases; or remote retastases which have not been apparent for 5 or more years.

13.01 CATEGORY OF IMPAIRMENTS, NEOPLASTIC DISEASES—MALIGNANT

13.02 *Epidermoid carcinoma (including lympho-epithelioma of base of tongue, pharynx and tonsil).* A. Inoperable or recurrent after radical surgery; or

B. Remote metastasis.

13.03 *Sarcoma of skin—Angiosarcoma or mycosis fungoides with metatastasis to regional lymph nodes or beyond.*

13.04 *Sarcoma of soft parts.* A. Not controlled by prescribed therapy; or

B. Cellular sarcoma with remote metastasis.

13.05 *Malignant melanoma.* A. Recurrent after excision; or

B. With metastasis to adjacent skin or regional lymph nodes or elsewhere.

13.06 *Lymph nodes.* A. Hodgkins disease, lymphosarcoma or giant follicular lymphoblastoma—not controlled by prescribed therapy or with evidence of mediastinal, pelvic, abdominal, retroperitoneal or skeletal extension from peripheral lymph nodes; or

B. Metastasis from distant carcinoma; or

C. Lymph nodes site of unresectable carcinoma.

13.07 *Salivary glands—carcinoma or sarcoma with metastasis beyond the regional lymph nodes.*

13.08 *Thyroid gland—carcinoma with metastasis beyond the regional lymph nodes not controlled by prescribed therapy.*

13.09 *Breast.* A. Inoperable carcinoma including acute (inflammatory) carcinoma; or

B. Recurrent carcinoma; or

C. Remote metastasis from breast carcinoma (Bilateral breast carcinoma, synchronous or metachronous, is usually primary in each breast.); or

D. Sarcoma with metastasis anywhere.

13.10 *Skeletal system. (exclusive of the jaw).* A. Osteogenic sarcoma, Edwin's tumor, reticulum cell sarcoma with evidence of metastasis; or

B. Multiple or diffuse myeloma; or

C. Metastatic carcinoma to bone (except those originating in thyroid or prostate, evaluate under the criteria in § 13.08 or § 13.23).

13.11 *Mandible, maxilla, orbit, or temporal fossa.* A. Sarcoma of any type with metastasis; or

B. Carcinoma of the antrum with extension into the orbit, or ethmoid of sphenoid sinus, or with regional or remote metastasis; or

C. Orbital tumors with intracranial extension; or

D. Tumors of the temporal fossa with perforation of skull and meningeal involvement; or

E. Adamantinoma with orbital or intracranial infiltration; or

F. Tumors of Rathke's pouch with infiltration of the base of the skull or bilateral metastasis to the cervical lymph nodes or remote metastasis.

13.12 *Brain or spinal cord.* A. Metastatic carcinoma to brain or spinal cord.

B. Evaluate other tumors under the criteria described in § 11.05 and § 11.08.

13.13 *Lungs—bronchogenic carcinoma or adenocarcinoma.* A. Unresectable; or

B. Recurrent after resection; or

C. Incomplete excision; or

D. Infiltration of the chest wall or preoperative pleural effusion or remote metastasis; or

E. Metastatic carcinoma or sarcoma to the lungs (except metastasis from thyroid, evaluate under the criteria in § 13.08).

13.14 *Pleura or mediastinum.* A. Pleural mesothelioma, with pleural effusion or remote metastasis; or

B. All primary or metastatic tumors of the anterior mediastinum (except thyroid or parathyroid tumors and benign thymoma and primary Hodgkins disease); or

C. Metastatic carcinoma or sarcoma to the pleura or mediastinum (except metastasis from thyroid, evaluate under the criteria in § 13.08).

13.15 *Abdomen.* A. Generalized carcinomatosis; or

B. Retroperitoneal cellular sarcoma; or

C. Unresectable benign fibromyxoma of nerve sheath.

13.16 *Esophagus or stomach.* A. Carcinoma or sarcoma of the upper two-thirds of the esophagus; or

B. Carcinoma or sarcoma, of the distal one-third of the esophagus with metastasis beyond the regional lymph nodes; or

C. Carcinoma of the stomach with either metastasis beyond the regional lypmh nodes or extension into the colon, pancreas or liver; or

D. Inoperable carcinoma; or

E. Recurrence or metastasis after resection; or

F. Multiple sarcomas.

13.17 *Small intestine.* A. Carcinoma or carsinoid tumor with metastasis beyond the regional lymph nodes; or

B. Multiple sarcomas; or

C. Sarcoma with metastasis.

13.18 *Large intestine (from ileocecal valve to and including anal canal)—carcinoma or sarcoma.* A. Unresectable; or

B. Metastasis beyond the regional lymph nodes; or

C. Recurrence, or remote metastasis, after resection.

13.19 *Liver or Gallbladder.* A. Primary or metastatic carcinoma, carcinoid tumor or sarcoma of the liver; or

B. Carcinoma of the gallbladder or bile duct when unresectable or there is direct extension into the liver.

13.20 *Pancreas.* Carcinoma in any location.

13.21 *Kidneys, adrenal glands, or ureters—carcinoma.* A. Unresectable or with metastasis; or

B. Metastatic carcinoma to a kidney, adrenal gland, or ureter.

13.22 *Urinary bladder—carcinoma.* With:

A. Infiltration beyond the bladder wall; or

B. Metastasis; or

C. Unresectable; or

D. Recurrence after total cystectomy; or

E. Evaluate urinary diversion after total cystectomy under the criteria in § 6.04.

13.23 *Prostate gland.* Carcinoma not controlled by prescribed therapy.

13.24 *Testicles.* A. Choriocarcinoma with metastasis even to regional lymph nodes; or

B. Other malignant tumors with metastasis beyond the para-aortic lymph nodes or when metastasis to the para-aortic lymph nodes are unresectable or not controlled by prescribed therapy.

13.25 *Uterus—carcinoma or sarcoma (fundus orcervix).* A. Inoperable and not controlled by prescribed therapy; or

B. Recurrent, after total hysterectomy; or

C. Total pelvic exenteration.

13.26 *Ovary or fallopian tubes—all malignant primary or recurrent tumors.* With:

A. Ascites; or

B. Unresectable infiltration; or

C. Unresectable metastasis to omentum or elsewhere in the peritoneal cavity; or

D. Remote metastasis; or

E. All metastatic tumors to ovary or Fallopian tubes.

13.27 *Leukemia.* Evaluate under the criteria in § 7.00ff, Hemic and Lymphatic System.

[FR Doc.75-19647 Filed 7-28-75;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 32]

HUNTING

Notice of Proposed Rulemaking

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222; 16 U.S.C. 715), and the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927 as amended; 16 U.S.C. 668dd), and as delegated to the Director, U.S. Fish and Wildlife Service, in Part 242 of the Departmental Manual, it is proposed to amend 50 CFR Part 32 by the addition of Sevilleta National Wildlife Refuge, New Mexico to the list of areas open to hunting of migratory game birds.

In accordance with 16 U.S.C. 668dd(d)(1) and 50 CFR 32.1, it has been determined that the opening will be compatible with the principles of sound wildlife management, will otherwise be in the public interest, and will be compatible with the major purposes for which the area was established.

The listing of the Sevilleta National Wildlife Refuge as an open area will be the first step in implementation of the proposed hunt plan for the refuge, which will be fully accomplished through annual issuance of special regulations permitting the hunting of waterfowl on designated portion of the refuge.

An environmental assessment of the proposal has been prepared and is available for review by contacting the address below.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections, with respect to the proposed amendment, to the Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 9218, Box 1306, Albuquerque, New Mexico, 87103 by August 18, 1975.

Accordingly, it is proposed that § 32.11, List of open areas; migratory game birds, be amended by the following addition:

NEW MEXICO

SEVILLETA NATIONAL WILDLIFE REFUGE

LYNN A. GREENWALT,
Director,
U.S. Fish and Wildlife Service.

JULY 22, 1975.

[FR Doc.75-19648 Filed 7-28-75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 405]

[Reg. No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Principles of Reimbursement for Cost-Basis Health Maintenance Organizations

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553), that the amendments to Subpart T of Regulations No. 5, set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. Section 1876 of the Social Security Act, which was added by section 226 of Pub. L. 92-603, provides two methods of reimbursement to health maintenance organizations (HMO's) for covered services furnished to enrollees who are Medicare beneficiaries—incentive reimbursement and reasonable cost reimbursement. The proposed amendments deal with the cost reimbursement method of payment provided for under section 1876(i)(2)(B) of the Act.

Both section 1876 and the legislative history make clear that: (1) "reasonable cost" is used in the same sense as defined in section 1861(v) of the Act; and (2) only those costs which are allowable under Medicare generally may be recognized as allowable costs. Accordingly, the reimbursement principles proposed herein are based, in large part, on the Medicare reimbursement principles for providers of services in Subpart D of Regulations No. 5. In addition, these proposed regulations take into account the special nature of the HMO by recognizing costs incurred by an HMO that are unique to the HMO form of health care delivery so that the Medicare program pays its share of the HMO's total reasonable cost actually incurred. Therefore, in addition to reasonable costs directly related to the delivery of needed health care covered by the Medicare program, other costs that are proper and necessary to HMO plan operations are allowable, such as HMO enrollment and marketing, membership costs, and reasonable, but not unlimited, bad debts attributable to deductible and coinsurance amounts for Part A and Part B covered services.

We plan to publish proposed regulations applicable to organizations, other than HMO's, such as Group Practice Prepayment Plans, which provide (or arrange for the provision of) medical and other health services on a prepayment basis, as authorized under section 1833(a) of the Act. Those regulations will be published under a Notice of Proposed Rule Making at a later time.

The proposed regulations define allowable costs, and set forth requirements for apportioning allowable costs between program beneficiaries who are enrolled in the HMO and other enrollees and nonmember patients of the HMO. In addition, they describe: (1) The mechanism by which HMO's will receive interim payments under section 1876(a)(2) of the Act; (2) the way in which the retroactive adjustment required by section 1876(a)(3)(B) of the Act will be accomplished to bring interim payments into agreement with the reimbursable amount due the HMO; and (3) the financial data, records, and reports which HMO's will be required to maintain and submit in order to receive payments.

The proposed regulations also recognize that developing HMO's may not have the capacity initially to produce the statistics and cost information required of mature HMO's. Therefore, the proposed regulations provide that, with prior approval of the Social Security Administration, another method for apportioning or allocating allowable costs instead of the methods required by these regulations may be used by such developing HMO's for two contract periods after the expiration of the HMO's initial contract with the Secretary.

Proposed amendments to Subpart T of Regulations No. 5, relating to HMO's receiving incentive reimbursement and to Subpart R of Regulations No. 5 setting out HMO reimbursement appeal rights are being developed and will be published under separate Notices of Proposed Rule Making.

Prior to the final adoption of the proposed amendments, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue, SW., Washington, D.C. 20201, on or before August 28, 1975.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201.

The proposed regulations are to be issued under the authority contained in sections 1102, 1871, and 1876 of the Social Security Act, 49 Stat. 647, as amended,

79 Stat. 331, 86 Stat. 1396, 42 U.S.C. 1302, 1395hh and 1395mm.

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance; No. 13.801, Health Insurance for the Aged—Supplementary Medical Insurance.)

Dated: June 25, 1975.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: July 17, 1975.

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

Part 405 of Chapter III of Title 20 of the Code of Federal Regulations, as amended, is further amended as set forth below:

1. The table of sections for Subpart T is amended by adding the following numbers and headings:

Sec.
405.2040 Reimbursement of cost-basis HMO's—introduction.
405.2041 Cost reimbursement—general.
405.2042 Allowable costs.
405.2043 Cost apportionment.
405.2044 Adequate financial records, statistical data, and cost finding.
405.2045 Interim per capita payments.
405.2046 Interim settlement.
405.2047 Final settlement.

2. Subpart T is amended by adding §§ 405.2040–405.2047, reading as follows:

§ 405.2040 Reimbursement of cost-basis HMO's—introduction.

(a) A developing HMO, or a mature HMO that elects to be reimbursed on a cost basis (see § 405.2001(b) for definitions of mature and developing HMO's), is paid the "reasonable cost" of the covered services it furnishes to its enrollees who are beneficiaries under title XVIII of the Act. The principles of reimbursement and guidelines to be used in determining the reasonable costs of such HMO's are set forth in §§ 405.2041 through 405.2047. Since the law contemplates that only those costs which are allowable under title XVIII of the Act generally may be recognized as allowable HMO costs, the principles and related policies in §§ 405.2041 through 405.2044 are based, in large part, on the principles of reimbursement for provider costs (see Subpart D of this part).

(b) The principles governing cost reimbursement to HMO's are flexible on many points in order to adjust to the circumstances of varying HMO's. For example, in § 405.2043(g) the principles applicable to developing HMO's allow time for those that do not already have the capability of reporting statistical and financial data by departments or functional service centers to meet this requirement. The principles governing cost reimbursement to HMO's also take into account the special nature of the HMO by recognizing costs of marketing, enrollment, and certain other costs that are unique to the HMO form of health care delivery.

§ 405.2041 Cost reimbursement—general.

(a) The costs incurred by the HMO in providing services covered under the hospital insurance program and supplementary medical insurance program are reimbursable if proper and necessary, reasonable in amount, and appropriately apportioned among enrollees who are title XVIII beneficiaries, other enrollees, and nonenrolled patients of the HMO. Implicit in the intention that the amount paid be reasonable is the expectation that the HMO seeks to minimize its costs and that its costs do not exceed what a prudent and cost-conscious buyer would pay for a given item or service.

(b) In formulating methods for making fair and equitable reimbursements to HMO's for services rendered to title XVIII beneficiaries who are enrolled in such organizations, the cost reimbursement principles set forth in paragraphs (a) and (b) of § 405.402 shall apply. In evaluating the reasonableness of costs, the Social Security Administration shall also take into account the HMO's per capita incurred costs for providing covered services to enrollees who are title XVIII beneficiaries in relation to the adjusted average per capita cost as described in section 1876(a)(3)(A)(iv) of the Act for the geographic area served by the HMO, or a similar area.

(c) The Social Security Administration shall determine an interim per capita cost rate of payment in accordance with § 405.2045 which shall be paid to the HMO each month, in advance, for each title XVIII beneficiary enrolled with the HMO for which the health insurance program is responsible for making such a payment pursuant to this subpart. The Social Security Administration shall adjust the interim per capita rate to the extent necessary, as provided in § 405.2045(c). Interim payments shall be subject to retroactive adjustment at the end of each contract period as provided in §§ 405.2046 and 405.2047. In determining the amount due the HMO, there shall be deducted from the reasonable cost actually incurred by the HMO, for covered services furnished title XVIII beneficiaries enrolled with the HMO, an amount equal to the actuarial value of the deductible and coinsurance amounts which would otherwise be applicable to the covered services for which payment is being made if the title XVIII beneficiaries who received the services had not been enrolled in the HMO.

(d) An HMO may elect to have providers of services that furnish covered services to enrollees who are title XVIII beneficiaries, obtain reimbursement directly from their health insurance program intermediaries. The election, which is binding for the entire contract period must be made in writing to the Social Security Administration prior to the beginning of the contract period. When the HMO makes the election, the providers are each paid the reasonable cost of covered services they furnish enrollees of the organization in accordance with principles of reimbursement for provider costs in Subpart D of this part and the amount of such reimbursement will be deducted from payments which would otherwise be made to the HMO.

§ 405.2042 Allowable costs.

(a) *General.* Allowable costs are those direct and indirect costs, including normal standby costs, which are incurred by the HMO and are proper and necessary to the efficient delivery by the HMO of needed health care covered by the health insurance program. Such costs include those related to the care of beneficiaries under title XVIII, enrollment, membership, and similar costs that are proper and necessary to the HMO plan operations. The treatment of certain items of costs following in essence the principles of reimbursement for provider costs is discussed in paragraph (b) of this section. The treatment of other items of cost is described in paragraphs (c) through (h) of this section.

(b) *Provider cost reimbursement principles applicable to HMO's.* The types and items of cost generally incurred by providers of services that are allowable under the principles of reimbursement for provider costs (see Subpart D of this part), including the following items, are allowable when incurred by an HMO or by providers of services and other facilities owned and/or operated by the HMO through which covered care is furnished to the HMO's enrollees who are title XVIII beneficiaries, unless otherwise specified in this subpart:

(1) *Depreciation.* An appropriate allowance for depreciation on buildings and equipment is an allowable expense. The HMO shall follow the provisions of §§ 405.415, 405.417, and 405.418.

(2) *Interest expense.* Necessary and proper interest on both current and capital indebtedness is an allowable expense in accordance with § 405.419.

(3) *Bad debts.* Bad debts are deductions from revenue and are not to be included in allowable costs; however, bad debts attributable to deductible and coinsurance amounts for Part A and Part B covered services for which the beneficiary is liable in a contract period pursuant to § 405.2022(b) are reimbursable under the health insurance program in accordance with the provisions of § 405.420.

(i) When deductible and coinsurance amounts are paid by all or a portion of a monthly premium, or other periodic amount, the amount of allowable bad debts for an enrollee who is a title XVIII beneficiary for a contract period shall be limited to an amount not to exceed three times the monthly rate for the actuarial value of the deductible and coinsurance amounts, or its equivalent if the periodic charge or premium is payable on other than a monthly basis.

(ii) Any bad debt related to a service furnished to an enrollee of the HMO who is a title XVIII beneficiary and claimed on a cost report submitted for reimbursement under title XVIII of the Act by a provider of services, or other facility reimbursed on a cost basis, may not be claimed as a bad debt by the HMO.

(4) *Charity and courtesy allowances.* Charity and courtesy allowances are deductions from revenue and are not to be included in allowable costs. (See § 405.420.)

(5) *Cost of educational activities.* An appropriate part of the net cost of approved educational activities engaged in by a provider of services or other health care facility owned and/or operated by the HMO is an allowable cost in accordance with § 405.421.

(6) *Research costs.* Cost incurred for research purposes, over and above usual patient care, in accordance with § 405.422, are not includable in allowable costs of the HMO.

(7) *Grants, gifts, and income from endowments.* Grants, gifts, and income from endowments are treated in accordance with § 405.423.

(8) *Value of services of nonpaid workers.* The value of services of certain nonpaid workers is an allowable cost in accordance with § 405.424.

(9) *Purchase discounts and allowances and refunds of expenses.* Discounts and allowances received on purchases of goods and services are reductions of the HMO's costs to which they relate. Similarly, refunds of previous expense payments are reductions of the related expense. (See § 405.425.)

(10) *Compensation of owners.* A reasonable allowance of compensation for services of owners is an allowable cost provided that the services are actually performed in a necessary function in accordance with § 405.426.

(11) *Cost to related organizations.* Costs applicable to services, facilities, and supplies furnished to the HMO by organizations related to the HMO by common ownership and/or control are includable in the allowable cost of the HMO at the cost to the related organization. However, such cost must not exceed the price of comparable services, facilities, or supplies which would be paid by a prudent buyer purchasing elsewhere. The provisions of § 405.427 are applicable to HMO's; however, in applying those provisions to HMO's, a provider of services, medical group, or other facility or supplier is not deemed a related organization solely because of a risk-sharing or incentive agreement with an HMO for reimbursement or compensation for services furnished HMO enrollees, or solely because substantially all services furnished by the provider or supplier are furnished enrollees of the HMO.

(12) *Return on equity capital of proprietary providers owned by the HMO.* An allowance for a reasonable return on equity capital invested and used in the provision of care is allowable as an element of the reasonable cost of covered services furnished by a proprietary provider of services owned by an HMO in accordance with § 405.429.

(13) *Limitation on Federal participation for capital expenditures.* Section 1122 of the Social Security Act prohibits the use of Federal funds to support certain capital expenditures made by or on behalf of HMO's (or health care facilities) that are determined to be inconsistent with State or local health facility planning requirements. HMO's are subject to the provisions of section 1122 in accordance with the principles in §§ 405.402, 405.419, and 405.435.

(14) *Special limitations on reimbursement.* The amount payable to an HMO for covered services furnished by providers of services or other health care facilities owned and/or controlled by the HMO shall be limited to the amount that would have been paid to the providers or other health care facilities under the following limitations:

(i) The amount of payments where customary charges for services furnished are less than reasonable costs (§ 405.455); and

(ii) Cost of treatment for chronic renal disease (§ 405.402 and § 405.502).

Providers of services which are owned and/or controlled by the HMO are also subject to the limitations on coverage of costs set forth in §§ 405.460 and 405.461.

(c) *Enrollment and marketing costs*—(1) *Principle.* Enrollment and marketing costs incurred in accordance with § 405.2023 are allowable costs. (See § 405.2043(e) and § 405.2044.)

(2) *Definition.* Allowable enrollment and marketing costs are those necessary and proper costs incurred in offering the HMO's plan to potential enrollees in accordance with this subpart. Such costs include selling, advertising, promotional, and other marketing costs and may not exceed an amount that would be incurred by a prudent and cost-conscious management.

(3) *Application.* Membership costs, described in paragraph (e) of this section, are not included in enrollment and marketing costs. Enrollment and marketing costs are allowable, whether incurred directly by HMO staff or under contract with marketing specialists or other outside consultants.

(4) *Enrollment and marketing costs reimbursement limitation.* The relatively higher costs that a developing HMO is likely to incur in offering its plan to title XVIII beneficiaries and that a mature HMO is likely to incur in initially offering its plan to title XVIII beneficiaries are taken into account in determining whether enrollment and marketing costs are reasonable in amount. However, if such costs exceed amounts which would be paid by prudent HMO management, the excess shall not be allowed.

(d) *Reinsurance.* The health insurance program's share of reasonable costs is allowable for reinsurance (i.e., protection against all or part of the financial risk that the HMO is obligated to assume under its subscriber agreement with title XVIII beneficiaries) that the HMO incurs for covered emergency services (§ 405.2005(a)(3)(i)) furnished outside the HMO's service area (§ 405.2005(a)(1)) and other covered items or services furnished outside the HMO's enrollment area (§ 405.2005(a)(1)). A reasonable estimate may be used where the actual cost of reinsurance for such items or services furnished enrollees who are title XVIII beneficiaries cannot be readily determined. When the HMO's reinsurance covers only part of the cost of such covered services, the share to be borne by the health insurance program for the cost of these covered services, including reinsurance cost and other payments, shall not exceed the amount that would be paid pursuant to Subparts D and E of this part. Other reinsurance costs are not allowable.

(e) *Membership costs*—(1) *Principle.* Membership costs are allowable (see §§ 405.2043(f) and 405.2044(e) on cost apportionment and cost finding).

(2) *Definition.* Membership costs are allowable if incurred in maintaining and servicing subscriber contracts for prepayment enrollees. Membership costs include, but are not limited to: reasonable costs incurred in connection with health insurance program administration, such as costs of maintaining and reporting accretion and deletion data, utilization information, statistical, financial and other data on members, and membership relations.

(3) *Application.* For health insurance program purposes, membership costs shall not be included with allowable enrollment and marketing costs.

(f) *Physician compensation*—(1) *Principle.* Compensation paid by an HMO to physicians is an allowable cost to the extent that such compensation is commensurate with the compensation paid for similar services performed by similar physicians practicing in the same or similar locality. To the extent such compensation cost is in excess of what is normally incurred, the excess is not an allowable cost.

(2) *Application.* Compensation for the personal services of physicians (i.e., salaries, wages, incentives, fringe benefits, etc.) shall be distinguished from payments to physicians for nonpersonal services (i.e., expense attributable to facilities, equipment, support personnel, supplies, etc.) in determining whether compensation is allowable. Physicians influence the management of an HMO to a very significant degree, and, therefore, directly affect the costs of services and the financial status of an HMO. Their compensation may take various forms, but it is intended that the aggregate compensation allowable be reasonable in relation to the services personally rendered. Reasonableness of compensation may be determined by reference to, or in comparison with, compensation paid for comparable services and responsibilities.

(g) *Physicians' services under arrangements.* The amount paid by an HMO to a physician group (organized on a group-practice or individual-practice basis) for physicians' services, and for other covered Part B services furnished under arrangements (see § 405.2006), shall be an allowable expense to the extent it is not in excess of the reasonable charges, as defined in §§ 405.501–405.508, that would otherwise be paid if the services were furnished by the physician group (or by similar physicians or practitioners) to title XVIII beneficiaries who are not en-

rolled in the HMO (exclusive of services furnished by group prepayment plans electing cost reimbursement and certain services furnished by, or under arrangements made by, a provider of services). The same limitation shall also apply to the amount paid by the HMO for such covered services furnished under arrangements with a physician, physician-directed clinic, or a supplier of services.

(h) *Provider services through arrangements.* The cost incurred by an HMO for covered services furnished by a provider through arrangements (see §§ 405.2006 and 405.2043(b)) shall be allowable to the extent that such cost would be allowable and reimbursable pursuant to Subpart D of this part, unless the HMO can demonstrate to the satisfaction of the Secretary that payment in excess of the reasonable cost allowed pursuant to such Subpart D of this part is justified on the basis of advantages gained by the HMO. An advantage gained shall represent a real and tangible benefit received by the HMO for the excess cost incurred. Any such excess payment shall also be subject to other applicable requirements of this part 405, including tests of reasonableness.

§ 405.2043 Cost apportionment.

(a) *General.* Total allowable direct and indirect costs of an HMO shall be apportioned between title XVIII beneficiaries who are enrolled in the HMO, other enrollees, and any nonenrolled patients of the HMO so that, to the extent reasonably possible, the costs of efficiently delivering covered care to enrollees who are title XVIII beneficiaries will not be borne by other enrollees, and by any nonenrolled patients of the HMO, and the costs of delivering care to individuals other than enrollees who are title XVIII beneficiaries will not be borne by the health insurance program. This apportionment shall be accomplished on the basis of requirements set forth in this section using methodologies approved by the Social Security Administration.

(b) *Methods of apportionment for provider services*—(1) *Provider services furnished directly by the HMO.* The method of apportionment required by §§ 405.452, 405.453, and 405.480 shall be used to determine the share to be borne by the health insurance program for the cost of covered services furnished to enrollees who are title XVIII beneficiaries, directly by the HMO through a "provider of services" (as defined in § 405.401) which is owned and/or operated by the HMO, or related to the HMO by common ownership and/or control (see § 405.2044(c) for cost-finding requirements).

(2) *Provider services furnished by the HMO through arrangements with others.* The share to be borne by the health insurance program for covered services furnished to enrollees who are title XVIII beneficiaries, by the HMO through arrangements with a provider of services which is not owned and/or operated by the HMO, or related to the HMO by common ownership and/or control, shall be determined as follows:

(i) The share to be borne by the health insurance program for covered services furnished to enrollees who are title XVIII beneficiaries by the provider shall be the cost the HMO pays the provider, pursuant to its financial arrangement with the provider, to the extent it is reasonable and subject to conditions and limitations set forth in § 405.2042(h). Thus, where the financial arrangement provides for HMO payment for services to enrollees who are title XVIII beneficiaries on a per diem basis, a charge per service, or per capita basis, such payment for services to enrollees who are title XVIII beneficiaries would represent the share to be borne by the health insurance program to the extent such share is reasonable and does not exceed the amount that would be paid for the covered services pursuant to Subpart D of this part, unless the HMO can justify an advantage gained (see § 405.2042(h)). If the HMO's financial arrangement with the provider of services calls for payment, by the HMO to the provider of services, of an aggregate fixed sum or other negotiated amount determined without regard to the frequency or extent of services furnished to any particular enrollee or patient, the amount of the fixed sum or other amount allocable to the health insurance program shall be determined on the same approved basis otherwise used by the provider in apportioning the health insurance program's share of allowable costs for covered services furnished title XVIII beneficiaries that are not enrollees of the HMO. In the event that apportionment on this basis, because of the special nature or terms of the HMO's financial arrangement with the provider, would result in the health insurance program's bearing the costs of delivering care to individuals other than enrollees who are title XVIII beneficiaries, the aggregate fixed sum or other negotiated amount shall be apportioned on some other appropriate basis approved by the Social Security Administration, intended to assure that the share allocated to the health insurance program does not include costs of delivering care to individuals other than enrollees who are title XVIII beneficiaries.

(ii) Where the HMO elects to have providers of services seek reimbursement from their health insurance program intermediary for covered services furnished to the HMO's enrollees who are title XVIII beneficiaries, the share to be borne by the health insurance program for covered services shall be the amount paid the provider pursuant to § 405.2041(d).

(3) *Emergency services; urgently needed services and out-of-area provider services for which the HMO assumes financial liability.* Providers of services shall be reimbursed through their health insurance program intermediary for the reasonable cost of covered emergency services (see § 405.2005(a)(3)(i)), urgently needed services (see § 405.2005(a)(3)(ii)), and other covered out-of-area services for which the HMO assumes financial liability, except for services covered under reinsurance, the cost of which is allowable pursuant to § 405.2042(d), in accordance with Subpart D of this part. The amount of such reimbursement will be deducted from payments which would otherwise be made to the HMO.

(c) *Methods of apportionment of covered physicians' services and other covered Part B services which are not provider services*—(1) *Medical services furnished directly by the HMO.* The total allowable direct and indirect costs of covered physicians' services and other Part B services not furnished through a provider of services, but which the HMO furnishes directly through physicians and other health care personnel who are employees or partners of the HMO, or by a group of physicians or by a health center or other facility which is related to the HMO by common control and/or ownership, shall be apportioned on the basis of the ratio of covered Part B services provided to enrollees who are title XVIII beneficiaries to total services furnished to all enrollees of the HMO and other patients on a functional-service-center or departmental basis. The sum of the apportioned costs for each functional service center or department furnishing covered services is the total share of the medical costs to be borne by the health insurance program (see examples in paragraph (e) of this section for services furnished directly).

(2) *Medical services furnished under arrangements by the HMO.* The share of cost of covered physicians' services and other Part B services furnished under arrangements by a group of physicians (organized on a group-practice or individual-practice basis) or Part B services furnished by a supplier of services, to be borne by the health insurance program shall be determined as follows:

(i) The share to be borne by the health insurance program for Part B services furnished by a group of physicians or supplier, to the HMO's enrollees who are title XVIII beneficiaries shall be the cost the HMO pays, pursuant to its financial arrangement with the group of physicians or supplier, to the extent it is reasonable, subject to conditions and limitations set forth in § 405.2042(g). Thus, where the financial arrangement provides for an HMO to pay on a per capita basis for services to enrollees who are title XVIII beneficiaries, such per capita charges would represent the share to be borne by the health insurance program to the extent such share is reasonable and does not exceed the amount that would otherwise be payable in accordance with §§ 405.501–405.508. If the HMO's financial arrangement calls for payment by the HMO to the group of physicians or supplier of an aggregate fixed sum or other negotiated amount which is determined without regard to the frequency or extent of services furnished to any particular enrollee or patient, the amount of the fixed sum or other amount allocable to the health insurance program shall be determined on the basis of a ratio of the covered services furnished by the group of physicians or supplier to

the HMO's enrollees who are title XVIII beneficiaries to total services furnished by the group of physicians or supplier to the HMO's enrollees and other patients covered by the payment, except where apportionment on this basis would result in the health insurance program's bearing the costs of delivering care to individuals who are not title XVIII beneficiaries. In that event, the aggregate fixed sum or other negotiated amount shall be apportioned on some other appropriate basis approved by the Social Security Administration so that the share allocated to the health insurance program does not include costs of delivering care to individuals who are not title XVIII beneficiaries.

(ii) If the HMO pays for covered physicians' services or other Part B services not furnished by a provider of services on a fee-for-service basis, the charges pursuant to the terms of the agreement for covered services furnished to enrollees who are title XVIII beneficiaries shall be borne by the health insurance program provided they do not exceed the reasonable charge for the service, as defined in §§ 405.501–405.508.

(3) *Emergency services, urgently needed services and other covered medical services for which the HMO assumes financial liability.* The share to be borne by the health insurance program for covered physicians' services and other covered Part B services which are not furnished by a provider of services and are emergency services (see § 405.2005(a)(3)(i)), urgently needed services (see § 405.2005(a)(3)(ii)), or other covered services for which the HMO assumes financial liability, except for services covered under reinsurance, the cost of which is allowable pursuant to § 405.2042(d), shall be determined in accordance with paragraph (c)(2) of this section.

(d) *Weighting for services of physicians and other health care personnel.* (1) Since the direct professional services of physicians and other health care personnel vary in time and complexity from patient to patient, depending on the patient's condition and other factors, the HMO may weight for time and complexity the services that are used to compute the apportionment of costs for the professional services of physicians and other health care personnel pursuant to paragraph (c)(1) of this section. The HMO may use statistics or reasonable estimates that are based on adequate data acceptable to the Secretary. However, services used in apportionment ratios for each functional service center or department, i.e., services furnished title XVIII beneficiaries who are enrolled in the HMO, other enrollees, and nonmember patients, must be weighted on the same basis to assure an equitable apportionment of costs.

(2) Such weighting shall be permitted in making reimbursement for the covered Part B professional services of physicians and other health care personnel furnished under arrangements where payment is based on an aggregate fixed sum or other negotiated amount that is apportioned on the basis of services, pursuant to paragraph (c)(2) of this section, provided such weighting is based on statistics or adequate data acceptable to the Secretary and all services used in the apportionment ratio are weighted on the same basis. Where payment for such arranged-for services is on some other basis, time and complexity shall be recognized but only to the extent that they are specific and reasonable elements of the amount which the HMO, pursuant to the terms of the financial agreement with the group of physicians, has agreed to pay for such services.

(e) *Examples.* The following examples illustrate the apportionment of the cost of covered Part B services on a functional-service-center or departmental basis. In the examples, the following assumptions are made:

(1) There are no covered services furnished in the following functional service centers: dental, optical, and social and community services;

(2) Allocable indirect costs (e.g., medical records costs) and general and administrative costs have been distributed to functional service centers;

(3) Unallowable costs have been excluded (e.g., research costs, unallowable costs related to capital expenditures (see § 405.2042(b)(13));

(4) Statistical data are weighted for time and complexity.

EXAMPLE No. 1

Apportionment of Costs of Functional Service Center

The following illustrates the apportionment of the cost of a functional service center (e.g., the primary care center). Similar calculations for ratios of other functional service centers in Example No. 2 are omitted (see column (5) of Example No. 2).

In the following example, enrollees who are title XVIII beneficiaries received 27,000 Part B covered services. For the 100,000 total services furnished, the primary care center incurred $750,000 total costs.

Apportionment of Costs for Primary Care Center (see Example No. 2):

Ratio of total covered services furnished enrollees who are title XVIII beneficiaries in the Primary Care department to total services furnished all HMO enrollees and other patients in the Primary Care department:

$\frac{27,000}{100,000}$ = 27 percent to be applied to the costs of the Primary Care Center to compute the health insurance program's share of these costs for part B covered services furnished title XVIII beneficiaries who are enrollees of the HMO.

EXAMPLE No. 2. *Apportionment of the cost of medical services furnished directly by the HMO*

Functional Service Center	Total cost	Total services	Total covered services furnished title XVIII enrollees	Percent title XVIII enrollee services[1]	Apportioned cost of title XVIII enrollee services furnished (col. 5 × col. 2)
(1)	(2)	(3)	(4)	(5)	(6)
1. Primary care	$750,000	100,000	27,000	27.00	$202,500
2. Laboratory	120,000	75,000	10,000	13.33	15,996
3. X-ray	50,000	20,000	2,800	14.00	7,000
4. Mental health	100,000	12,000	1,000	8.23	8,333
5. Dental	200,000	20,000	0		
6. Optical	235,000	15,000	0		
7. Social and community	20,000	10,000	0		
Total	1,475,000				233,829

[1] Calculations not shown. See example No. 1 of this paragraph for methodology.

(f) *Methods of apportionment of general and administrative cost of HMO plan.* (1) Enrollment and marketing, membership, management and other administration and overhead costs of the HMO plan that benefit the total enrolled population of the HMO and which are not directly associated with providing medical care, shall be opportioned on the basis of a ratio of enrollment of title XVIII beneficiaries to the total HMO enrollment. Such costs which are allocable to individuals who are not enrollees of the HMO shall be excluded from the allowable costs subject to apportionment. Where general and administrative costs of the HMO plan are included with general and administrative costs of the medical group, or with the costs of other suppliers or providers of service of the HMO, these general and administrative costs of the HMO plan shall be separately apportioned on the basis of the ratio of enrollment of title XVIII beneficiaries to total enrollment.

(2) The following example illustrates the apportionment of allowable general and administrative costs of the HMO plan on the basis of enrollment, and the method of determining the percent of enrollment of title XVIII beneficiaries of an HMO.

(i) The following illustrates the apportionment of general and administrative costs of the HMO plan on the basis of a ratio of enrollment of title XVIII beneficiaries to total HMO enrollment. The calculation of the 10 percent enrollment of title XVIII beneficiaries of total HMO enrollment used in this example is illustrated in paragraph (f)(2)(ii) of this section. (The amounts used are for illustration purposes only and are not intended to demonstrate actual or approved expenditure level.)

GENERAL AND ADMINISTRATIVE COSTS OF THE HMO PLAN

Expense:	Amount
Membership	$250,000
Enrollment and marketing	225,000
Insurance	30,000
Management:	
Fringe benefits	100,000
Salaries and wages	500,000
Data processing	200,000
Legal and accounting	70,000
Depreciation	50,000
Other	200,000
Total	1,625,000

Apportionment: $1,625,000 × 10 percent* = $162,500 share of general and administrative costs of the HMO plan to be borne by the health insurance program.

*The calculation of the 10-percent enrollment of title XVIII beneficiaries of total HMO enrollment is illustrated in the example following paragraph (f)(2)(ii) of this section.

(ii) The following illustrates the use of the number of contract months for each person enrolled in calculating a ratio of enrollment of title XVIII beneficiaries to the total HMO enrollment. Where more than one person is enrolled under one contract, each person is counted for a contract month (e.g., 5 members of a family enrolled under one contract for 12 months are counted as 5 contract months in each month for a total of 60 contract months for the year). This methodology is used in determining the percent of enrollment of title XVIII beneficiaries in an HMO (see paragraphs (b)(2), (c)(2), and (e) of this section).

Example: Number of persons enrolled as of the first day of each month:

Contract period	Number of persons enrolled—monthly contract totals	Number of persons enrolled—monthly title XVIII contracts	Title XVIII, percent
(1)	(2)	(3)	(4)
January	23,100	2,250	
February	23,600	2,300	
March	23,700	2,310	
April	24,200	2,380	
May	24,800	2,450	
June	25,000	2,500	
July	25,200	2,530	
August	25,400	2,550	
September	25,700	2,590	
October	25,800	2,630	
November	26,600	2,650	
December	26,900	2,860	
Total monthly contracts	300,000	30,000	10

Explanation: Where costs are apportioned on the basis of enrollment, the ratio of the cumulative total number of monthly contracts for each title XVIII beneficiary enrolled to the cumulative total number of monthly contracts for all persons enrolled in the HMO, recorded as of the first day of each month, is used for cost apportionment purposes (see paragraph (e) of this section). In this illustration, the ratio of enrollment of title XVIII beneficiaries to total enrollment (10%) is computed by dividing the cumulative total of column (3) (30,000) by the cumulative total of column (2) (3000,000).

(g) *Other methods of allocation and apportionment.* (1) A method of apportionment or basis for allocation of costs, other than the methods prescribed in this subpart, may be used provided such method results in a more accurate and equitable apportionment of allowable costs and is justifiable from an administrative and cost standpoint. An HMO that desires to use such an alternate method must submit its request to do so to the Social Security Administration (SSA), in writing, at least 90 days prior to the beginning of the period to which the different method or basis of allocation is to be used. Once having obtained approval from SSA to use a different method or basis of allocation, the HMO may not revert to another method without obtaining the approval of SSA.

(2) Where a developing HMO does not have the capability to collect the statistical and financial data required to apportion allowable costs pursuant to the requirements set forth in this section, it may, after first obtaining the approval of SSA, use another method for apportioning or allocating allowable costs. However, the HMO must present a plan which satisfies SSA that it will have the capability necessary to collect statistical and financial data to apply the methods of apportionment required by this subpart within a reasonable period of time, not to exceed two contract periods after the expiration of the period of its initial contract with the Secretary.

§ 405.2044 Adequate financial records, statistical data, and cost finding.

(a) HMO's must maintain sufficient financial records and statistical data for proper determination of costs payable to the HMO pursuant to this subpart by the health insurance program for the covered services furnished by the HMO to its enrollees who are title XVIII beneficiaries, whether furnished directly by the HMO or under arrangements by the HMO with others. Unless otherwise provided for in this subpart, standardized definitions, accounting statistics, and reporting practices which are widely accepted in the health care industry shall be followed.

(b) The HMO must provide adequate cost and statistical data, based on its financial and statistical records, which are capable of verification by qualified auditors. The cost data must be based on an approved method of cost finding and on the accrual basis of accounting. However, where governmental institutions operate on a cash basis of accounting, cost data based on such basis of accounting will be acceptable, subject to appropriate treatment of capital expenditures.

(c) Where the services of providers of services are furnished directly by the HMO, the provider of services is subject to the cost-finding and cost-reporting requirements set forth in Subpart D of this part. An approved cost-finding method described in § 405.453 must be used to determine the actual cost of covered services furnished directly by the HMO during its reporting period.

(d) Where physicians' and other Part B medical services (not furnished by a provider of services) are furnished directly by the HMO, the statistical and financial data for such services shall be reported by functional service centers or departments (e.g., primary care, laboratory, X-ray). Statistics shall be furnished that indicate the frequency and type of service provided, in such form and detail as prescribed by the Social Security Administration. Costs allocable to more than one functional service center or department, such as medical records, shall be distributed to each such center or department in proportion to the benefits received by the functional service center or department. Other general and administrative costs of a health services delivery component of the HMO which cannot be assigned to a specific department or functional service center shall be allocated on the basis of costs already distributed or allocated to the functional service center.

(e) Where physicians' and other Part B medical services (not furnished by a provider of services) are furnished by the HMO through arrangements, the HMO shall furnish statistical, financial, and other information in such form and detail as prescribed by the Social Security Administration.

(f) Accurate and sufficient detail of incurred costs, enrollment, and statistical data shall be maintained in financial and other records and shall be reported in such form and detail as required by the Social Security Administration. In the case of a separate organization or department that performs administrative services, such as centralized purchasing, accounting, data processing, etc., that benefit the HMO and the HMO's major functional components, such as a hospital, skilled nursing facility, or other activity owned by the HMO, these costs shall be allocated or distributed to each such component in reasonable proportion to the benefits received by the component. Other allocable administrative service costs that cannot otherwise be distributed shall be allocated on the basis of cost already distributed or allocated to the component (see § 405.2043(f)).

§ 405.2045 Interim per capita payments.

(a) *Principle of payment.* Each month the Social Security Administration shall pay, in advance, to the HMO its interim per capita rate of payment for each individual enrolled in the HMO for whom the health insurance program is responsible for making such a payment pursuant to § 405.2021. Additional lump-sum payments may be made at other times during the contract period, at the discretion of the Social Security Administration, to adjust the total amounts paid during the contract period to the level of current costs.

(b) *Determination of rate.* The interim per capita rate of payment is equal to the estimated per capita cost of providing covered services to title XVIII beneficiaries enrolled in the HMO, based

upon types and components of costs which are reimbursable pursuant to this Subpart. The interim per capita rate shall be determined annually by the Social Security Administration on the basis of the HMO's annual operating and enrollment forecast (see paragraph (e) of this section) and may be revised during the contract period as explained in paragraph (c) of this section.

(c) *Adjustments of payments.* In order to maintain the interim payments at the level of current reasonable costs, the Social Security Administration shall adjust the interim per capita rate, to the extent necessary, on the basis of adequate data supplied by the HMO in its interim estimated cost and enrollment reports or such other evidence that the Social Security Administration may have that the rate based on actual costs is less than the current rate. Adjustments may also be made where there is:

(1) A change in the number of enrollees in the HMO who are title XVIII beneficiaries and the per capita cost rate is affected;

(2) A material variation for the costs estimated when the annual operating budget was prepared; or

(3) A significant change in the use of covered services by enrollees in the HMO who are title XVIII beneficiaries.

(d) *Reduction in payment.* The Social Security Administration may reduce interim payments, to the extent appropriate, in the event that reports (and other data the HMO is required to submit pursuant to this subpart in order to determine the amount of payment to be made) are not furnished timely, or may take such other action as is authorized pursuant to this subpart. An interim payment reduction shall remain in effect until such time as a reasonable estimate of per capita costs can be made.

(e) *Budget and enrollment forecast.* (1) The HMO shall submit an annual operating budget and enrollment forecast, in such form and detail as the Social Security Administration may require, at least 90 days prior to the beginning of each contract period. Such forecast shall be based upon information and statistical data capable of verification where a detailed review of supporting records is required by the Social Security Administration. Such information and data includes, but is not limited to, all ledgers, books, records, and original evidence of costs and statistical data which pertain to the determination of reasonable cost. (See also § 405.2023(b) on the enrollment forecast.)

(2) Whenever the budget and enrollment forecast is not submitted on a timely basis, the Social Security Administration may:

(i) Establish an interim per capita rate of payment (see § 405.2045) on the basis of the best available data and adjust payments based on such a rate until such time as the required reports are submitted and a new interim per capita rate can be established, or

(ii) Advise the HMO that interim payments will not be made until such time as the required reports are submitted if there is not sufficient data on which to establish an interim per capita rate of payment.

(f) *Interim cost and enrollment reports.* An HMO is required to submit interim cost reports and enrollment data on a quarterly basis in such form and manner as the Social Security Administration may prescribe. The interim cost reports of a contract period shall be submitted not later than 45 days after the close of each quarter of the HMO's contract period.

§ 405.2046 Interim settlement.

(a) *Determination.* Within 30 days following the receipt of the required HMO reports, the Social Security Administration makes an interim determination of the estimated amount payable to the HMO for the reasonable cost of covered services furnished to its enrollees who are title XVIII beneficiaries during the contract period. Such determination is made on the basis of the interim cost reports (see § 405.2045(f)), enrollment data submitted by the HMO, and such other relevant data as the Social Security Administration finds appropriate. For this purpose, costs are accepted as reported, subject to later audit, unless there are obvious errors or inconsistencies.

(b) *Payment.* Any difference between the total amount of interim payments and the amount found payable on the basis of the interim determination, described in paragraph (a) of this section, shall be paid by such HMO or by the Social Security Administration, whichever is appropriate, no later than 30 days after such determination.

§ 405.2047 Final settlement.

(a) *General.* Final settlement and payment of amounts due the HMO or the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall be made following the submission and review of an independently certified financial statement and supporting documents as described in paragraph (b) of this section.

(b) *Certified financial statement as basis for final settlement*—(1) *General.* The HMO shall submit to the Social Security Administration an independently certified financial statement and supporting documents, in such form and detail as the Social Security Administration may prescribe, no later than 180 days following the close of each contract period. Such statement shall include:

(i) The HMO's per capita incurred costs (based upon principles described in §§ 405.2040 through 405.2044) of providing covered services to its enrollees who are title XVIII beneficiaries during the contract period, including costs incurred by another organization related to the HMO by common ownership and/or control;

(ii) The HMO's methods of allocating costs among enrollees who are title XVIII beneficiaries, enrollees who are not title XVIII beneficiaries, and others (nonmembers receiving health care services on a fee-for-service or other basis), in accordance with accounting procedures required pursuant to this subpart (and, as applicable, Subpart D of this part); and

(iii) Such information on enrollment and other data as the Social Security Administration may require.

(2) *Related organizations.* Where an HMO is related to another organization by common ownership and/or control (including sole proprietorships, partnerships, joint ventures, and corporations), the independently certified financial statement shall be submitted on a consolidated basis, in such form and detail as the Social Security Administration may prescribe. Such report shall:

(i) Include an individual financial statement for the HMO, prepared in accordance with paragraph (b)(1) of this section, and separate financial statements for the other entities included in the consolidated statements; and

(ii) Exclude from allowable costs of the HMO any costs in excess of those which would be determined to be reasonable in accordance with § 405.2042.

(3) *Failure to report required financial information.* Whenever an HMO does not submit the required financial statement and supporting documents within the time specified in paragraph (b)(1) of this section, except where the HMO has requested and received an extension of time for good cause shown, such failure to report such information may be deemed by the Social Security Administration to constitute evidence of likely overpayment on the basis of which appropriate recovery of amounts previously paid and/or the reduction of interim payments may be made.

(c) *Retroactive adjustment; determination and notice.* (1) A retroactive adjustment is made at the end of a contract period to bring interim payments into agreement with the reimbursable amount due the HMO.

(2) The retroactive adjustment is based on the required financial reports (as specified in paragraph (b) of this section) of the cost actually incurred by the HMO (in accordance with the principles of cost reimbursement in § 405.2040 through § 405.2044) for providing covered services to enrollees in the HMO who are title XVIII beneficiaries.

(3) The notice of amount of reimbursement by the health insurance program shall:

(i) Explain the Social Security Administration's determination regarding total reimbursement due the organization by the health insurance program for the contract period covered by the financial information specified in paragraph (b) of this section;

(ii) Relate this determination to the HMO's claimed total reimbursable costs for such period;

(iii) Explain the amount(s) and reason(s), by appropriate reference to law, regulations, and health insurance program policy and procedures, where such determination may differ from the HMO's claim; and

(iv) Inform the HMO of its right to have the determination reviewed at a hearing in accordance with § 405.1801(b) if the amount in controversy is $1,000 or more.

(4) The Social Security Administration's determination (as contained in the notice of amount of reimbursement by the health insurance program) shall constitute the basis for making retroactive adjustments to any program payment made by the health insurance program to the HMO during the period to which the determination applies, including the suspending of further payments to the HMO in order to recover, or to aid in the recovery of, any overpayment identified in the determination as having been made to the HMO, notwithstanding a request for a hearing on the determination which the HMO may make pursuant to § 405.1801(b). Any such suspension shall remain in effect as specified in § 405.373(a).

[FR Doc.75-19491 Filed 7-28-75;8:45 am]

[20 CFR Part 405]

[Regs. No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Risk-Basis Health Maintenance Organizations

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553), that the amendments to the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. Section 1876 of the Social Security Act which was added to title XVIII by section 226 of Pub. L. 92-603, provides for two methods of reimbursement to health maintenance organizations (HMO's) for covered services furnished to Medicare enrollees—incentive reimbursement and reasonable cost reimbursement. These proposed regulations deal with the incentive reimbursement method of payment provided for under section 1876(a)(3)(A) of the Act. Proposed regulations for HMO's receiving cost reimbursement are being published under a separate notice of proposed rulemaking.

Section 1876(a)(3)(A) of the Social Security Act provides for risk-basis HMO's to share in savings (up to prescribed limits) when the HMO provides covered services to its Medicare enrollees at a cost that is less than the average cost of providing such services to a similar beneficiary population outside the HMO. On the other hand, this section of the law requires those risk-basis HMO's with costs in excess of the average cost to absorb the difference between such costs. The proposed regulations set forth the mechanism by which it will be determined whether such an HMO has incurred "savings" or "losses." Section 1876(a)(3)(A) provides for this determination to be made by comparing the HMO's per capita incurred cost and the adjusted average per capita cost. Basically, the adjusted average per capita cost represents the cost that would have been incurred if covered services had been provided outside the HMO to a beneficiary population similar to that of the HMO enrollees in the geographic area served by the HMO or a similar area. If the HMO's per capita incurred cost is less than the adjusted average per capita cost and within the sharing limit, the difference, which is called "savings," is divided between the HMO and the Medicare program in accordance with a prescribed formula. On the other hand, if the HMO's per capita incurred cost exceeds the adjusted average per capita cost, the difference is called "losses" and this amount is absorbed entirely by the HMO. Losses are, however, offset against future savings in the manner specified in the regulations.

The regulations provide that the HMO's incurred cost is the reasonable cost that would be allowed under the principles of reimbursement for cost-basis HMO's, as described in the proposed §§ 405.2040-405.2044 recently published in the FEDERAL REGISTER, with certain adjustments specified in regulations to assure comparability with the adjusted average per capita cost. The regulations also describe the actuarial methodology for computing the adjusted average per capita cost. Basically, a national average cost figure for providing covered services, which is adjusted for the relative price level in the HMO's geographic area and the age-sex distribution of the HMO's Medicare enrollment is used in the computation. Medicare payment data accumulated on a county basis will be used in adjusting the national cost figure to the HMO's geographic area.

The methodology for computing the adjusted average per capita cost is intended to be as accurate, reliable, and timely as data available to the Social Security Administration permit. It is anticipated that, as more experience is acquired, additional data sources and adjustment factors may be identified. These additional factors and data sources will be added to the basic methodology only if they will improve the equity and precision of the calculation and will not interfere with meeting requirements relating to timeliness.

In computing the adjusted average per capita cost at this time, the Social Security Administration will generally rely on published program data. By using these data sources and the HMO's geographic area and age-sex distribution, an HMO, prior to entering into a contract with the Secretary, can evaluate the Medicare reimbursement experience (i.e., the adjusted average per capita cost) in its area in past periods for which data is available. In addition, the Social Security Administration may provide more current estimates of the adjusted average per capita cost when the Secretary is requested to do so by the HMO. On these bases, an HMO can make an informed decision on whether or not to contract with the Secretary on an incentive basis.

The regulations also describe procedures required under section 1876(a)(3)(A)(iii) of the Social Security Act for interim and final settlements with risk-basis HMO's. The interim settlement determination is to be made within 90 days after the end of a contract period. A tentative settlement may be made at the option of the Secretary if a final settlement has not been reached within 180 days following the close of the contract period. The purpose of the tentative settlement is to minimize the amount of interest on the amount due the health insurance program trust funds or the HMO when final settlement may be delayed. When final settlement with a risk-basis HMO is not made within 90 days after submission by the HMO of its certified financial statement and supporting documents, the regulations provide, as required by section 1876(a)(3)(A)(iii), that interest is to be charged on the amounts payable to the trust funds or the HMO, as appropriate.

Proposed amendments to Subpart R of Regulations No. 5, that will set out appeal rights relating to HMO reimbursement, are being developed and will be published under a separate notice of proposed rulemaking.

Prior to the final adoption of the proposed regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare, Social Security Administration, P.O. Box 1585, Baltimore, Maryland 21203, on or before August 28, 1975.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201.

The proposed regulations are issued under the authority contained in sections 1102, 1871, and 1876 of the Social Security Act, 49 Stat. 647, as amended, 79 Stat. 331, 86 Stat. 1396, 42 U.S.C. 1302, 1395hh and 1395mm.

(Catalogue of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance; No. 13.801, Health Insurance for the Aged—Supplementary Medical Insurance.)

Dated: June 25, 1975.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: July 17, 1975.

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

Part 405 of Chapter III of Title 20 of the Code of Federal Regulations is amended as set forth below:

1. The table of sections for Subpart T is amended by adding the following numbers and headings:

PRINCIPLES OF REIMBURSEMENT FOR RISK-BASIS HMO'S UNDER TITLE XVIII

Sec.

405.2060 Reimbursement of risk-basis HMO's—Introduction.
405.2061 Determining adjusted incurred cost.
405.2062 Determining adjusted average per capita cost.
405.2063 Computation of the amount due to (or from) the HMO.
405.2064 Interim and tentative settlements.
405.2065 Final Settlement.

2. Subpart T is amended by adding §§ 405.2060–405.2065, reading as follows:

PRINCIPLES OF REIMBURSEMENT FOR RISK-BASIS HMO'S UNDER TITLE XVIII

§ 405.2060 Reimbursement of risk-basis HMO's—Introduction.

(a) A mature HMO (as defined in § 405.2001(b)) which meets the requirements of paragraph (a) (1) or (2) of § 405.2004, may elect to be reimbursed on an incentive basis for the covered services it furnishes to its enrollees who are title XVIII beneficiaries. The distinguishing characteristic of incentive reimbursement is that the total payment to the HMO for a contract year is determined by comparing the HMO's per capita incurred cost to the adjusted average per capita cost of providing covered title XVIII services (including chronic renal disease benefits) to a similar beneficiary population outside the HMO. Based on this comparison, the HMO and the health insurance program trust funds share savings up to prescribed limits, or the HMO absorbs losses. If the HMO's per capita incurred cost is less than the adjusted average per capita cost as defined in § 405.2062, the difference is termed "savings" and payment of the HMO's share and the share of these savings to be paid to such trust funds is made in the manner described in § 405.2063(b). If the HMO's per capita incurred cost exceeds the adjusted average per capita cost, the difference is termed "losses" and such losses are absorbed by the HMO. Losses are carried forward and offset from savings realized in later contract years, as provided in § 405.2063(c).

(b) The specific principles and procedures applicable to incentive reimbursement are discussed in §§ 405.2061 through 405.2065. The procedures described in § 405.2045 (Interim per capita payments) are also applicable to risk-basis HMO's. Monthly interim per capita payments made by the Secretary to a risk-basis HMO are determined on the same basis as those made to cost-basis HMO's and are not adjusted for estimated savings or losses.

§ 405.2061 Determining adjusted incurred cost.

The Secretary uses the cost determination procedure described in this section to develop an adjusted incurred cost for the HMO.

(a) *Total allowable cost.* The reimbursement principles as described in §§ 405.2040–405.2044 are used to determine the total allowable, reimbursable, reasonable cost incurred by the risk-basis HMO for the contract year in providing covered items and services to its enrollees who are title XVIII beneficiaries except for reinsurance costs which are reimbursed in the following manner:

(1) The health insurance program's share of reasonable costs for reinsurance (i.e., protection against all or part of the financial risk that the HMO is obligated to assume under its subscriber agreement with enrollees who are title XVIII beneficiaries) is allowable to the extent that the HMO incurs costs for:

(i) Covered emergency services (§ 405.2005(a)(3)(i)) furnished outside the HMO's service area (§ 405.2005(a)(1)),

(ii) Covered urgently needed services (§ 405.2005(a)(3)(ii)) furnished outside the HMO's enrollment area (§ 405.2005(a)(1)), and

(iii) Other covered items and services furnished outside the HMO's enrollment area through arrangements (§ 405.2005(a)(2)).

(2) If the actual cost of reinsurance cannot be readily determined for such covered items or services specified in paragraph (a)(1) of this section, which are furnished enrollees who are title XVIII beneficiaries, a reasonable estimate may be used.

(3) If a risk-basis HMO is reimbursed for reinsurance (as described in paragraph (a) (1) or (2) of this section), the HMO's allowable cost excludes any amount otherwise representing payment for such covered services delivered to its enrollees who are title XVIII beneficiaries for which the HMO is covered by reinsurance. If a risk-basis HMO does not obtain reinsurance (as described in paragraph (a) (1) or (2) of this section) and/or has a reciprocal arrangement with other HMO's for providing such covered services, such HMO is reimbursed for the reasonable cost actually incurred by the HMO for such covered services delivered to enrollees who are title XVIII beneficiaries.

(b) *Adjusted incurred cost.* The reasonable costs actually incurred by the HMO in providing covered services to enrollees who are title XVIII beneficiaries, as determined pursuant to paragraph (a) of this section, are adjusted in order to obtain greater comparability with the adjusted average per capita cost. Adjustments to the HMO's incurred cost include:

(1) *Deductibles and coinsurance.* There is deducted from the reasonable cost actually incurred by the HMO, for covered services furnished title XVIII beneficiaries enrolled with the HMO, an amount equal to the actuarial value of the deductible and coinsurance amounts which would otherwise be applicable to the covered services for which payment is being made if the title XVIII beneficiaries who received the services had not been enrolled in the HMO.

(2) *Cost of out-of-plan services.* The reasonable cost of out-of-plan services (less deductibles and coinsurance) attributable to those enrollees who are title XVIII beneficiaries who elect, pursuant to § 405.2022(c)(2), to be exempt from the restriction imposed by § 405.2022(c)(1) on out-of-plan services, is added to the reasonable costs actually incurred by the HMO.

(3) *HMO option—payment to providers by intermediaries.* If the HMO has elected to have providers of services (as defined in section 1861(u) of the Social Security Act) that furnish covered services to its enrollees who are title XVIII beneficiaries, obtain reimbursement directly from their title XVIII intermediaries (see § 405.2041(d)), the reasonable cost of these covered items and services reimbursed by the intermediaries (less applicable deductibles and coinsurance), as well as intermediary administrative costs applicable to such payment, is added to the reasonable costs actually incurred by the HMO.

§ 405.2062 Determining adjusted average per capita cost.

(a) *General.* The adjusted average per capita cost is the amount that is compared with the HMO's per capita incurred cost to determine whether there is a "savings" or "loss" accruing to the HMO. It represents the average per capita cost which would have been incurred by the enrollees of the HMO who are title XVIII beneficiaries if they had received their covered services from providers of services, physicians, suppliers, and organizations other than the HMO in the same "geographic area" (as defined in paragraph (b) of this section) served by the HMO or a "similar area" (as defined in paragraph (c) of this section). The Secretary computes the adjusted average per capita cost or an estimated adjusted average per capita cost under the following circumstances:

(1) As part of the procedures for final settlement and payment with a risk-basis HMO (see § 405.2065), the Secretary determines the adjusted average per capita cost;

(2) For use in the interim settlement and tentative settlement with a risk-basis HMO (see § 405.2064), the Secretary determines an estimated adjusted average per capita cost subject to adjustment at the time of final settlement; and,

(3) Upon request by the HMO, the Secretary makes a preliminary estimate of the adjusted average per capita cost for the current year and/or the following year, using the latest available data applicable to such an HMO. Such a preliminary estimate of the adjusted average per capita cost is computed and furnished to the HMO with the understanding that the adjusted average per capita cost computed at the time of final settlement may be significantly different from the estimate.

(b) *Geographic area.* The geographic area used in determining the adjusted average per capita cost is normally the area or areas of residence for enrollees in the HMO who are title XVIII beneficiaries.

(c) *Similar area.* In some cases the geographic area, as defined in paragraph (b) of this section, may not be an appropriate basis of comparison because, if used, it would result in an HMO's being reimbursed significantly more or less than is reasonable for the covered services rendered. If there is substantial evi-

dence of special characteristics that may have such results (e.g., an area that was significantly underserved and the HMO provided adequate services), the Secretary may determine on an individual HMO basis that a similar area is a more appropriate geographic area for computing the adjusted average per capita cost. In such a case, the Secretary selects an area similar in its major actuarial features to the HMO's geographic area, except for the special characteristics.

(d) *Computation of adjusted average per capita cost.* In computing the adjusted average per capita cost, the Secretary uses the U.S. per capita incurred cost, as defined in paragraph (d)(1) of this section, modified by a number of actuarial factors, as described in paragraphs (d) (2) through (4) of this section.

(1) *U.S. per capita incurred cost.* The U.S. per capita incurred cost represents the average per capita cost, including administrative expenses reimbursed to intermediaries and carriers, incurred by the health insurance program, as determined on an accrual basis, for covered services furnished to title XVIII beneficiaries. The U.S. per capita incurred cost is consistent with the determination of incurred cost used by the Office of the Actuary of the Social Security Administration, in connection with the Annual Report of the Board of Trustees and covers the same time period as the HMO's contract year.

(2) *Geographic index.* In computing the adjusted average per capita cost, an appropriate actuarial adjustment is made by the Secretary to reflect the relative level of health insurance program expenditures for title XVIII beneficiaries in the HMO's geographic area, who are not enrolled in the HMO. This adjustment is independent of the influence of the age and sex distribution of the area's title XVIII beneficiaries. The geographic index is based on services reimbursed by the health insurance program and utilizes the most accurate and timely data available to the Social Security Administration to adapt the U.S. per capita incurred cost figure to the HMO's geographic area.

(3) *Age, sex, and disability status.* The adjusted average per capita cost is adjusted to reflect the age and sex distribution and disability status of the HMO's enrollees who are title XVIII beneficiaries, as health insurance program experience indicates differences in costs by age, sex, and disability status of such beneficiaries. Adjustments for age and sex are made for those beneficiaries age 65 and over as well as those beneficiaries under age 65 qualifying for title XVIII benefits on the basis of disability. The adjustments for age and sex of beneficiaries under age 65 include those beneficiaries qualifying for title XVIII benefits under section 226(b) or 226(e) of the Act. The adjustment factors for age and sex are based on data compiled annually by the Office of Research and Statistics of the Social Security Administration and the distribution by age and sex for the HMO's title XVIII beneficiaries. For example, for beneficiaries 65 and over, such adjustment is comprised of separate factors for each 5 years of age by sex through age 84, plus a separate factor for all beneficiaries 85 and over by sex.

(4) *Other relevant factors.* If accurate data are available and appropriate, race, institutional status, and other relevant factors, as specified in section 1876 of the Social Security Act, are reflected in the adjusted average per capita cost computation.

§ 405.2063 Computation of the amount due to (or from) the HMO

(a) *Determining per capita savings or losses.* The Secretary determines whether the risk-basis HMO has incurred savings or losses by comparing the HMO's adjusted incurred cost (see § 405.2061) to the adjusted average per capita cost (see § 405.2062). In making this comparison, both the HMO's adjusted incurred cost and the adjusted average per capita cost are first converted to a monthly per capita basis. To accomplish this conversion, the HMO's adjusted incurred cost is divided by the total number of contract months for title XVIII beneficiaries who are enrollees to develop the HMO's monthly per capita adjusted incurred cost. (Total number of contract months for title XVIII beneficiaries who are enrollees is the cumulative number of such contracts, recorded as of the first day of each month, for all months included in the HMO's contract year. If more than one person is enrolled under one contract, each person is counted for a contract month (see § 405.2043(g)). The adjusted average per capita cost is also converted to a monthly per capita basis. A comparison is then made of the HMO's monthly per capita adjusted incurred cost and the monthly adjusted average per capita cost to determine the monthly per capita savings or losses as defined in § 405.2060. This monthly per capita savings (or losses) is multiplied by the cumulative total number of contract months for title XVIII beneficiaries who are enrollees to determine the total amount of savings to be apportioned (or losses to be absorbed).

(b) *Apportionment of savings.* Accrued savings for each contract year shall be apportioned between the FMO and the health insurance program, following the close of such contract year, as follows:

(1) If losses for prior year(s) have not been offset, the provisions of paragraph (c) of this section apply.

(2) If there are no losses for prior year(s) to be offset, savings of up to 20 percent of the adjusted average per capita cost are apportioned equally between the HMO and the health insurance program.

(3) If the remaining savings are in excess of 20 percent of the adjusted average per capita cost, such excess is apportioned entirely to the health insurance program trust funds.

(c) *Carrying losses forward and offsetting losses.* If an HMO incurs losses, they are absorbed fully by the HMO. Such losses are carried forward and offset from savings realized in later contract years as follows:

(1) Losses are offset against savings only in subsequent contract years, i.e., not against savings in prior contract years.

(2) Losses are offset in the order in which they are incurred, i.e., losses for earliest year(s) are offset first.

(3) Losses for prior year(s) in excess of current year's savings are carried forward and offset in accordance with paragraph (c)(2) of this section.

(4) If there are savings remaining after losses for prior year(s) have been offset, the remaining savings up to 20 percent of the adjusted average per capita cost are apportioned equally between the HMO and the health insurance program except that remaining savings in excess of 20 percent of the adjusted average per capita cost shall be apportioned entirely to the health insurance program trust funds.

(5) If a merger is effected involving one or more risk-basis HMO's, a loss carry-over is permitted but only to the extent that the combined savings exceed the combined losses of such HMO('s) for the two reporting years prior to the effective date of the merger.

(6) In the case of HMO's that are related organizations, the losses incurred by one HMO may not be offset against the savings of another.

(7) If a risk-basis HMO subsequently exercises its option to become a cost-basis HMO, losses from prior years are not considered an allowable cost to the cost-basis HMO.

(8) Deficits incurred by an HMO prior to the effective date of its risk-basis contract with the Secretary are not carried forward nor offset against savings in years subsequent to the date of the contract.

(9) If a risk-basis HMO, having a carry-over of losses, terminates its participation in the health insurance program, losses from prior years in excess of current year's savings are not considered an allowable cost of either the last contract year or the termination process and such a loss carry-over is not available if the HMO subsequently enters into an agreement to be reimbursed as a risk-basis HMO.

(d) *Computation of the amount due to (or from) the HMO for the contract year.* (1) The liability of the health insurance program, as determined by the Secretary, for the contract year, equals the total allowable reasonable cost actually incurred by the HMO for covered services (less deductibles and coinsurance) provided enrollees who are title XVIII beneficiaries (including those entitled on the basis of chronic renal disease)

(i) Plus the HMO's share of savings, as determined in paragraph (b) of this section, or

(ii) Minus the HMO's losses, as determined in paragraph (c) of this section.

(2) To determine the amount due to (or from) the HMO, the Secretary takes into account any previously made interim payments to the HMO as well as pay-

ments at the time of interim settlement and tentative settlement which are applicable to the same contract year. For purposes of this section, the term "interim payments to the HMO" includes all payments made by the Secretary for the pertinent contract year, including monthly interim per capita payments, lump sum payments, and payments made at the time of interim settlement and tentative settlement (see § 405.2064).

§ 405.2064 Interim and tentative settlements.

(a) *Interim settlement*—(1) *Determination.* Within 90 days after the close of a contract year (or not more than 30 days after the submission of adequate reports, data, and information required by the Social Security Administration if such submission occurs more than 60 days after the end of the contract year) the Social Security Administration makes a determination of the estimated amount payable to the HMO under its contract with the Secretary for the contract year. Such determination is based on the estimated adjusted average per capita cost (see § 405.2062), the HMO's per capita incurred allowable costs, acceptable interim cost reports, enrollment data (as recorded in Social Security Administration records), actuarial data, and such other required data and information in such form and detail as required by the Social Security Administration and as are available. Besides the data required by § 405.2044, the HMO shall maintain and submit, along with the last interim cost report for the contract year, other required data and information. Such data and information include the following:

(i) The number of beneficiaries age 65 and over enrolled in the HMO for hospital insurance and supplementary medical insurance benefits (or supplementary medical insurance benefits only) during the contract year and their distribution by age and sex for each subdivision in the HMO's geographic area;

(ii) The number of beneficiaries under age 65 enrolled in the HMO for hospital insurance and supplementary medical insurance benefits (or supplementary medical insurance benefits only) during the contract year and their distribution by age and sex for each subdivision in the HMO's geographic area; and

(iii) Any other data and information for the contract year required by the Social Security Administration, submitted at such time and in such form and detail as required by the Social Security Administration.

(2) *Payment.* On the basis of the determination as to interim settlement, 50 percent of any amounts deemed payable to the HMO or to the health insurance program trust funds shall be paid by the HMO or by the Secretary, as appropriate, within 30 days of the notice of determination regarding interim settlement.

(b) *Tentative settlement.* A tentative settlement may be made at the option of the Secretary if a final settlement (see § 405.2065) is not reached within 180 days after the end of the HMO's contract year. In such a case, the determination of the estimated amount deemed payable to the HMO under its contract with the Secretary for the contract year, is made on the basis of data as required by § 405.2064(a) and additional available data. A provision of the settlement is payment by either the Secretary or the HMO, as appropriate, of any estimated amounts due, including estimated savings or losses. If appropriate, the amount of the tentative settlement is subject to adjustment at the time of final settlement.

§ 405.2065 Final settlement.

(a) *General.* Final settlement and payment of amounts due the HMO or the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall be made, following submission of an independently certified financial statement and supporting documents as described in paragraph (b) of this section.

(b) *Certified financial statement*—(1) *General.* The HMO shall submit to the Social Security Administration an independently certified financial statement and supporting documents, in such form and detail as the Social Security Administration may prescribe, no later than 180 days following the close of the contract year. Such statement shall include:

(i) The HMO's per capita incurred costs (based upon the principles described in §§ 405.2040 through 405.2043) of providing covered services to its health insurance beneficiaries who are enrollees during the contract year;

(ii) The HMO's methods of apportioning costs among enrollees who are title XVIII beneficiaries, enrollees who are not title XVIII beneficiaries, and others (non-members receiving health care services on a fee-for-service basis or other basis), and

(iii) Such information on enrollment and other data as the Social Security Administration may require.

(2) *Related organizations.* If an HMO is related to another organization by common ownership and/or control (including sole proprietorships, partnerships, joint ventures, and corporations), the independently certified financial statement (specified in paragraph (b)(1) of this section) shall be submitted on a consolidated basis, in such form and detail as the Social Security Administration may prescribe. Such report shall:

(i) Include an individual financial statement for the HMO, prepared in accordance with paragraph (b)(1) of this section, and separate financial statements for the other entities included in the consolidated statements; and

(ii) Exclude from allowable costs of the HMO any costs in excess of those which would be determined to be reasonable in accordance with § 405.2042(b)(11).

(3) *Failure to submit report.* Whenever the HMO fails to submit the required adequate financial statement and supporting documents within the time specified in paragraph (b) of this section, except where the HMO has requested and received approval of an extension of time for good cause shown, such failure to report such information may be deemed by the Social Security Administration to constitute evidence of likely overpayment, on the basis of which appropriate recovery of amounts previously paid, and/or the reduction of current interim payments, may be made.

(c) *Final settlement.* The final settlement consists of a determination by the Social Security Administration, following the submission of the reports specified in paragraph (b) of this section of the amount due to (or from) the HMO as explained in § 405.2063, and a retroactive adjustment by the Social Security Administration of amounts paid by the HMO for the amounts determined to be due the HMO or the health insurance program trust funds, as appropriate. Payments already made, including amounts paid either by the HMO or by the Secretary as a result of the interim settlement (see § 405.2064(a)) and tentative settlement (see § 405.2064(b)), are brought into agreement with the amount due to (or from) the HMO, in accordance with the provisions of § 405.2063. The Social Security Administration's determination (as contained in a notice of health insurance reimbursement) and retroactive adjustment are explained in paragraphs (c)(1) and (2) of this section.

(1) The notice of health insurance program reimbursement shall:

(i) Explain the Social Security Administration's determination regarding total health insurance program reimbursement due the organization for the contract year covered by the reports specified in paragraph (b) of this section, including an explanation of the computation of savings or losses;

(ii) Relate this determination to the HMO's claimed total reimbursable costs for such period;

(iii) Explain the amount(s) and reason(s), by appropriate reference to law, regulations, and health insurance program policy and procedures, if such determination of reimbursable cost may differ from the HMO's claim.

(2) The Social Security Administration's determination (as contained in the notice of health insurance program reimbursement) shall constitute the basis for making retroactive adjustments to any health insurance program payments made to the HMO during the period to which the determination applies.

(3) The Social Security Administration may suspend further payments to the HMO in order to recover, or to aid in the recovery of, any overpayment identified in the determination as having been made to the HMO, notwithstanding a request for a hearing on the determination which the HMO may make pursuant to § 405.1801(b). Any such suspension shall remain in effect as specified in § 405.373(a).

(d) *Interest.* In order that neither the HMO nor the health insurance program trust funds gain from excessive delay in final settlement (see paragraph (c) of this section), interest is charged on amounts payable if payment by the Secretary or the HMO, as determined by the

final settlement, takes place more than 90 days after the submission of an acceptable certified financial statement and supporting documents. Such interest, which accrues on amounts outstanding and unpaid beginning with the 91st day following the submission of such reports and continuing up to, but not including, the date such amounts are paid, is computed at a rate equal to the average rate of interest payable on obligations of the Federal Government issued on such 91st day for purchases by such trust funds.

[FR Doc.75-19492 Filed 7-28-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 14818]

AIRWORTHINESS DIRECTIVES

Societe Nationale Industrielle Aerospatiale Alouette II and Alouette III

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to certain Societe Nationale Industrielle Aerospatiale (S.N.I.A.S. formerly Sud Aviation) Alouette helicopters. There have been reports of corrosion in blade spars of the main rotor blades in the area between the blade cuff and the root end rib that could result in failure of main rotor blades. Since this condition is likely to exist or develop in other helicopters of the same type design, the proposed airworthiness directive would require a one-time inspection, repair and replacement as necessary, of the blade spars of the main rotor blades on certain S.N.I.A.S. Alouette helicopters.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before August 28, 1975, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

This amendment is proposed under the authority of Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

SOCIETE NATIONALE INDUSTRIELLE AEROSPATIALE. Applies to Alouette helicopter Models SE-3130, SE-313B, SA-3180, SA-318B, SA-318C, SA-315B, SE-3160, SA-316B, SA-319B, and SA-316C incorporating 3130 series main rotor blade(s) with serial number 9554 and lower, and 3160 series main rotor blade(s) with serial number 6999 and lower.

Compliance is required within the next 100 hours' time in service after the effective date of this AD, unless already accomplished in accordance with Lama Service Bulletin No. 01.04 for the Model SA-315B, or Alouette Service Bulletin No. 01.30 for the other designated models.

To prevent failure of the main rotor blades due to corrosion, inspect the blade spar in the section between the attachment fitting and root end rib for corrosion, repair as necessary, and return to service, in accordance with paragraphs 2B(2), 2B(3), 2B(4) and 2C of SGAC-approved Alouette Service Bulletin No. 01.30, as amended August 30, 1972, or an equivalent approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region.

Issued in Washington, D.C. on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19579 Filed 7-28-75;8:45 am]

[14 CFR Part 71]

TRANSITION AREA

Proposed Designation

Correction

In FR Doc. 75-18556, appearing at page 30127 for the issue of Thursday, July 17, 1975, in the third column, transition area for Galveston, Texas, the coordinates for longitude should read "longitude 94°45'-00'' W."

Federal Highway Administration

[49 CFR Part 391]

[Docket No. MC 67, Notice No. 75-13]

DRIVERS OPERATING IN INTRASTATE COMMERCE TRANSPORTING HAZARDOUS MATERIALS

Notice of Proposed Rule Making

In response to a petition for rulemaking and on his own motion, the Director of the Bureau of Motor Carrier Safety is considering an amendment to Part 391, Qualification of Drivers, of the Federal Motor Carrier Safety Regulations (49 CFR Part 391), by adding a new section to Subpart A—General Exemptions, to provide a 3-year period for compliance with certain driver qualification requirements for those intrastate operations that will become subject to the Federal Motor Carrier Safety Regulations on January 1, 1976, by virtue of DOT Hazardous Materials Docket No. HM 102, Flammable, Combustible, and Pyrophoric Liquids, Definitions, becoming effective on that date.

On June 15, 1972, the Hazardous Materials Regulations Board published a Notice of Proposed Rule Making, Docket No. HM-102 (37 FR 1189) proposing new definitions for certain classes of materials. On January 24, 1974, the Board published amendments which changed the definition of a flammable liquid to include any liquid having a flash point below 100° F., and created a new classification for combustible liquids. Under the amendment, combustible liquids with a flash point between 100° F. and 200° F., will be subject to placarding, incident reporting, and shipping paper requirements of the Hazardous Materials Regulations when transported in containers having a capacity of 110 gallons or more.

By expanding the number of commodities regulated as flammable and combustible, many intrastate operations of interstate motor carriers will be subject to the DOT Hazardous Materials Regulations and the Federal Motor Carrier Safety Regulations. The intrastate operations affected include the local hauling of fuel oil, and heating oil delivery operations of an interestate carrier. The Department's jurisdiction over the transportation of hazardous materials is set forth in title 18, United States Code, sections 831-835. As provided in section 834(a), the Department's Regulations are binding upon all carriers engaged in interstate or foreign commerce transporting explosives or other dangerous articles by land. The nature of the carrier's operation determines whether these Regulations are applicable. Thus, the intrastate hazardous materials operations of an interstate carrier are subject to both the Federal Motor Carrier Safety Regulations and the DOT Hazardous Materials Regulations.

At present, drivers transporting such liquids as home heating oils (a combustible liquid) in tank trucks in intrastate commerce are not subject to the Federal Motor Carrier Safety Regulations since combustibles have not been a regulated class of commodities. The petitioner presently employs approximately seventy-five drivers who are less than 21 years of age and also older drivers who cannot meet the minimum physical requirements set forth in § 391.41 of the Federal Motor Carrier Safety Regulations (49 CFR 391.41). The petitioner points out that as an interstate carrier, with combustible liquids becoming a hazardous material July 1, 1975, (the effective date has been extended to January 1, 1976 (49 FR 22263, May 22, 1975)), these drivers will not be qualified to drive. Therefore, the petitioner asked that the Director consider a rule which would include either (1) A grandfather clause which would allow drivers hired prior to July 1, 1975, who are otherwise legally licensed to transport a combustible liquid without adherence to the minimum age requirement and physical requirements of the Federal Motor Carrier Safety Regulations, or (2) a minimum of nine months delay, to give adequate time to hire and train replacement drivers.

Therefore, the Director is considering an amendment which would permit the

continued employment for a period of 3 years from the effective date of Docket HM-102, of unqualified drivers who were continuously employed prior to July 1, 1975. This would provide ample time for drivers under 21 years of age to meet the minimum age requirement and for older drivers who cannot qualify under § 391.41, Physical qualifications for drivers, to secure employment in other activities. The proposed amendment would apply only to drivers employed in intrastate hazardous materials operations by an interstate carrier.

In consideration of the foregoing, the Director of the Bureau of Motor Carrier Safety is considering an amendment to add a new paragraph (g) to § 391.2, *General Exemptions*, of the Federal Motor Carrier Safety Regulations (Subchapter B of Chapter III in title 49 CFR), as follows:

§ 391.2 General exemptions.

* * * * *

(g) *Drivers operating intrastate-hazardous materials.* (1) The rules in this part do not apply to a driver who was a regularly employed driver (as defined in § 395.2(f) of this Subchapter) before July 1, 1975, as long as he continues to be a regularly employed driver of that motor carrier, and who drives only a motor vehicle that:

(i) Is used to transport combustible liquids as defined in § 173.115 of this title, and

(ii) Is operated wholly within a single State by a motor carrier as defined in § 390.15 of this subchapter, subject to the Department of Transportation Act (49 U.S.C. 1651 et seq.).

(2) The exemptions provided for in Subparagraph (g) of this section will not apply on and after January 1, 1979.

Interested persons are invited to submit written data, views, or arguments pertaining to the revision under consideration. All comments submitted should refer to the docket number and notice number that appear at the top of this document. Comments should be submitted in three copies to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590. All comments received before the close of business on September 1, 1975, will be considered before further action is taken. All comments received will be available for examination in the Docket Room of the Bureau of Motor Carrier Safety, Room 3401, 400 Seventh Street, SW., Washington, D.C., both before and after the closing date for comments.

This proposal is issued under the authority of section 204 of the Interstate Commerce Act, as amended, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 C.F.R. 1.48 and 389.4, respectively.

Issued on July 17, 1975.

ROBERT A. KAYE,
Director,
Bureau of Motor Carrier Safety.

[FR Doc.75-19594 Filed 7-28-75;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 20520, RM-2169, RM-2193, RM-2197, RM-2198, RM-2234, RM-2343]

STANDARD, FM, TELEVISION BROADCAST STATIONS, AND CROSS-OWNERSHIP OF CABLE TELEVISION SYSTEMS

Multiownership; Correction

In the matter of amendment of §§ 73.35, 73.240, 73.636, and 76.501 of the Commission's rules relating to multiple ownership of standard, FM, television broadcast stations and cross-ownership of cable television systems (stock held by insurance companies, mutual funds, and other institutional investors).

1. In paragraph 53 of the notice of proposed rulemaking (FCC 75-709, 40 FR 26551, adopted on June 11, 1975), "Note 5" should read "Note 6".

2. In the Appendix to the notice of proposed rulemaking, certain language was inadvertently omitted from Note 6 to §§ 73.35, 73.240, and 73.636. Note 6 to each of these sections, as corrected, reads as follows:

NOTE 6: In calculating the percentage of ownership of voting stock under the provisions of Notes 4 and 5, if an investment company, bank or insurance company, directly or indirectly owns voting stock in a company which in turn directly or indirectly owns 50 percent or more of the voting stock of a corporate broadcast licensee or corporate daily newspaper, the investment company, bank or insurance company shall be considered to own the same percentage of outstanding shares of the corporate broadcast station licensee or corporate daily newspaper as it owns of outstanding voting shares of the company standing between it and the licensee corporation or corporate daily newspaper. If the intermediate company owns less than 50 percent of the voting stock of a corporate broadcast station licensee or corporate daily newspaper, the holding of the investment company, bank or insurance company, need not be considered under the 5-percent rule, but, officers or directors of the licensee corporation or of the corporate daily newspaper who are representatives of the intermediate company shall be deemed to be representatives of the investment company, bank or insurance company.

Released: July 14, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75-19653 Filed 7-28-75;8:45 am]

[47 CFR Part 76]

[Docket No. 20553; FCC 75-850]

TELEVISION BROADCAST STATIONS

Definition for "Specialty Stations" and "Specialty Format Programming"

In the matter of amendment of Part 76, Subparts A and D of the Commission's rules and regulations relative to adding a new definition for "specialty stations" and "specialty format programming" and amending the appropriate signal carriage rules.

1. Notice is hereby given of proposed rulemaking in the above entitled matter concerning the carriage of "specialty" television broadcast stations and amending §§ 76.57 (a) and (b), 76.59 (a) and (b), 76.61 (a) and (b) and § 76.63 of the Commission's cable television rules.

2. "Specially programmed"[1] television broadcast stations received their first significant Commission treatment in paragraph 21 of the *Reconsideration of the Cable Television Report and Order*, FCC 72-530, 36 FCC 2d 326 (1972). At that time the Commission stated:

Religious and Other Specially Programmed Stations. Jerrold Electronics Corp., Athena Communications, Buckeye Cablevision Inc., *et al.*, and New Channels Corp., request that religious stations and other specially programmed stations be permitted to be carried as distant signals without counting such signals against the applicable distant signal quota. It is argued that religious stations, like non-English language stations, generally attract select small audiences, and will not be carried by cable systems unless an exemption from the distant signal quota is provided. While petitioner's assertions may be true, there is a fundamental difference between the considerations that prompted us to adopt a rule for non-English language stations and those pertaining to religious programming. In the case of the first, local service is available in very few places in the country. But religious programming is generally available both on radio and television broadcast stations throughout the country, and the resulting impact of unlimited carriage is likely to be more pervasive.

As to specifically programmed stations, petitioners allege that such stations should also be treated outside the confines of distant signal quotas. But the lack of standards by which to measure "specially programmed stations" and the failure of petitioners to demonstrate how the public interest would be served by assuming the risks of greater impact on local stations from widened distribution of the programming of such stations compel rejection of the proposal.

The above quoted passage sets out the rationale for originally treating non-English language stations differently than other television broadcast stations and the reasons that religious and other specially programmed stations were not treated in a like manner.

3. Our continuing review of our cable television rules generally as well as our specific experience with waiver requests concerning these "specially programmed" stations and through comments received by our Re-Regulation Task Force now leads us to question whether our current policy toward "specially programmed" stations is grounded upon a legitimate concern.

4. The problems that "specially programmed" stations create arise in several different contexts. One of the most critical problem areas is "leapfrogging." In paragraph nine of the recent notice of proposed rulemaking in Docket No. 20487, FCC 75-565,— FCC 2d — (1975), the Commission stated: "Systems may

[1] As used herein, the terms "specialty stations" and "specially programmed" stations are used synonomously.

be forced to carry signals with very limited audience appeal. [The type of 'specialty station' involved, broadcast predominantly religious oriented and/or stock market quotations.] Cable subscribers in such situations do not receive the type and variety of programming which was contemplated when the rules were adopted." In that same document the Commission went on to suggest (Para. 12) as one alternative to the leapfrogging rule the following:

A definition of "specialty stations" and their elimination as stations to which the leapfrog rules apply.

It must be pointed out that our treatment of "specialty stations" in the context of "leapfrogging" applies only to the limited area of the existence of these stations in Top-25 markets and their possible importation into cable communities located outside the market of the station.

5. Leapfrogging, however, is not the only context in which "specially programmed" stations undermine some of the basic policies behind our existing signal carriage rules. In *Teleprompter Florida CATV Corp.*, FCC 75-276, __ FCC 2d __ (1975), the Commission was faced with a special relief petition to allow a cable operator to carry an additional independent signal when its authorized independent was broadcasting stock market and Spanish language programming. The petitioner claimed that the subject station did not provide the "variety of programming contemplated by the inclusion of one independent station in the minimum signal complement for smaller television markets." The Commission, in granting the requested special relief, stated:

* * * special relief would be granted where necessary to permit cable systems to meet the minimum levels of signal carriage diversity permitted * * * The variety of programming a station offers is as much affected by scheduling as it is by actual programming practices * * * No matter how relevant and wide-ranging the stock market reports and analysis might be, it is not the type of programming the Commission contemplated an independent station authorized for cable carriage would be presenting when the cable rules were adopted * * * Under ordinary circumstances, program "popularity" is not something with which the Commission concerns itself. However, when specialized programming over the single authorized independent becomes so pervasive that major portions of the day and evening are devoted exclusively to its carriage, the Commission may be called upon * * * to provide special relief.

6. An essential part of signal complement package for the various cable markets is the concept of bringing into a community diversified programming. This concept is not only grounded upon allowing an abundance of programming onto a cable system but, more importantly, upon bringing into the subscriber's home a variety of programs not available off-the-air. The present rules already recognize the value of identifying specialty format programming and have, since the 1972 cable rules, treated some specific categories differently for carriage purposes. Cable systems have been granted great latitude in their ability to select from among all available distant non-commercial educational television broadcast stations. More closely aligned to the type of programming that is under discussion in this proposal is the exception drawn for television stations broadcasting "predominantly in non-English language." In adopting this latter rule, which allows carriage of these stations on cable systems without having to be counted against that system's quota of independent stations, the Commission was guided by a desire to bring programming aimed at a minority of a community's population into that community where such programming was not theretofore available.

7. Our experience thus far with carriage of these foreign language stations on cable systems without having to count against their quotas has been favorable. Many cable systems have taken advantage of these liberal rules and have elected to add them to their signal complement. As far as we can discern, there has been no deleterious effect upon television stations in those markets in which these extra signals are being carried, while, conversely, we feel that these specialized stations' audiences have been increased and their specific message has reached a larger segment of the nation's population. Since there is a limited amount of space and time on the broadcast spectrum, it is quite difficult, if not impossible, for local stations to exhibit programming to meet the needs of every segment of the population. Cable systems, on the other hand, because of the ability to carry many additional stations simultaneously, can fill this void by making these specialized programs available and by doing so, fulfill the Commission's mandate of spreading the benefits of television programming to a larger segment of the population. Moreover, because the stations here involved typically obtain a very small share of the available audience, even in their home market, their potential to significantly divert audience from markets into which they are carried by cable systems is slight.

8. Of course, as with any proposal, going from a theoretical abstract to a practical application of a rule is a difficult task. In this situation we believe that specialized format programming carriage on cable systems is in the public interest; however, the difficulty herein lies in identifying specifically what it is which constitutes such programming and then how to promulgate rules which are administratively workable without causing significant impact on the local television station's ability to serve its community of license.

9. What we believe is desirable is to create a new rule for specialty stations which allows for the deregulation of the unnecessarily restrictive carriage limitations of programs which are not viewed by the public in general. In this way we can liberalize the carriage complement on cable systems by allowing additional specialized format, diversified programming and at the same time cause no significant impact to local television stations.

10. We seek comments upon two general questions. First, we solicit comments on the definition of what it is that should comprise a specialty format television broadcast station. Second, we request comment upon the procedural aspects, such as whether there should be a limiit on how many stations, or programs, to allow into a local market.

11. Thus far we have not sought to clearly differentiate between identification of the specialized format as both a concept of categorization of television stations and individual programs. This has been done intentionally. At this point of our investigation, we have made no determination as to the best way to proceed. We hold ourselves flexible to developing rules which would treat an entire station as a speciality format station, as we do with the non-English stations, or to also look at segments of the television station's general programs and to fashion rules which would treat blocks of specialized format programs differently from that station's general fare. If this latter concept is applied, we are concerned with the problem of uncertainty of schedules since each time the television station changes its programs or juggles its time frames, it could cause scheduling problems for the cable operator. Perhaps one way of looking at a speciality format program is to look at the audience to which that program has been designed to appeal. Here we would concentrate upon defining the targeted audience which would be some segment of the general population, but not the whole of the available viewing audience.

12. As a point of departure, we offer the following definitions for specialty format stations; comments are welcome, of course, upon any other additional definitions which would achieve our stated goal of diversity of overall programming on the cable system.

Proposal #1, § 76.5(n)(1).

1. *Specialty Station.* A commercial television broadcast station, broadcasting predominantly programming which consists of non-English, religious, ethnic or automated services.

This definition would allow the Commission flexibility since it would not require a great percentage of any one category of programs to trigger the application of the rule but would concentrate on reviewing the entire station's programming, looking to see where the emphasis has been placed (*e.g.*, prime time programming). This definition would have the additional effect of allowing an additional independent station to be carried on a cable system located in a market where the local independent station is a specialty station.

Proposal #2, § 76.5(n)(1).

1. *Specialty Station.* A commercial television broadcast station of which at least 50 percent of its programming consists of non-English, religious, ethnic, or automated services.

This definition would reflect a straight percentage formula of the overall station's programs. Exception to this rule would be accommodated through waiver requests.

Proposal #3, §§ 76.5(n) and 76.5(n)(1).

1. *Independent Station.* A commercial television station which generally devotes more than 50 percent of its total weekly hours to "entertainment/sports" programming.

2. *Entertainment/Sports Programs.* Entertainment programs include all programs intended primarily as entertainment, such as music, drama, variety, comedy, quiz, etc. Sports programs include play-by-play and pre- or post-game related activities and separate programs of sports instruction, news, or information (*e.g.*, fishing opportunities, golfing instruction, etc.).

The emphasis in this definition is to define what an independent station is, leaving all other non-network stations to be carried according to any new rules developed by this proceeding. The 50 percent standard in this definition could be replaced by the "predominant" standard discussed above.

Proposal #4, § 76.5(n)(1).

1. *Specialty Format Program.* Programming intended primarily for a targeted audience which is measured by specialized nature of the broadcast. It includes non-English language, religious, ethnic, or automated services.

This definition reflects the concept that less than the whole station's programming may be carried on cable systems. It would allow carriage on a program-by-program basis; perhaps with an additional requirement that such programming be contained in a minimum "time block"—*e.g.*, 2 or 3 hours.

13. Assuming the definition problem is resolved, we would like comments concentrating upon the carriage of the specialty stations or special format programs. As noted in the first alternative definition, some television markets would be allowed an additional independent station or additional independent programs if the local station is considered a specialty station. We here inquire whether there should be a limit on the number or distance of the specialty stations, or programs allowed to be carried on cable systems in the station's market as well as in distant communities. We also would like to have information submitted which would reflect how much specialty programming could be allowed to be carried before there is likely to be a significant impact on the local stations, if indeed there could be any such threshold amount.

14. Authority for the proposed rule making instituted herein is contained in Sections 4(i), 303 and 403 of the Communications Act of 1934, as amended.

15. All interested persons are invited to file written comments on the rule making proposals on or before September 15, 1975, and reply comments on or before September 30, 1975. In reaching a decision in this matter, the Commission may take into account any other relevant information before it, in addition to the comments invited by this notice.

16. In accordance with the provisions of § 1.419 of the Commission's rules and regulations, an original and 14 copies of all comments, replies, pleadings, briefs, or other documents filed in this proceeding shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (Room 239) at its Headquarters in Washington, D.C. (1919 M Street, NW.).

ADOPTED: July 16, 1975.

RELEASED: July 24, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.19651 Filed 7-28-75;8:45 am]

[47 CFR Parts 89, 91, 93]

[Docket No. 20547; RM-1773; FCC 75-837]

TRANSMITTERS IN THE INDUSTRIAL RADIOLOCATION SERVICE

Notice of Proposed Rule Making

In the matter of amendment of parts 89, 91, and 93 of the Commission's rules to modify the type acceptance requirements for transmitters in the Industrial Radiolocation Service.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Collins Radio Company (Collins) has filed a petition requesting amendment of Part 91 of the Commission's Rules to establish certain minimum technical standards and to require type acceptance of transmitters in the Industrial Radiolocation Service. Also, the petitioner requested that all transmitters in the Industrial Radiolocation Service meet these requirements within five years of the date the rule changes are adopted. Comments opposing this petition were received from Decca Survey Systems, Inc., (Decca). Reply comments were filed by Collins. A letter supporting the petition was received from Central Station Industry.

3. In support of its request, Collins states that land mobile licensees should be afforded every possible means of protection from harmful interfering effects from other transmitters. By requiring radiolocation transmitters licensed under Part 91 to meet certain technical standards[1] (and that such ability be demonstrated through the type acceptance process) land mobile licensees would be assured a minimum interference potential from radiolocation operations. Collins contends that the Commission contemplated adoption of further technical standards for the Industrial Radiolocation Service. They maintain that the radiolocation state of the art is far enough past a completely developmental stage at this time to establish certain technical standards and notes that the Commission has already acknowledged this by requiring radiolocation transmitters licensed after January 1, 1974, under Parts 89 and 93 to be type accepted.

4. Decca, in their comments, agreed with Collins that the Commission contemplated adoption of further technical standards in the future. However, they contend that the radiolocation art is still in a developmental stage and the Commission should await the arrival of further permanency in the state of the art of radiolocation transmitting equipment before adopting formal technical standards.

5. Central Station Industry (CSI) expressed concern about the proliferation of non-type accepted field disturbance sensors. CSI pointed out that field disturbance sensors may operate without an individual license if they meet the minimum technical requirements of Part 15. The same equipment, CSI states, may be licensed for use in the Industrial Radio Service under Part 91, but is not required to meet any technical standards whatever. (Note, however, that § 2.805 of the Commission's Rules requires equipment to comply with the standards in the applicable rules, prior to marketing or use, although an equipment authorization may not be required.) To alleviate the problem they urged the Commission to adopt the Collins petition and in addition, issue a separate list of field disturbance sensor equipment acceptable for licensing in the Industrial Radiolocation Service.

6. A brief background concerning type acceptance of radiolocation transmitters licensed under Part 91 can be found in the Report and Order in Docket 16106 (5 FCC 2d 197). In this proceeding the Commission considered the radiolocation art to be in a developmental stage, too much so to warrant the adoption of formal type acceptance requirements at that time. Therefore, the use of non-type accepted equipment was authorized subject to certain frequency tolerance specifications enumerated in Subpart C of Part 91. It was the Commission's intent, however, to require type acceptance when additional technical standards in the radiolocation art were developed.

7. The question of type acceptance of radiolocation transmitters was brought up again in the Order in Docket 17847 (11 FCC 2d 937). This time, however, the Commission decided that the radiolocation art was sufficiently developed to require radiolocation transmitters licensed under Parts 89 and 93 of the Rules to demonstrate their ability to meet the technical requirements in Parts 89 and 93 through the type acceptance process. Since 1956 the Commission has pursued a step by step approach in requiring transmitters licensed under Parts 89, 91, and 93 to be type accepted. The Commission believes this policy should be continued when possible. Since radiolocation operations under Parts 89 and 93 are similar to those licensed under Part 91, the type acceptance requirement

[1] Equipment would be required to meet frequency tolerance specifications and emission limitation requirements in Subpart C of Part 91.

should be extended to include radiolocation transmitters licensed under Part 91. We propose, therefore, to amend Subpart M of Part 91 of the Rules to require transmitters to meet the frequency tolerance and emission limitations enumerated in Subpart C of Part 91 and, in addition, that they demonstrate such ability through the type acceptance process. We are not, however, at this time, advocating detailed technical standards which might tend to constrain development in the state of the art of radiolocation transmitters, but only those minimum technical standards necessary to provide reasonable freedom from harmonics and other spurious emissions which may interfere with land mobile operations.

8. In addition to the type acceptance requirement, we propose at this time to add certain limitations on speed measuring devices operating on the frequencies 2455 MHz and 10,525 MHz and other devices operating on frequencies between 2450 and 2500 MHz in order to keep radiolocation operations under Parts 89, 91, and 93 consistent. However, such stations would be exempt from the requirements of §§ 91.107(c), 91.151(d), and § 91.152(a) of Part 91.

9. Collins also requested that all transmitters in the Industrial Radiolocation Service meet these requirements within five years of the date rule changes are adopted. The Commission considered this question in Docket 17847 and decided to "grandfather" non-type accepted equipment in radiolocation stations. To keep consistency in the Rules, we believe it is best to extend the Commission's decision in this proceeding to include Part 91. Therefore, we propose to amend § 91.109(b) to exclude previously authorized radiolocation stations governed by Part 91 from the equipment type-acceptance requirement. This will mean that radiolocation stations authorized under Part 91 prior to the effective date of the proposed rules, could continue to be authorized indefinitely even though non-type-accepted equipment is used. This action will ease the equipment conversion problems and would be in the public interest. Also, we have amended the above Section to reflect the current equipment marketing requirements as specified in Subpart I of Part 2 of the Rules. All equipment marketed after the effective date of the proposed rules would have to be type accepted.

10. The Commission considers it unacceptable to continue the practice of licensing non-type accepted equipment in the Industrial Radiolocation Service and proposes to require all low power intrusion alarms which meet the limits and are encompassed by the definition of a field disturbance sensor in § 15.4(j) of Part 15 to be governed by Part 15. Accordingly, the attached regulations set out the criteria for determining which equipment may be used only in a licensed service and which may be operated without an individual license. The Commission proposes to use field strength, which is directly related to the amount of electromagnetic energy produced by the device, to determine which Part of the Rules will be applicable. Devices which are used to produce a field strength greater than 50,000 or 250,000 microvolts per meter (depending upon the operating frequency) at 30 meters on the fundamental frequency will require type acceptance and may be authorized for use at stations licensed pursuant to Parts 89, 91, and 93 of the Rules. Devices operated below this level must comply with the requirements for field disturbance sensors as set forth in Subpart F of Part 15 of this Chapter.

11. In regard to the Central Station Industry's request concerning the listing of equipment, the Commission believes it is best for the time being to list the radiolocation type accepted equipment in the regular manner, in the Radio Equipment List, of equipment acceptable for licensing. As in the past, extracting the pertinent information is left to the public.

12. The proposed amendments of the Rules as set forth below are issued pursuant to the authority contained in Sections 4(i), 302, 303 (c) and (f) of the Communications Act of 1934, as amended. Pursuant to the applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before September 9, 1975, and reply comments on or before September 24, 1975. All relevant and timely comments will be considered. The Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

13. In accordance with the provisions of § 1.419(b) of the Commission's Rules, an original and fourteen copies of all statements, briefs, and comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its Headquarters in Washington, D.C.

Adopted: July 16, 1975.

Released: July 23, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

PART 89—PUBLIC SAFETY RADIO SERVICES

I. Part 89 is amended as follows:

1. In § 89.101 the frequency table in paragraph (h) is amended by revising the entries for 2450–2500 MHz and 10,500–10,550 MHz and adding the remaining entries in proper numerical order, and paragraph (i) is amended by adding subparagraphs (21), (22), and (23) as follows:

§ 89.101 Frequencies.

* * * * *

(h) * * *

Frequency band	Class of station(s)	Limitations
MHz		
* * *	* * *	* * *
2450-2500	Base, mobile, operational fixed and radiolocation.	2, 4, 6, 21, 22
* * *	* * *	* * *
10,500-10,550	do	3, 6, 21, 23
* * *	* * *	* * *

(i) * * *

(21) The frequencies 2455 MHz and 10,525 MHz are available to radiolocation land and mobile stations in this service: *Provided,* That unmodulated continuous wave (AO) emission only shall be employed and that a frequency stability of at least 0.2 percent shall be maintained. Such stations shall be exempt from the requirements of §§ 89.113(c), 89.151(a), and 89.151(b).

(22) Devices designed to operate as field disturbance sensors on frequencies between 2450 and 2500 MHz, with a field strength equal to or less than 50,000 microvolts per meter at 30 meters, on the fundamental frequency, will not be type accepted for use under this part. Such equipment must comply with the requirements for field disturbance sensors as set forth in Subpart F of Part 15 of this Chapter.

(23) Devices designed to operate as field disturbance sensors on frequencies between 10,500 and 10,550 MHz, with field strength equal to or less than 250,000 microvolts per meter at 30 meters, on the fundamental frequency, will not be type accepted for use under this part. Such equipment must comply with the requirements for field disturbance sensors as set forth in Subpart F of Part 15 of this Chapter.

* * * * *

2. Section 89.153(d) is revised to read:

§ 89.153 Station identification.

* * * * *

(d) Except as indicated in paragraphs (e), (f), and (g) of this section, each station in these services which is capable of being identified by transmission of its assigned call signal shall transmit the required identification at the end of each transmission or exchange of transmissions, or once each 30 minutes of the operating period, as the licensee may prefer.

* * * * *

PART 91—INDUSTRIAL RADIO SERVICES

II. Part 91 is amended as follows:

1. Section 91.109 is amended by redesignating the present paragraph (c) as paragraph (e). In addition, paragraph (b) is revised and new paragraphs (c) and (d) are added as follows:

§ 91.109 Acceptability of transmitters for licensing.

* * * * *

(b) Each transmitter marketed as specified in § 2.803 of this Chapter or utilized by a station authorized for operation under this part must be of a type

which is included in the Commission's current Radio Equipment List and is designated for use under this part or be of a type which has been type accepted by the Commission for use under this part. As exceptions to these requirements, type acceptance is not required for the following:

(1) Transmitters used at developmental stations.

(2) Transmitters used at radiolocation stations authorized prior to (effective date of rules).

(c) Radiolocation transmitters marketed prior to (effective date of rules) must meet the applicable technical standards in this Part, pursuant to § 2.805 of this Chapter.

(d) Radiolocation transmitters marketed after (effective date of rules) must comply with the requirements of paragraph (b) of this section.

* * * * *

2. Section 91.603 is revised to read:

§ 91.603 Station limitations.

Stations licensed in this service may transmit only those signals necessary to the rendition of the radiolocation service involved.

3. In § 91.604 the frequency table in paragraph (a) is amended by revising the entries for 2450–2500 MHz and 10,500–10,550 MHz and adding the remaining entries in proper numerical order, and paragraph (b) is amended by adding subparagraphs (20), (21), (22), and (23) as follows:

§ 91.604 Frequencies available.

(a) * * *

Frequency band	Class of station(s)	Limitations
MHz		
*	*	*
2450–2500	do	3, 20, 21, 22
*	*	*
10,500–10,550	do	12, 20, 21, 23
*	*	*

(b) * * *

(20) Stations authorized to operate on those frequencies above 952 MHz shall be constructed and used in such a manner as to conform with all technical and operating requirements of Subparts C and D of this part, unless deviation therefrom is specifically provided for in the station authorization.

(21) The frequencies 2455 MHz and 10,525 MHz are available to radiolocation land and mobile stations in this service: *Provided*, That unmodulated continuous wave (AO) emission only shall be employed and that a frequency stability of at least 0.2 percent shall be maintained. Such stations shall be exempt from the requirements of §§ 91.107 (c), and 91.151(d).

(22) Devices designed to operate as field disturbance sensors on frequencies between 2450 and 2500 MHz, with a field strength equal to or less than 50,000 microvolts per meter at 30 meters, on the fundamental frequency, will not be type accepted for use under this part. Such equipment must comply with the requirements for field disturbance sensors as set forth in Subpart F of Part 15 of this Chapter.

(23) Devices designed to operate as field disturbance sensors on frequencies between 10,500 and 10,550 MHz, with a field strength equal to or less than 250,000 microvolts per meter at 30 meters, on the fundamental frequency, will not be type accepted for use under this part. Such equipment must comply with the requirements for field disturbance sensors as set forth in Subpart F of Part 15 of this Chapter.

* * * * *

PART 93—LAND TRANSPORTATION RADIO SERVICES

III. Part 93 is amended as follows:

1. In § 93.112 the frequency table in paragraph (a) is amended by revising the entries for 2450–2500 MHz and 10,500–10,550 MHz and adding the remaining entries in proper numerical order, and paragraph (b) is amended by adding subparagraphs (22) and (23) as follows:

§ 93.112 Availability of microwave frequencies.

(a) * * *

Frequency band	Class of stations	Limitations
MHz		
*	*	*
2450–2500	Base, mobile operational and fixed radiolocation	2, 4, 6, 7, 22
*	*	*
10,500–10,550	do	3, 6, 7, 23
*	*	*

(b) * * *

(22) Devices designed to operate as field distrubance sensors on frequencies between 2450 and 2500 MHz, with a field strength equal to or less than 50,000 microvolts per meter at 30 meters, on the fundamental frequency will not be type accepted for use under this part. Such equipment must comply with the requirements for field disturbance sensors as set forth in Subpart F of Part 15 of this Chapter.

(23) Devices designed to operate as field disturbance sensors on frequencies between 10,500 and 10,550 MHz, with a field strength equal to or less than 250,000 microvolts per meter at 30 meters, on the fundamental frequency will not be type accepted for use under this part. Such equipment must comply with the requirements for field disturbance sensors as set forth in Subpart F of Part 15 of this Chapter.

* * * * *

[FR Doc.75-19652 Filed 7-28-75;8:45 am]

NATIONAL SCIENCE FOUNDATION

[45 CFR Part 613]

PRIVACY ACT REGULATIONS

Proposed Procedures

Notice is hereby given that Part 613 of Title 45 of the Code of Federal Regulations is proposed to be added as set forth below.

The proposed addition implements 5 USC 552a(f) by setting forth rules and procedures for notification of the existence of records, obtaining copies of records and correction of records under the Privacy Act of 1974.

Interested persons are invited to submit written comments on these proposed regulations to the Director, National Science Foundation, ATTN: Office of General Counsel (Privacy Act), Washington, D.C. 20550 by September 5, 1975.

Proposed § 613.6 exercises the Foundation's right to exempt certain investigatory materials from disclosure. The Foundation is claiming an exemption under 5 USC 552a(k)(5) with respect to the identity of persons supplying references for applicants for various types of NSF fellowships. Fellowships are considered to fall within the class of activities described in 5 USC 552a(k)(5), and it is considered to be imperative that reference reports be provided on a confidential basis. In practice, the exercise of this exemption will often require the withholding of the actual reference reports since the comments will in many cases reflect the identity of the reference. Confidentiality is needed to ensure that references are given with complete candor.

The Foundation is also claiming an exemption with respect to the identity of references of persons seeking employment with the Foundation. The reasons for this are substantially the same as maintaining fellowship references in confidence—the need for candor in response.

It is proposed that Chapter VI of Title 45 of the Code of Federal Regulations be amended as follows:

1. The table of parts is proposed to be revised to add the following entry: "613 Privacy Act Regulations".

2. Part 613 is proposed to be added to read as follows:

PART 613—PRIVACY ACT REGULATIONS

Sec.

613.1 Purpose and scope.
613.2 Procedures for notification of existence of records pertaining to individuals.
613.3 Procedures for requests for access to or disclosure of records pertaining to individuals.
613.4 Correction of records.
613.5 Disclosure of records to agencies or persons other than the individual to whom the record pertains.
613.6 Exemptions.

AUTHORITY: 5 USC 552a(f).

§ 613.1 Purpose and scope.

This part sets forth the National Science Foundation procedures under the Privacy Act of 1974 as required by 5 USC 552a(f). Internal guidance for NSF staff and other regulations implementing the Privacy Act are contained or will be contained in NSF Circulars.

§ 613.2 Procedures for notification of records pertainingg to individuals.

(a) The systems of records, as defined in the Privacy Act of 1974, maintained by the National Science Foundation are listed annually in the FEDERAL REGISTER as required by that Act. Any person who wishes to know whether a system of records contains a record pertaining to him may either appear in person at Room ____, 1800 G Street, NW, Washington, D.C. 20550, on work days between the hours of 8:30 a.m. and 5:00 p.m. or may write to the NSF Privacy Act Officer, Assistant Director for Administration, National Science Foundation, Washington, D.C. 20550 (Phone 202-634 ____). It is recommended that requests be made in writing, since in many cases it will take several days to ascertain whether a record exists.

(b) Requests for notification of the existence of a record should specifically identify the system of records involved and should state, if the requester is other than the individual to whom the record pertains, the relationship of the requester to that individual. (Note that requests will not be honored by the Foundation pursuant to the Privacy Act unless made (1) by the individual to whom the record pertains, (2) by such individual's parent if the individual is a minor, or (3) by such individual's legal guardian if the individual has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction). In cases where the NSF Notice of the System appearing in the FEDERAL REGISTER states that the system location is decentralized the special instructions in such notice pertaining to "Notification" and "Access" and "Content" must be followed.

(c) The Foundation will attempt to respond to a request as to whether a record exists within 10 working days from the time it receives the request or from the time any required identification is established, whichever is later.

§ 613.3 Procedures for requests for access to or disclosure of records pertaining to an individual.

(a) Any person may request review of records pertaining to him by appearing at Room ——, 1800 G Street, NW, Washington, D.C. on work days between the hours of 8:30 a.m. and 5 p.m. or by writing to the NSF Privacy Act Officer, Assistant Director for Administration, NSF. Washington, D.C. 20550. (See Paragraphs (b) and (c) of this section for identification requirements.) The request should specifically identify the systems or records involved, and in cases where the NSF notice of the System appearing in the FEDERAL REGISTER states that the system location is decentralized the special instructions in such notice pertaining to "Notification" and "Access and Content" must be followed. The Foundation will strive either to make the record available within 15 working days of the request or to inform the requester of the need for additional identification or the tendering of fees (as specified in paragraph (e) of this section), within 15 working days.

(b) In the case of persons making requests by appearing at the Foundation the amount of personal identification required will of necessity vary with the sensitivity of the record involved. Except as indicated below reasonable identification such as employment identification cards, drivers licenses, credit cards will normally be accepted as sufficient evidence of identity in the absence of any indications to the contrary. Records in the following systems of records, however, are considered to contain relatively sensitive and/or detailed personal information—

Applicants to Committee on the Challenges of Modern Society Fellowship Program (NATO);
Applicants for Employment;
Confidential Statements of Employment and Financial Interests;
Congressional Contact Files;
Doctorate Records File;
Earnings and Tax Statements;
Employee Grievance and Appeals File;
Employee Payroll Jackets;
Equal Employment Opportunity Case File;
Fellowship and Traineeship Filing System;
Grants to Individuals;
Health Service Medical Records;
Intergovernmental Personnel Act Grant Jackets;
Manpower Management Subsystem;
Medical Examination Records for Service in Antarctica;
Minority Applicants for Employment;
Official Personnel Folders;
Payroll System;
Presidential Internship in Science and Engineering;
President's Committee on National Medal of Science;
Principal Investigator/Project Director Subsystem;
Science Education Applicants Information System;
Separated Employees Service Record (SF7);
Student Science Training Program Participant Information;
Time and Attendance Reports; and
U.S. Antarctic Research Program Personal Information.

Accordingly, with respect to requests for records in these systems the Foundation reserves the right to require sufficient identification to identify positively the individual making the request. This might involve independent verification by the Foundation as by phone calls to determine whether an individual has made a request, personal identification by Foundation employees who know the individual, or such other means as are considered appropriate under the circumstances.

(c) A written request will be honored only if it contains the following certification before a duly commissioned notary public of any state or territory (or similar official if the request is made outside the United States):

I, _____, do hereby certify that
(Printed name)
I am the individual about whom the record requested in this letter pertains or that I am within the class of persons authorized to act on his behalf in accordance with 5 USC 552a(h).

_____
Signature

_____
Date

In the County of _____
State of _____
On this ____ day of _____, 19__,
_____ who is personally
(Name of individual)
known to me, did appear before me and sign the above certificate.

_____
Signature

_____
Date

(S) My commission expires _____.

However, where the record requested is contained in any of the systems of records listed in paragraph (b) of this section, the Foundation reserves the right to require additional identification and/or to independently verify to its satisfaction the identity of the requester.

(d) Charges for copies of records will be at the rate of $0.10 per photocopy of each page. Where records are not susceptible to photo-copying, e.g., punch cards, magnetic tapes or oversize materials, the amount charged will be actual cost as determined on a case-by-case basis. Only one copy of each record requested will be supplied. No charge will be made unless the charge as computed above would exceed $3 for each request or related series of requests. If a fee in excess of $25 would be required, the requester shall be notified and the fee must be tendered before the records will be copied.

§ 613.4 Correction of records.

(a) Any individual is entitled to request amendments of records pertaining to him pursuant to 5 USC 552a(d)(2). Such a request shall be made in writing and addressed to the Privacy Act Officer, Assistant Director for Administration, National Science Foundation, Washington, D.C. 20550.

(b) The request should specify the record and systems of records involved, and should specify the exact correction desired and state that the request is made pursuant to the Privacy Act. An edited copy of the record showing the desired correction is desirable. Within 10 working days of the receipt of a properly addressed request (or within 10 working days of the time the Privacy Act Officer becomes aware that a particular communication not addressed as prescribed above is a request for correction of a record under the Privacy Act), the Privacy Act Officer shall acknowledge receipt of the request.

(c) The Privacy Act Officer upon the receipt of such a request shall promptly confer with the Directorate or office within the Foundation responsible for the record. In the event it is felt that correction is not warranted in whole or in part, the matter shall be brought to the attention of the General Counsel. If, after review by the General Counsel and discussion with the requester if deemed helpful, it is determined that correction as requested is not warranted, a letter shall be sent by the Privacy Act Officer to the requester denying his request and/or explaining what correction might be made if agreeable to the requester. This letter shall set forth the reasons for the refusal to honor the re-

quest for correction. It shall also inform him of his right to appeal this decision and include a description of the appeals procedure set forth in paragraph (d) of this section.

(d) An appeal may be taken from an adverse determination under paragraph (c) of this section to the Deputy Director of the Foundation. Such appeal must be made in writing and should clearly indicate that it is an appeal. The basis for the appeal should be included, and it should be mailed to the same address as listed in paragraph (a) of this section. A hearing at the Foundation may be requested. Such hearing will be informal, and shall be before the Deputy Director or his designee. If no hearing is requested, the request for appeal should include the basis for the appeal. Where no hearing is requested the Deputy Director shall render his decision within thirty working days after receipt of the written appeal at the Foundation unless the Director, for good cause shown, extends the 30-day period and the appellant is advised in writing of such extension. If a hearing is requested, then the Foundation will attempt to contact the appellant within five working days and arrange a suitable time for the hearing. In such cases the decision of the Deputy Director shall be made within 30 working days after the hearing unless the time is extended and the appellant is advised in writing of such extension.

(e) The final decision of the Deputy Director in an appeal shall be in writing and, if adverse to the appellant, set forth the reasons for the refusal to amend the record and advise him of his right to appeal the decision under 5 USC 552a (g)(1)(A). The individual shall also be notified that he has the right to file with the Foundation a concise statement setting forth the reasons for his disagreement with the refusal of the Foundation to amend his record.

§ 613.5 Disclosure of records to agencies or persons other than the individual to whom the record pertains.

Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except under the following circumstances:

(a) Records required to be made available by the Freedom of Information Act will be released in response to a request formulated in accordance with NSF regulations found at 45 CFR Part 612.

(b) Records not required by the Freedom of Information Act to be released may be released, at the discretion of the Foundation, if the written consent of the individual to whom they pertain has been obtained or if such release would be authorized under 5 USC 552a(b)(1) or (3)–(11).

§ 613.6 Exemptions.

(a) *Fellowships.* Pursuant to 5 USC 552a(k)(5), the Foundation hereby exempts from the application of 5 USC 552a(d) any materials which would disclose the identity of references of fellowship applicants contained in any of the following systems of records: (1) Fellowship and Traineeship Filing System and (2) Applicants to Committee on the Challenges of Modern Society Fellowship Program (NATO).

(b) *Applicants for Employment.* Pursuant to 5 USC 552a(k)(5), the Foundation hereby exempts from the application of 5 USC 552a(d) any materials which would disclose the identity of references of applicants for employment at NSF contained in the system of records entitled "Official Personnel Folders."

RICHARD C. ATKINSON,
Acting Director.

JULY 22, 1975.

[FR Doc.75-19587 Filed 7-28-75;8:45 am]

POSTAL RATE COMMISSION

[39 CFR Part 3003]

[Docket No. RM-76-2]

PRIVACY ACT RULES

Notice of Proposed Rulemaking

JULY 25, 1975.

Notice is hereby given that the Postal Rate Commission has under consideration rulemaking action to amend 39 CFR by establishing a new Part 3003 which implements provisions of the Privacy Act of 1974 (Pub. L. 93-579).

The new Part establishes procedures by which individuals may safeguard their privacy by obtaining access to and requesting changes in, information about them which is under the Commission's control. The Commission accepts the responsibility to ensure that any system of records it maintains will be kept in such a way that the privacy of all individuals concerned is protected. Disclosure of information from any system of records will be made only in conformity with the Privacy Act.

The proposed Part 3003 is set forth in full in an attachment hereto. Since final publication of this Part is required on or before August 28, 1975, the Commission will entertain comments received on or before August 13, 1975. Comments should be filed with the Commission's Secretary, at the Postal Rate Commission, 2000 L Street, NW., Washington, D.C. 20268.

Authority for the proposed rulemaking is contained in 39 U.S.C. 3603 and 5 U.S.C. 552a.

By the Commission.

[SEAL] JAMES R. LINDSAY,
Secretary.

Part 3003 is proposed to read as follows:

PART 3003—PRIVACY ACT RULES

Sec.

3003.1 Purpose and scope.
3003.2 Definitions.
3003.3 Procedures for requests pertaining to individual records in a record system.
3003.4 Times, places and requirements for identification of individuals making requests.
3003.5 Disclosure of requested information to individuals.
3003.6 Special procedures: Medical records.
3003.7 Request for correction or amendment to record.
3003.8 Agency review of request for correction or amendment of record.
3003.9 Appeal of initial adverse agency determination on correction or amendment.
3003.10 Disclosure of record to person other than the individual to whom it pertains.
3003.11 Fees.
3003.12–3003.13 [Reserved]
3003.14 Specific exemptions.

AUTHORITY: Privacy Act of 1974 (Pub. L. 93-579).

§ 3003.1 Purpose and scope.

This Part is published in compliance with the Privacy Act of 1974 (Pub. L. 93-579). It establishes procedures, consistent with the purposes of the Act, by which individuals may safeguard their privacy by obtaining access to, and requesting amendments or corrections in, information about them which is under the Commission's control.

§ 3003.2 Definitions.

For purposes of this Part:

(a) "Commission" means The Postal Rate Commission.

(b) "Act" means the Privacy Act of 1974 (Pub. L. 93-579).

(c) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) "Maintain", used with reference to a record means to collect, to use, to disseminate, to have control over and responsibility for such record.

(e) "Record" means any item, collection or grouping of information about an individual that is maintained by the Commission and that is retrievable by his or her name or an identifying particular, such as a number, symbol, fingerprint, or photograph, of the individual. Information maintained by the Commission includes, but is not limited to, education, financial transactions, medical history, employment history and criminal history.

(f) "Routine use" means, with respect to the disclosure of a record, the use of such a record for a purpose which is compatible with the purpose for which it was collected. The routine uses of record systems maintained by the Commission were established pursuant to notice in the FEDERAL REGISTER.

(g) "System of records" means a group of any records under the control of the Commission from which information about an individual is retrievable by his or her name or by some identifying particular.

§ 3003.3 Procedures for requests pertaining to individual records in a record system.

(a) (1) An individual who wishes to know whether a system of records maintained by the Commission contains a record or records pertaining to him or her shall file a written inquiry to this effect with the Chief Administrative Officer of the Commission at the Commission's business address. The request shall clearly state on the outside of the en-

velope and in the body that it is a Privacy Act request.

(2) The Chief Administrative Officer shall, within 10 days of receipt of such an inquiry (exclusive of Saturdays, Sundays, and legal holidays) respond informing the individual whether a system of records maintained by the Commission contains such a record or records.

(b) After an accounting of disclosures has been kept, an individual may request an accounting of disclosures of his or her record or records made within the immediately preceding year, except for those made:

(1) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(2) Required under section 552 of this title;

(3) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Commission specifying the particular portion desired and the law enforcement activity for which the record is sought.

Such a request shall be addressed in writing to the Chief Administrative Officer.

(c) (1) An individual who desires to gain access to any record pertaining to him or her contained in a system of records maintained by the Commission shall file a written request with the Chief Administrative Officer at the Commission's business address.

(2) The written request shall state whether the individual intends to appear in person at the Commission's offices or whether he desires to receive a copy of the record or records pertaining to him or her through the mails.

§ 3003.4 Times, places and requirements for identification of individuals making requests.

(a) An individual appearing in person pursuant to paragraph (c) of § 3003.3 of this Part, shall:

(1) Appear at the Commission's business offices between the hours of 8 a.m. and 4:30 p.m. on any day except Saturdays, Sundays, and legal holidays;

(2) Present suitable identification, such as a driver's license, employee identification card, or Medicare card;

(3) If accompanied by another individual of his or her choosing, provided a written statement authorizing discussion of his or her record in the presence of the accompanying individual.

(b) An individual who files a request through the mails pursuant to paragraph (c) of § 3003.3 of this Part shall include as suitable proof of identity his or her date of birth and Social Security number.

§ 3003.5 Disclosure of requested information to individuals.

An individual who has filed a request in accordance with § 3003.4 of this Part shall be permitted to review the record or records pertaining to him or her and to have all or any portion thereof copied. Review of Commission records pursuant to § 3003.4(a) will be conducted in the presence of a representative of the Commission.

§ 3003.6 Special procedures: Medical records.

An individual who requests access to records containing medical information about himself or herself shall provide the Chief Administrative Officer with the name of a licensed medical practitioner. If in the Chief Administrative Officer's judgment transmission of the medical information to the individual could have an adverse effect upon him or her, the information will be transmitted directly to the named medical practitioner.

§ 3003.7 Request for correction or amendment to record.

(a) An individual may request that a record or records pertaining to him or her be amended or corrected. Such requests shall be submitted in writing to the Chief Administrative Officer at the Commission's business address.

(b) An individual requesting amendment of a record or records pertaining to him or her shall furnish suitable identification, as provided in §§ 3003.4 (a) (2) and (b) of this Part.

(c) A request for amendment shall contain an exact description of the item or items sought to be amended and specific reasons for the requested amendment.

§ 3003.8 Agency review of request for correction or amendment of record.

(a) Within 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt of a request to amend a record, the Chief Administrative Officer shall transmit to the requester a written acknowledgement of receipt of the request. Such an acknowledgment may, if necessary, request any additional information needed to make a determination on the request. No acknowledgment is required if the request can be reviewed, processed, and the individual notified of compliance or denial within the ten-day period.

(b) The Chief Administrative Officer shall promptly review the record upon receipt of a request for amendment thereof.

(c) If the Chief Administrative Officer determines that the requested amendment is appropriate to insure that the record is:

(1) Relevant and necessary to accomplish the purposes of chapter 36 of title 39, United States Code; and

(2) As accurate, timely and complete as are reasonably necessary to assure fairness to the requester, the Chief Administrative Officer shall:

(i) Change the record accordingly;

(ii) Advise the requester that the change has been made and transmit a copy of the revision to him or her; and

(iii) After an accounting of disclosures has been kept pursuant to 5 U.S.C. 552a (c), advise all previous recipients of the record of the fact that the amendment was made and the substance of the amendment.

(d) If, after review of the record, the Chief Administrative Officer determines that the requested amendment is not in conformity with the requirements of the Act, he shall:

(1) Advise the requester in writing of such determination, together with the specific reasons therefor; and

(2) Inform the requester that further review of the request by the Chairman of the Commission is available if a written request therefor is made.

§ 3003.9 Appeal of initial adverse agency determination on correction or amendment.

(a) Within 30 days (excluding Saturdays, Sundays, and legal holidays) of receipt of a written request for review pursuant to § 3003.8(d)(2) of this Part, the Chairman shall make an independent review of the record, using the criteria of § 3003.8(c) (1) and (2) of this Part. If the Chairman determines that the record should be amended in accordance with the request, the Chief Administrative Officer shall:

(1) Change the record accordingly;

(2) Advise the requester that the change has been made; and

(3) After an accounting of disclosures has been kept pursuant to 5 U.S.C. 552 a(c), advise all previous recipients of the record of the fact that the amendment was made and the substance of the amendment.

(b) If the Chairman, after independent review, determines that the record should not be amended in accordance with the request, the Chief Administrative Officer shall advise the requester:

(1) Of the determination and the reasons therefor;

(2) Of his or her right to file with the Chief Administrative Officer a concise statement of his or her reasons for disagreeing with the refusal to amend the record;

(3) That the record will be annotated to indicate to anyone subsequently having access to it that a statement of disagreement has been filed, and that the statement will be made available to anyone to whom the record is disclosed;

(4) That the Chairman and the Chief Administrative Officer may, in their discretion, include a brief summary of their reasons for refusing to amend the record whenever such disclosure is made;

(5) That any prior recipients of the disputed record will be sent a copy of the statement of disagreement, after an accounting of disclosures has been kept pursuant to 5 U.S.C. § 552a(c);

(6) Of his or her right to seek judicial review of the refusal to amend the record, pursuant to 5 U.S.C. § 552a(g)(1)(A).

§ 3003.10 Disclosure of record to person other than the individual to whom it pertains.

Commission employees or officers who have possession of or access to individuals' records may be subject to criminal penalties pursuant to 5 U.S.C. 552 a(i)(1) for disclosure thereof without the prior written consent of the indi-

viduals to whom the records pertain unless disclosure is:

(a) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act (5 U.S.C. § 552 of this title);

(c) For a routine use as defined in § 3003.2(f) of this Part;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(e) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency which maintains the record has made a written request to the Commission specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

§ 3003.11 Fees.

There shall be no charge for the first copy of any records furnished pursuant to § 3003.5 and § 3003.6 of this Part. Additional copies will be charged at the cost of reproduction.

§§ 3003.12—3003.13 [Reserved]

§ 3003.14 Specific Exemptions.

The provisions of §§ 3003.3, 3003.4, 3003.5 3003.6, 3003.7, 3003.8, 3003.9, and 3003.11 shall not be applicable to an individual's record or records if:

(a) They are maintained solely for purposes of determining an individual's qualifications, eligibility, or suitability for employment; and

(b) They are relevant and necessary to making a judicious determination as to qualifications, eligibility, suitability, and could only have been obtained by providing express assurance to the source of the materials that his or her identity would not be revealed to the subject of the record; and

(c) Disclosure of the record with the source's name or identity removed would probably not conceal the source's name or identity.

[FR Doc.75-19728 Filed 7-28-75;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 75-181]

IMPORTED TOY TOOL SETS WITHIN CASES

Country of Origin Marking

JULY 3, 1975.

The following is a decision recently promulgated by the United States Customs Service through the Office of Regulations and Rulings.

T.D. 75-181 *Imported toy tool sets within cases*—The Customs Service has been asked to rule whether each of fourteen hand tools of a set, contained in a substantial wood carrying and storage case within an outer sealed cardboard box, are required to be individually marked with the name of the foreign country of origin under section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), additionally to the country of origin label applied abroad inside the lid of the case.

The sets are marketed in the United States exclusively by means of resale to the ultimate purchaser from selection by the latter out of the importer's catalog, primarily for mail order delivery. Foreign country of origin of the set is disclosed in the catalog among illustrated descriptive information.

The transaction raises the issue whether the claimed exception of section 304(a)(3)(D) of the Act and § 134.32(d), Customs Regulations (19 CFR 134.32), authorizing country of origin marking on the container of unmarked foreign articles, properly may be relied upon in lieu of marking the individual tools. There also is raised the question whether the marking label inside the case is acceptable compliance according to Headquarters precedent that has extended the exception to importations of collections of related items made in a single foreign country sold in kits, fitted cases, and similar substantial containers intended for permanent enclosure of the collection.

For country of origin marking purposes, it is ruled that the permanently encased unmarked set of toy tools, with their undisposable wood case, are to be treated as comprising one article and that a conspicuously appearing country of origin marking in English language, applied legibly and permanently on the wood carrying and storage case, is sufficient compliance with the marking law. The legend, such as "West Germany," is considered acceptably conspicuous if the marking appears on the outside surface of the wood case, preferably on its lid. To comply with requirements of § 134.21(c) Customs Regulations (19 CFR 134.21 (c)), the words "Contents made in" or "Contents product of" must prefix the name of the foreign country of origin wherever, on either the wood case or cardboard shipping box, there also appears the name and address of the United States importer or distributor. (January 2, 1975—704139)

[SEAL] RAYMOND E. TURNER,
Director, Entry Procedures and Penalties Division.

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

[FR Doc.75-19608 Filed 7-28-75;8:45 am]

[T.D. 75-187]

SEMICONDUCTOR DEVICES

Country of Origin Marking

JULY 22, 1975.

T.D. 75-187 *Semiconductor devices, including transistors, diodes and integrated circuits.*—The Customs Service has been asked to rule on the proposed multiple listing of countries of origin as a compliance with the requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), in the case of semiconductor devices which are manufactured in up to nine or more foreign countries, and commingled either before or after importation into the United States. The Customs Service has previously ruled that if these devices are large enough to be marked to indicate certain technical and commercial characteristics, they are large enough to be marked to indicate the country of origin. If the articles are not large enough to bear both markings, the requirement for country of origin marking must prevail.

Articles may be excepted from individual marking to indicate their country of origin pursuant to 19 U.S.C. 1304(a)(3)(D) and section 134.32(d) of the Customs Regulations, if the marking of their containers will reasonably indicate the country of origin to the ultimate purchasers in the United States. Accordingly, if the semiconductor devices are imported in containers that are legibly and conspicuously marked to indicate the country of origin, and the Customs officers at the port of entry are satisfied that the devices will reach the ultimate purchasers in the marked containers, the devices may be excepted from individual marking to indicate the country of origin, notwithstanding they are marked with technical and commercial characteristics. The ultimate purchaser of the devices, within the meaning of 19 U.S.C. 1304(a), may be a manufacturer who uses the devices in the manufacture of new and different articles such as television sets, radios, or other electronic equipment, or a hobbyist, experimenter, or repairman who purchases the devices in their original imported condition for use in his hobby or profession.

The Customs Sevice has also ruled that semiconductor devices may be excepted from individual marking in appropriate cases under the provisions of section 134.34 of the Customs Regulations, if the devices are imported in bulk, and repackaged in containers in the United States that are marked to indicate the country of origin to an ultimate purchaser. In some cases these devices are imported in bulk for the purpose of further testing in the United States, and appropriate symbolization marking depending on the results of the tests. The devices are then repackaged in marked containers for resale to ultimate purchasers.

The previous ruling of the Customs Service, permitting the country of origin marking to appear on the containers in which the devices are repackaged in the United States, was conditioned on a requirement that the correct country of origin of each of the transistors must appear on the package. Experience has demonstrated that this is a difficult requirement to enforce, since it is frequently common for manufacturers to commingle many devices of the same type from different countries during the testing and symbolization marking process. This requires the manufacturers to attempt to keep segregated during this process transistors made in different countries so that they can be packaged in properly marked containers, or to identify the particular country of origin of the devices by a color code or other means so that they can be placed in properly marked packages.

The Customs Service has previously ruled that when the name of the country of origin of an imported article is not known but the names of the countries, in one of which it was manufactured or produced, are known, the article (or its container) shall be marked to show the names of all the countries in which it may have originated but that the exact country of origin is unknown (T.D. 51100(4)). Accordingly, the Customs Service is of the view that when semiconductor devices made in a number of different foreign countries are commingled for a *bona fide* reason, and subsequently repackaged for sale to the ultimate purchaser, the marking requirements of 19 U.S.C. 1304 will be met if the containers are legibly and conspicuously marked to indicate that the devices were made in one or more of the countries listed on the container. This ruling will apply only

where all of the commingled devices are made in foreign countries. The ruling will not be applicable if foreign devices are commingled with domestically-manufactured devices.

This ruling, permitting a multiple listing of countries of origin, will apply equally to devices that are repackaged in large containers for sale to ultimate purchasers who are manufacturers, or in smaller packages containing one or several items for sale at the retail level to hobbyists, experimenters and similar purchasers.

In order for the repackaging procedure to be acceptable, it will be necessary for the importing company to make satisfactory arrangements with the District Director of Customs at the port of entry to insure that the importing company will repackage the devices in containers marked to indicate the country or countries of origin of the devices, or that the devices are to be sold by the importer to a company known and designated to Customs at the time of importation which will repackage them in marked retail containers under a procedure approved by the District Director of Customs at the port of entry. It will not be acceptable for the importer to merely instruct his distributors to inform their customers of the foreign origin of the semiconductors at the time of sale, in the event the original container is broken into in order to ship fewer than the total number in that container. (701516)

[SEAL] RAYMOND E. TURNER,
Director, Entry Procedures and Penalties Division.

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

[FR Doc.75-19609 Filed 7-28-75;8:45 am]

[Dept. Circular; Public Debt Series—No. 23-75]

Office of the Secretary

TREASURY NOTES OF SERIES F-1978

Dated and Bearing Interest From August 15, 1975; Due May 15, 1978

JULY 24, 1975.

I. INVITATION FOR TENDERS

1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders on a yield basis for $3,000,000,000, or thereabouts, of notes of the United States, designated Treasury Notes of Series F-1978. The interest rate for the notes will be determined as set forth in Section III, paragraph 3, hereof. Additional amounts of these notes may be issued at the average price of accepted tenders to Government accounts and to Federal Reserve Banks for themselves and as agents of foreign and international monetary authorities. Tenders will be received up to 1:30 p.m., Eastern Daylight Saving time, Tuesday, July 29, 1975, under competitive and noncompetitive bidding, as set forth in Section III hereof. The 5⅞ percent Treasury Notes of Series C-1975, maturing August 15, 1975, will be accepted at par in payment, in whole or in part, to the extent tenders are allotted by the Treasury.

II. DESCRIPTION OF NOTES

1. The notes will be dated August 15, 1975, and will bear interest from that date, payable on a semiannual basis on May 15 and November 15, 1976, and thereafter on May 15 and November 15 in each year until the principal amount becomes payable. They will mature May 15, 1978, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000 and $1,000,000. Book-entry notes will be available to eligible bidders in multiples of those amounts. Interchanges of notes of different denominations and of coupon and registered notes, and the transfer of registered notes will be permitted.

5. The notes will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing United States notes.

III. TENDERS AND ALLOTMENTS

1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to the closing hour, 1:30 p.m., Eastern Daylight Saving time, Tuesday, July 29, 1975. Each tender must state the face amount of notes bid for, which must be $5,000 or a multiple thereof, and the yield desired, except that in the case of noncompetitive tenders the term "noncompetitive" should be used in lieu of a yield. In the case of competitive tenders, the yield must be expressed in terms of an annual yield, with two decimals, e.g., 7.11. Fractions may not be used. Noncompetitive tenders from any one bidder may not exceed $500,000.

2. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, may submit tenders for account of customers provided the names of the customers are set forth in such tenders. Others will not be permitted to submit tenders except for their own account. Tenders will be received without deposit from banking institutions for their own account, Federally-insured savings and loan associations, States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, international organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, and Government accounts. Tenders from others must be accompanied by payment (in cash or the notes referred to in Section I which will be accepted at par) of 5 percent of the face amount of notes applied for.

3. Immediately after the closing hour tenders will be opened, following which public announcement will be made by the Department of the Treasury of the amount and yield range of accepted bids. Those submitting competitive tenders will be advised of the acceptance or rejection thereof. In considering the acceptance of tenders, those with the lowest yields will be accepted to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established at the nearest ⅛ of 1 percent necessary to make the average accepted price 100.000 or less. That will be the rate of interest that will be paid on all of the notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price corresponding to the yield bid. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders, in whole or in part, including the right to accept tenders for more or less than the $3,000,000,000 of notes offered to the public, and his action in any such respect shall be final. Subject to these reservations, noncompetitive tenders for $500,000 or less without stated yield from any one bidder will be accepted in full at the average price (in three decimals) of accepted competitive tenders.

IV. PAYMENT

1. Settlement for accepted tenders in accordance with the bids must be made or completed on or before August 15, 1975, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt. Payment must be in cash, notes referred to in Section I (interest coupons dated August 15, 1975, should be detached), in other funds immediately available to the Treasury by August 15, 1975, or by check drawn to the order of the Federal Reserve Bank to which the tender is submitted, or the United States Treasury if the tender is submitted to it, which must be received at such Bank or at the Treasury no later than: (1) Tuesday, August 12, 1975, if the check is drawn on a bank in the

Federal Reserve District of the Bank to which the check is submitted, or the Fifth Federal Reserve District in case of the Treasury, or (2) Friday, August 8, 1975, if the check is drawn on a bank in another district. Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at a Federal Reserve Bank. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. In every case where full payment is not completed, the payment with the tender up to 5 percent of the amount of notes allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. When payment is made with notes, a cash adjustment will be made to or required of the bidder for any difference between the face amount of notes submitted and the amount payable on the notes allotted.

V. ASSIGNMENT OF REGISTERED NOTES

1. Registered notes tendered as deposits and in payment for notes allotted hereunder are not required to be assigned if the notes are to be registered in the same names and forms as appear in the registrations or assignments of the notes surrendered. Specific instructions for the issuance and delivery of the notes, signed by the owner or his authorized representative, must accompany the notes presented. Otherwise, the notes should be assigned by the registered payees or assignees thereof in accordance with the general regulations governing United States securities, as hereinafter set forth. Notes to be registered in names and forms different from those in the inscriptions or assignments of the notes presented should be assigned to "The Secretary of the Treasury for Treasury Notes of Series F–1978 in the name of (name and taxpayer identifying number)." If notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon Treasury Notes of Series F–1978 to be delivered to _____." Notes tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The notes must be delivered at the expense and risk of the holder.

VI. GENERAL PROVISIONS

1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid tenders allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

WILLIAM E. SIMON,
Secretary of the Treasury.

[FR Doc.75-19697 Filed 7-25-75;11:28 am]

[Dept. Circular; Public Debt Series—No. 24-75]

TREASURY NOTES OF SERIES B–1982

Dated and Bearing Interest From August 15, 1975; Due August 15, 1982

I. INVITATION FOR TENDERS

JULY 24, 1975.

1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders on a yield basis for $2,000,000,000, or thereabouts, of notes of the United States, designated Treasury Notes of Series B–1982. The interest rate for the notes will be determined as set forth in Section III, paragraph 3, hereof. Additional amounts of these notes may be issued at the average price of accepted tenders to Government accounts and to Federal Reserve Banks for themselves and as agents of foreign and international monetary authorities. Tenders will be received up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, July 30, 1975, under competitive and noncompetitive bidding, as set forth in Section III hereof. The 5⅞ percent Treasury Notes of Series C–1975, maturing August 15, 1975, will be accepted at par in payment, in whole or in part, to the extent tenders are allotted by the Treasury.

II. DESCRIPTION OF NOTES

1. The notes will be dated August 15, 1975, and will bear interest from that date, payable semiannually on February 15 and August 15 in each year until the principal amount becomes payable. They will mature August 15, 1982, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000. Book-entry notes will be available to eligible bidders in multiples of those amounts. Interchanges of notes of different denominations and of coupon and registered notes, and the transfer of registered notes will be permitted.

5. The notes will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing United States notes.

III. TENDERS AND ALLOTMENTS

1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to the closing hour, 1:30 p.m., Eastern Daylight Saving time, Wednesday, July 30, 1975. Each tender must state the face amount of notes bid for, which must be $1,000 or a multiple thereof, and the yield desired, except that in the case of noncompetitive tenders the term "noncompetitive" should be used in lieu of a yield. In the case of competitive tenders, the yield must be expressed in terms of an annual yield, with two decimals, e.g., 7.11. Fractions may not be used. Noncompetitive tenders from any one bidder may not exceed $500,000.

2. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, may submit tenders for account of customers provided the names of the customers are set forth in such tenders. Others will not be permitted to submit tenders except for their own account. Tenders will be received without deposit from banking institutions for their own account, Federally-insured savings and loan associations, States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, international organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, and Government accounts. Tenders from others must be accompanied by payment (in cash or the notes referred to in Section I which will be accepted at par) of 5 percent of the face amount of notes applied for.

3. Immediately after the closing hour tenders will be opened, following which public announcement will be made by the Department of the Treasury of the amount and yield range of accepted bids. Those submitting competitive tenders will be advised of the acceptance or rejection thereof. In considering the acceptance of tenders, those with the lowest yields will be accepted to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established at the nearest ⅛ of one percent necessary to make the average accepted price 100.000 or less. That will be the rate of interest that will be paid on all of the notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful

competitive bidder will be required to pay the price corresponding to the yield bid. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be fined. Subject to these reserva- Treasury expressly reserves the right to accept or reject any or all tenders, in whole or in part, including the right to accept tenders for more or less than the $2,000,000,000 of notes offered to the public, and his action in any such respect shall be final. Subject to these reservations, noncompetitive tenders for $500,000 or less without stated yield from any one bidder will be accepted in full at the average price (in three decimals) of accepted competitive tenders.

IV. PAYMENT

1. Settlement for accepted tenders in accordance with the bids must be made or completed on or before August 15, 1975, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt. Payment must be in cash, notes referred to in Section I (interest coupons dated August 15, 1975, should be detached), in other funds immediately available to the Treasury by August 15, 1975, or by check drawn to the order of the Federal Reserve Bank to which the tender is submitted, or the United States Treasury if the tender is submitted to it, which must be received at such Bank or at the Treasury no later than: (1) Tuesday, August 12, 1975, if the check is drawn on a bank in the Federal Reserve District of the Bank to which the check is submitted, or the Fifth Federal Reserve District in case of the Treasury, or (2) Friday, August 8, 1975, if the check is drawn on a bank in another district. Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at a Federal Reserve Bank. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. In every case where full payment is not completed, the payment with the tender up to 5 percent of the amount of notes allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. When payment is made with notes, a cash adjustment will be made to or required of the bidder for any difference between the face amount of notes submitted and the amount payable on the notes allotted.

V. ASSIGNMENT OF REGISTERED NOTES

1. Registered notes tendered as deposits and in payment for notes allotted hereunder are not required to be assigned if the notes are to be registered in the same names and forms as appear in the registrations or assignments of the notes surrendered. Specific instructions for the issuance and delivery of the notes, signed by the owner or his authorized representative, must accompany the notes presented. Otherwise, the notes should be assigned by the registered payees or assignees thereof in accordance with the general regulations governing United States securities, as hereinafter set forth. Notes to be registered in names and forms different from those in the inscriptions or assignments of the notes presented should be assigned to "The Secretary of the Treasury for Treasury Notes of Series B–1982 in the name of (name and taxpayer identifying number)." If notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon Treasury Notes of Series B–1982 to be delivered to _____." Notes tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The notes must be delivered at the expense and risk of the holder.

VI. GENERAL PROVISIONS

1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid tenders allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or mandatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

WILLIAM E. SIMON,
Secretary of the Treasury.

[FR Doc.75-19698 Filed 7-25-75;11:28 am]

[Dept. Circular; Public Debt Series—No. 25-75]

TREASURY BONDS OF 1995–2000

Dated and Bearing Interest From August 15, 1975; Due August 15, 2000

JULY 24, 1975.

I. INVITATION FOR TENDERS

Redeemable at the option of the United States at par and accrued interest on and after August 15, 1995.

1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders on a yield basis for $800,000,000, or thereabouts, of bonds of the United States, designated Treasury Bonds of 1995–2000. The interest rate for the bonds will be determined as set forth in Section III, paragraph 3, hereof. Additional amounts of these bonds may be issued at the average price of accepted tenders to Government accounts and to Federal Reserve Banks for themselves and as agents of foreign and international monetary authorities. Tenders will be received up to 1:30 p.m., Eastern Daylight Saving time, Thursday, July 31, 1975, under competitive and noncompetitive bidding, as set forth in Section III hereof. The 5⅞ percent Treasury Notes of Series C–1975, maturing August 15, 1975, will be accepted at par in payment, in whole or in part, to the extent tenders are allotted by the Treasury.

II. DESCRIPTION OF BONDS

1. The bonds will be dated August 15, 1975, and will bear interest from that date, payable semiannually on February 15 and August 15 in each year until the principal amount becomes payable. They will mature August 15, 2000, but may be redeemed at the option of the United States on and after August 15, 1995, in whole or in part, at par and accrued interest on any interest day or days, on 4 months' notice of redemption given in such manner as the Secretary of the Treasury shall prescribe. In case of partial redemption, the bonds to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice, interest on the bonds called for redemption shall cease.

2. The income derived from the bonds is subject to all taxes imposed under the Internal Revenue Code of 1954. The bonds are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The bonds will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer bonds with interest coupons attached, and bonds registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000. Book-entry bonds will be available to eligible bidders in multiples of those amounts. Interchanges of bonds of different denominations and of coupon and registered bonds, and the transfer of registered bonds will be permitted.

5. The bonds will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing United States bonds.

III. TENDERS AND ALLOTMENTS

1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to the closing hour, 1:30 p.m., Eastern Daylight Saving Time, Thursday, July 31, 1975. Each tender must state the face amount of bonds bid for, which must be $1,000 or a multiple thereof, and the yield desired, except that in the case of noncompetitive tenders the term "noncompetitive" should be used in lieu of a yield. In the case of competitive tenders, the yield must be expressed in terms of an annual yield with two decimals, e.g., 7.11. Fractions may not be used. Noncompetitive tenders from any one bidder may not exceed $500,000.

2. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and dealers who make primary markets in Government securi-

ties and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, may submit tenders for account of customers provided the names of the customers are set forth in such tenders. Others will not be permitted to submit tenders except for their own account. Tenders will be received without deposit from banking institutions for their own account, Federally-insured savings and loan associations, States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, international organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowing thereon, and Government accounts. Tenders from others must be accompanied by payment (in cash or the notes referred to in Section I which will be accepted at par) of 5 percent of the face amount of bonds applied for.

3. Immediately after the closing hour tenders will be opened, following which public announcement will be made by the Department of the Treasury of the amount and yield range of accepted bids. Those submitting competitive tenders will be advised of the acceptance or rejection thereof. In considering the acceptance of tenders, those with the lowest yields will be accepted to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established at the nearest ⅛ of one percent necessary to make the average accepted price 100.000 or less. That will be the rate of interest that will be paid on all of the bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price corresponding to the yield bid. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders, in whole or in part, including the right to accept tenders for more or less than the $800,000,000 of bonds offered to the public, and his action in any such respect shall be final. Subject to these reservations, noncompetitive tenders for $500,000 or less without stated yield from any one bidder will be accepted in full at the average price (in three decimals) of accepted competitive tenders.

1. Settlement for accepted tenders in accordance with the bids must be made or completed on or before August 15, 1975, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt. Payment must be in cash, notes referred to in Section I (interest coupons dated August 15, 1975, should be detached), in other funds immediately available to the Treasury by August 15, 1975, or by check drawn to the order of the Federal Reserve Bank to which the tender is submitted, or the United States Treasury if the tender is submitted to it, which must be received at such Bank or at the Treasury no later than: (1) Tuesday, August 12, 1975, if the check is drawn on a bank in the Federal Reserve District of the Bank to which the check is submitted, or the Fifth Federal Reserve District in the case of the Treasury, or (2) Friday, August 8, 1975, if the check is drawn on a bank in another district. Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at a Federal Reserve Bank. Payment will not be deemed to have been completed where registered bonds are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. In every case where full payment is not completed, the payment with the tender up to 5 percent of the amount of bonds allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. When payment is made with notes, a cash adjustment will be made to or required of the bidder for any difference between the face amount of notes submitted and the amount payable on the bonds allotted.

V. Assignment of Registered Notes

1. Registered notes tendered as deposits and in payment for bonds allotted hereunder are not required to be assigned if the bonds are to be registered in the same names and forms as appear in the registrations or assignments of the notes surrendered. Specific instructions for the issuance and delivery of the bonds, signed by the owner or his authorized representative, must accompany the notes presented. Otherwise, the notes should be assigned by the registered payees or assignees thereof in accordance with the general regulations governing United States securities, as hereinafter set forth. Bonds to be registered in names and forms different from those in the inscriptions or assignments of the notes presented should be assigned to "The Secretary of the Treasury for Treasury Bonds of 1995–2000 in the name of (name and taxpayer identifying number)." If bonds in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon Treasury Bonds of 1995–2000 to be delivered to _____." Notes tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The notes must be delivered at the expense and risk of the holder.

VI. General Provisions

1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of bonds on full-paid tenders allotted, and they may issue interim receipts pending delivery of the definitive bonds.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

William E. Simon,
Secretary of the Treasury.

[FR Doc.75-19699 Filed 7-25-75;11:28 am]

VINYL CLAD FENCE FABRIC CANADA

Antidumping; Determination of Sales at Less Than Fair Value

Information was received on September 27, 1974, that vinyl clad fence fabric from Canada was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as "the Act").

A "Notice of Tentative Negative Determination" that such merchandise is not being, nor likely to be, sold at less than fair value within the meaning of the Act was published in the Federal Register of April 29, 1975, on page 18565. However, information gathered subsequent to the tentative negative determination provided a basis for fair value comparisons on additional sales.

A "Withholding of Appraisement Notice" issued by the Assistant Secretary of the Treasury is being published concurrently with this notice.

I hereby determine that, for the reasons stated below, vinyl clad fence fabric from Canada, other than that produced and sold by General Wire and Cable Co., Ltd., is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160 (a)).

Statement of Reasons on Which This Determination Is Based: An analysis of information from all sources reveals that for fair value purposes the proper basis of comparison is between the purchase price and the adjusted home market price of identical merchandise.

Purchase price was calculated on the basis of a packed f.o.b. delivered to U.S. customer price. Deductions were made for freight, Customs duties, brokerage charges, cash discounts, quantity discounts, and selling commissions, and an addition was made for the Canadian federal sales tax included in the home market price of identical merchandise.

Home market price was based on the packed f.o.b. delivered to Canadian customer price, with deductions for freight and cash discounts, and adjustments for quantity discounts and selling commissions. Packing costs were identical in both markets.

Using the above criteria, home market price was found to be greater than purchase price on sales of this merchandise to the United States from Canada during the period under consideration.

Vinyl clad fence fabric produced and sold by General Wire and Cable Co., Ltd., is excluded from this determination of sales at less than fair value since 100 percent of the sales to the United States during the period under consideration were examined, and the foreign market value was found to be not greater than the purchase price of identical merchandise in every instance.

The United States International Trade Commission is being advised of this determination.

This determination is published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)).

[SEAL] DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

JULY 24, 1975.

[FR Doc.75-19624 Filed 7-28-75;8:45 am]

VINYL CLAD FENCE FABRIC FROM CANADA

Antidumping; Withholding of Appraisement Notice

Information was received on September 27, 1974, that vinyl clad fence fabric from Canada was being sold at less than fair value within the meaning of the Antidumping Act; 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of October 29, 1974, on page 38117. The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury or likelihood of injury or prevention of establishment of an industry in the United States.

A "Notice of Tentative Negative Determination" that vinyl clad fence fabric from Canada is not being, nor likely to be, sold at less than fair value within the meaning of the Act was published in the FEDERAL REGISTER of April 29, 1975, on page 18565. However, information gathered subsequent to the tentative negative determination indicates that vinyl clad fence fabric from Canada, other than that produced and sold by General Wire and Cable Co., Ltd., is being, or is likely to be, sold at less than its foreign market value.

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the purchase price (section 203 of the Act; 19 U.S.C. 162) of vinyl clad fence fabric from Canada, other than that produced and sold by General Wire and Cable Co., Ltd., is less, or is likely to be less, than the foreign market value (section 205 of the Act; 19 U.S.C. 164).

Customs officers are being directed to withhold appraisement of vinyl clad fence fabric from all Canadian exporters or producers with the exception of General Wire and Cable Co., Ltd., in accordance with section 153.48, Customs Regulations (19 CFR 153.48).

In accordance with sections 153.32(b) and 153.37, Customs Regulations (19 CFR 153.32(b), 153.37), interested persons may present written views or arguments.

Any such written views or arguments should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by his office not later than 7 days from the date of publication of this notice in the FEDERAL REGISTER.

This notice, which is published pursuant to section 153.34(a), Customs Regulations (19 CFR 153.34(a)), shall become effective upon publication in the FEDERAL REGISTER. It shall cease to be effective at the expiration of 3 months from the date of this publication, unless previously revoked.

[SEAL] DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

JULY 24, 1975.

[FR Doc.75-19625 Filed 7-28-75;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DEFENSE SCIENCE BOARD TASK FORCE ON THEATER NUCLEAR FORCES R&D REQUIREMENTS

Advisory Committee Meeting

The Defense Science Board Task Force on Theater Nuclear Forces R&D Requirements will meet in closed session on 25 and 26 August 1975 in the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Director of Defense Research and Engineering on overall research and engineering and to provide long range guidance in these areas to the Department of Defense.

The Task Force will provide an analysis of technology and systems applicable to theater nuclear forces and indicate promising solutions to the problem area for possible implementation within the Department of Defense.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in Section 552(b) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

JULY 23, 1975.

[FR Doc.75-19611 Filed 7-28-75;8:45 am]

DEFENSE SCIENCE BOARD TASK FORCE ON SPECIFICATIONS AND STANDARDS IMPROVEMENT

Cancellation of Open Committee Meeting

The announcement of the July 29, 1975 meeting of the Defense Science Board Task Force on Specifications and Standards Improvement appearing in Federal Register, Vol. 40, No. 127, July 1, 1975, has been cancelled. It is expected that the Task Force will meet during September. When the time and place has been selected, appropriate announcement will be made.

MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

JULY 24, 1975.

[FR Doc.75-19610 Filed 7-28-75;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

LOUISIANA

Application

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Mid Louisiana Gas Company has applied for a 6⅝" natural gas pipeline right-of-way that will cross the following lands:

T. 20 S., R. 19 E.,
Sec. 10.

The pipeline will convey natural gas across 636.9 feet of the Delta National Wildlife Refuge, Plaquemines Parish, Louisiana.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their view should promptly send their name and address to the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329.

ROY R. VAUGHN,
Acting Regional Director, U.S. Fish and Wildlife Service.

JULY 22, 1975.

[FR Doc.75-19585 Filed 7-28-75;8:45 am]

[INT DES 75-42]

NATIONAL FISH AND WILDLIFE HEALTH LABORATORY

Availability of Draft Environmental Statement

Pursuant to Section 101(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the Department of Interior has prepared a draft environmental statement for the National Fish and Wildlife Health Research Laboratory, Leetown, West Virginia, and invites written comments within 45 days of this notice.

The proposed action is to construct and operate a Fish and Wildlife Health Research Laboratory, Leetown, West Virginia, to develop methods of identification and control of fish and wildlife diseases.

Copies of the draft statement are available for inspection at the following locations:

U.S. Fish and Wildlife Service, Division of Cultural Methods Research, Washington, D.C. 20240.

U.S. Fish and Wildlife Service, Division of Ecological Services, Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240.

Single copies may be obtained by writing the Chief, Division of Ecological Services, U.S. Fish and Wildlife Service, Department of Interior, Washington, D.C. 20240. Comments concerning the proposed action should also be addressed to the Chief, Division of Ecological Services. Please refer to the statement number above.

Dated: July 23, 1975.

STANLEY D. DOREMUS,
Deputy Assistant Secretary, Program Development and Budget.

[FR Doc.75-19650 Filed 7-28-75;8:45 am]

National Park Service

[INT DES 75-39]

KNIFE RIVER INDIAN VILLAGES NATIONAL HISTORIC SITE, NORTH DAKOTA

Proposed Establishment: Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a draft environmental statement for the proposed establishment of Knife River Indian Villages National Historic Site, North Dakota.

The environmental statement considers the social, economic, and ecological effects of the proposal to purchase 1252 acres of land from 12 owners in Mercer County, North Dakota, to be added to the National Park System.

Written comments on the environmental statement are invited and will be accepted for a period of forty-five (45) days following publication of this notice. Comments should be addressed to the Superintendent, Theodore Roosevelt National Memorial Park at the address given below.

Copies of the draft environmental statement are available from, or for inspection at, the folowing locations:

Superintendent, Theodore Roosevelt National Memorial Park, Medora, North Dakota 58645.

Superintendent, State Historical Society of North Dakota, Liberty Memorial Building, Bismarck, North Dakota 58501.

Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225.

Dated: July 16, 1975.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.75-19623 Filed 7-28-75;8:45 am]

Bureau of Reclamation

PROPOSED MODIFICATION TO THE FOUR CORNERS POWERPLANT AND NAVAJO MINE

Public Hearing on Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a draft environmental statement for the Proposed Modifications to the Four Corners Powerplant and Navajo Mine. This statement (INT DES 75-40) was made available to the public on July 18, 1975.

The draft environmental statement deals with the proposed modification of the air pollution equipment on all units in order to bring the plant into compliance with existing State and Federal standards. Units 1, 2, and 3 would have existing scrubbers modified to meet the standards, but units 4 and 5 would have to have a scrubber/absorber system installed. A limestone quarry and kiln would be opened 130 miles northwest of the plant to supply the scrubbers with lime.

In addition to the above, plans for the Four Corners Powerplant would include modification of the solid waste and water disposal systems to minimize environmental damage.

Utah International Inc. (Navajo Mine) is requesting an additional amendment (Amendment Four) to their present lease. Amendment Four consists of 3,224.25 acres containing approximately 48,000,000 tons of coal.

A public hearing will be held from 1:00 p.m. to 8:00 p.m. on August 28 and 29, 1975, to receive views and comments from interested organizations or individuals relating to the environmental impacts of this project. The hearing will be held at one of the following locations: The Nenahnezad Navajo Tribal Chapter House, New Mexico, which is located approximately 15 miles west of Farmington, New Mexico, and 5 miles northeast of the Four Corners Powerplant, or the City Hall Auditorium in Farmington, New Mexico. Notification of the exact location will be published in the FEDERAL REGISTER at least 1 week before the hearing is scheduled.

Oral statements at the hearing will be limited to a period of ten (10) minutes. Speakers will not trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker one additional opportunity to comment after all other persons wishing to comment have been heard. A translator will be present to translate from Navajo into English. Requests for scheduled presentation will be accepted up to 4:30 p.m. August 22, 1975. Any subsequent requests will be handled at the hearings on a first-come-first-served basis following the scheduled presentations. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone request. Any scheduled speaker not present when called will lose his turn in the scheduled order and will be given an opportunity to speak at the end of the scheduled presentations.

Organizations or individuals desiring to present statements at the hearing should contact Regional Director David L. Crandall, Bureau of Reclamation, Room 7201, 125 South State Street, Salt Lake City, Utah 94147, telephone (801) 524-5592, and announce their intention to participate. Directions to the Nenahnezad Navajo Tribal Chapter House may be obtained from the number above. Written comments from those unable to attend and from those wishing to supplement their oral presentation at the hearing should be received by September 5, 1975, for inclusion in the hearing record.

Dated: July 24, 1975.

G. G. STAMM,
Commissioner of Reclamation.

[FR Doc.75-19568 Filed 7-25-75;8:45 am]

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

CHOCCOLOCCO CREEK WATERSHED, ALABAMA

Availability of Negative Declaration

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; § 1500.6(e) of the Council on Environmental Quality Guidelines (38 FR 20550) issued on August 1, 1973; and § 650.8(b)(3) of the Soil Conservation Service Guidelines (39 FR 19651) issued on June 3, 1974; the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for a portion of the Choccolocco Creeks Watershed Project, Calhoun, Clay, Cleburne, and Talladega Counties, Alabama.

The environmental assessment of this federal action indicates that this portion of the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with this portion of the project. As a result of these findings, Mr. W. B. Lingle, State Conservationist, Soil Conservation Service, USDA, 138 South Gay Street, Auburn, Alabama 36830, has determined that the preparation and review of an environmental impact statement is not needed for this portion of the project.

The project concerns a plan for watershed protection, flood prevention, recreation, and municipal and industrial water supply. The remaining planned works of improvement as described in the negative declaration include conservation land treatment supplemented by one single-purpose floodwater retarding structure (FRS No. 8) and 9,300 feet of channel work on an existing, intermittent stream (Lateral No. 1).

The environmental assessment file is available for inspection during regular working hours at the following location:

Soil Conservation Service, USDA, 138 South Gay Street, Auburn, Alabama 36830.

Requests for the negative declaration should be sent to the above address.

No administrative action on the proposal will be taken until August 13, 1975.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services)

Dated: July 21, 1975.

WILLIAM B. DAVEY,
Deputy Administrator for Water Resources Soil Conservation Service.

[FR Doc.75-19582 Filed 7-28-75;8:45 am]

MILL CREEK WATERSHED, ILLINOIS

Availability of Negative Declaration

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; and § 1500.6(e) of the Council on Environmental Quality Guidelines (38 FR 20550) August 1, 1973; and § 650.8(b)(3) of the Soil Conservation Service Guidelines (39 FR 19651) June 3, 1974; the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mill Creek Watershed project, Clark and Edgar Counties, Illinois.

The environmental assessment of this federal action indicates that the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with it. As a result of these findings, Mr. Daniel E. Holmes, State Conservationist, Soil Conservation Service, USDA, 200 West Church Street, Champaign, Illinois 61820, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection and flood prevention. The remaining planned works of improvement, as described in the negative declaration, include conservation land treatment supplemented by a floodwater retarding structure.

The environmental assessment file is available for inspection during regular working hours at the following location:

Soil Conservation Service, 200 West Church Street, Champaign, Illinois 61820.

Requests for single copies of the Negative Declaration should be sent to the above address.

No administrative action on implementation of this proposal will be taken until August 13, 1975.

Dated: July 17, 1975.

(Catalog of Federal Domestic-Assistance Program No. 10.904, National Archives Reference Service)

WILLIAM B. DAVEY,
Deputy Administrator for Water Resources, Soil Conservation Service.

[FR Doc.75-19581 Filed 7-28-75;8:45 am]

NORTHWEST LATERALS WATERSHED PROJECT, TEX.

Availability of Negative Declaration

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; § 1500.6(e) of the Council on Environmental Quality Guidelines (38 FR 20550) August 1, 1973; and § 650.8(b)(3) of the Soil Conservation Service Guidelines (39 FR 19651) June 3, 1974; the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Northwest Laterals Watershed Project, Coleman and Runnels, Counties, Texas.

The environmental assessment of this federal action indicates that the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. Edward E. Thomas, State Conservationist, Soil Conservation Service, USDA, First National Bank Building, Temple, Texas 76501, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection and flood prevention. The remaining planned works of improvement as described in the negative declaration includes Floodwater Retarding Structure No. 17A1.

The environmental assessment file is available for inspection during regular working hours at the following location:

Soil Conservation Service, USDA, First National Bank Building, Temple, Texas 76501.

Requests for the negative declaration should be sent to the above address.

No administrative action on implementation of the proposal will be taken until August 13, 1975.

Dated: July 21, 1975.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Service)

WILLIAM B. DAVEY,
Deputy Administrator for Water Resources, Soil Conservation Service.

[FR Doc.75-19583 Filed 7-28-75;8:45 am]

UPPER BRUSHY CREEK WATERSHED PROJECT, ALABAMA

Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; Part 1500 of the Council on Environmental Quality Guidelines (38 FR 20550, August 1, 1973); and Part 650 of the Soil Conservation Service Guidelines (39 FR 19650, June 3, 1974); the Soil Conservation Service, U.S. Department of Agriculture, has prepared a final environmental impact statement (EIS) for the Upper Brushy Creek Watershed Project, Escambia County, Alabama, USDA-SCS-EIS-WS-(ADM)-75-1-(F)-AL.

The environmental impact statement concerns a plan for watershed protection, flood prevention, and drainage. The planned works of improvement include conservation land treatment, supplemented by 7.2 miles of channel work and one grade stabilization structure. The channel work will involve enlargement by excavation to provide a more efficient and unrestricted stream flow in a flatland watershed that is about 60 percent agricultural cropland and pastureland. Of the 7.2 miles of work proposed on existing streams or channels, none involves streams with perennial flow. There is practically no defined channel on 5.8 miles of which one-half involves ponded water and the rest ephemeral or intermittent flow. The balance of 1.4 miles is manmade or previously modified channels which involves ponded water and ephemeral flow.

The final EIS has been filed with the Council on Environmental Quality.

A limited supply is available at the following location to fill single copy requests:

Soil Conservation Service, USDA, 138 South Gay Street, Auburn, Alabama 36830.

Dated: July 17, 1975.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services)

WILLIAM B. DAVEY,
Deputy Administrator for Water Resources, Soil Conservation Service.

[FR Doc.75-19580 Filed 7-28-75;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-457]

COVE TANKERS CORP.

Notice of Application

Notice is hereby given that Cove Tankers Corporation, a New York Corporation, has filed an application, dated June 19, 1975, with the Maritime Subsidy Board (the Board) pursuant to Title VI of the Merchant Marine Act, 1936, as amended (the Act), for an operating-differential subsidy contract, to expire December 31, 1975 (unless extended only for a subsidized voyage in progress on that date), to operate two tanker vessels, the SS *Mount Explorer* and the SS *Mount Navigator*, of approximately 25,000 and 32,000 deadweight tons respectively, in the carriage of export bulk raw and processed agricultural commodities in the foreign commerce of the United States (U.S.) from ports in the U.S. to ports in the Union of Soviet Socialist Republics (U.S.S.R.), or other permissible ports of discharge. Liquid and dry bulk cargoes may be carried from U.S.S.R. and other foreign ports inbound to U.S. ports during voyages subsidized for carriage of export bulk raw and processed agricultural commodities to the U.S.S.R.

Full details concerning the U.S.-U.S.S.R. export bulk raw and processed agricultural commodities subsidy program, including terms, conditions and restrictions upon both the subsidized operators and vessels, appear in Title 46 of the Code of Federal Regulations, Part 294.

For purposes of section 605(c) of the Act, it should be assumed that, should the Board grant the requested approval, the two vessels named above will engage in the described trades, on a full-time basis, during the indicated time period. Under such approval each voyage must be approved for subsidy assistance prior to its commencement and the Board will act on such request(s) as an administrative matter for which there is no requirement for further section 605(c) notice(s).

Any person having an interest in the granting of the application and who would contest a finding of the Board that the service now provided by vessels of U.S. registry for the carriage of cargoes as previously specified is inadequate, must on or before August 4, 1975, notify the Board's Secretary, in writing, of his interest and of his position, and file a petition for leave to intervene in accordance with the Board's rules of practice and procedure (46 CFR Part 201). Each statement of interest and petition to intervene shall state whether a hearing is requested under section 605 (c) of the Act and, with as much specificity as possible, the facts that the intervenor would undertake to prove at such hearing.

In the event a hearing under section 605(c) of the Act is ordered to be held with respect to the subject application, the purpose of such hearing will be to receive evidence relevant to (1) whether the application herein described is one with respect to the vessel to be operated inan essential service, served by citizens of the U.S. which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. registry is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Board will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsides (ODS))

By Order of the Maritime Subsidy Board/Maritime Admimistration.

Dated: July 24, 1975.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.75-19665 Filed 7-28-75;8:45 am]

National Oceanic and Atmospheric Administration

G. CARLETON RAY AND DOUGLAS WARTZOK

Issuance of Endangered Species Permit—E4

On April 14, 1975, notice was published in the FEDERAL REGISTER (40 FR 16706) than an application had been filed with the National Marine Fisheries Service by G. Carleton Ray and Douglas Wartzok, Department of Pathobiology, School of Hygiene and Public Health, The Johns Hopkins University, 615 North Wolfe Street, Baltimore, Maryland 21205, for a permit to take, by tagging with implantable radio transmitters, fifty (50) live bowhead whales (*Balaena mysticetus*) for the purpose of scientific research.

Notice is hereby given that, on July 18, 1975, the National Marine Fisheries Service issued a Scientific Purposes Permit, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), for the radio tagging of fifty (50) adult live bowhead whales to G. Carleton Ray and Douglas Wartzok, subject to certain conditions set forth therein. The permit also authorizes the use of dead bowhead whales and/or other dead endangered species of cetaceans, or parts thereof, which were lawfully taken in accordance with the Endangered Species Act of 1973, in testing the implantable radio transmitter. Issuance of this permit, as required by the Endangered Species Act of 1973, is based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of the permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This permit was also issued in accordance with and is subject to Parts 220 and 222 of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367, November 27, 1974). A similar permit (39 FR 25702, June 18, 1975) for the taking of bowhead whales has been issued under the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407).

The Scientific Purposes Permit is available for review by interested persons in the Division of Marine Mammals and Endangered Species, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, and in the Offices of the Regional Director, National Marine Fisheries Service, Northeast Region, 300 Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, and the Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99801.

Dated: July 18, 1975.

ROBERT W. SCHONING,
Director, National Marine Fisheries Service.

[FR Doc.75-19584 Filed 7-28-75;8:45 am]

Office of the Secretary

[Dept. Org. Order 25-2; Amdt. 2; Transmittal 2]

MARITIME ADMINISTRATION

Authority Delegation

JUNE 2, 1975.

This order, effective June 2, 1975, further amends the material appearing at 38 FR 30757 of November 7, 1973; and 40 FR 16707 of April 14, 1975.

Department Organization Order 25-2, dated October 23, 1973, is hereby further amended, as shown below. This amendment establishes a new region organization within the Maritime Administration, the Great Lakes Region. The activities and responsibilities of the new region are identical to those of the long-established (Eastern, Western, Central) regions with the exception of activities related to the reserve fleets—there are none in the Great Lakes Region—and certain low level activities that do not justify additional positions. These activities, described in subparagraph 13.01c.2., will be handled by other Maritime Administration units, as appropriate.

1. *Section 13. Field Organization.* Paragraph .01 is amended to read:

".01a. There shall be four field organizations called Regions, each headed by a Region Director, as specified below:

Region	*Headquarters location*
Eastern Region	New York, N.Y.
Great Lakes Region	Cleveland, Ohio.
Central Region	New Orleans, La.
Western Region	San Francisco, Calif.

"b. The Regions shall have geographic areas of responsibility as shown in Exhibit 2. A copy of Exhibit 2 is attached to the original of this document on file in the Office of the Federal Register.

"c.1. The *Region Directors* shall be responsible for all field operations and programs of the Maritime Administration within their respective Regions, except ship construction and the United States Merchant Marine Academy, subject to national policies, determinations, procedures and directives of the appropriate headquarters office in Washington, D.C. The programs and activities under their jurisdiction shall include marine inspections; training for marine personnel in radar, loran, etc.; market development; port and intermodal transportation development activities; and administrative support activities.

"2. In addition, the Eastern, Central, and Western Region Directors shall be responsible for the custody and preservation of ships in the national defense reserve fleets; operation, repair and maintenance of ships; facilities management; contract compliance activities; activities to assure equal opportunity in employment in water transportation industries, as assigned; accounting and external auditing; financial analysis of the shipping industry; and procurement and disposal of property and supplies.

"3. The Great Lakes Region Director shall conduct programs and activities to promote the development of Great Lakes shipping."

2. Exhibit 1, Organization Chart, and Exhibit 2, Field Organization have been revised accordingly and supersede Exhibits 1 and 2 dated October 23, 1973. Copies of these exhibits are attached to the original of this document on file in the Office of the Federal Register.

ROBERT J. BLACKWELL,
Assistant Secretary for Maritime Affairs.

Approved:

GUY W. CHAMBERLIN, Jr.,
Acting Assistant Secretary for Administration.

[FR Doc. 75-19649 Filed 7-28-75;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[Docket No. N-75-398]

BERRYESSA HIGHLANDS DEVELOPMENT CORP.

Proceedings and Opportunity for Hearing

In the matter of Berryessa Highlands Land Sales Enforcement Division File No. Y-9611S.

Notice is hereby given that:

On March 19, 1975, the Department of Housing and Urban Development, Office of Interstate Land Sales Registration, attempted to serve upon Douglass H. Perry, President, Berryessa Highlands Development Corporation, 418 Clay Street, San Franciso, California 94111, a Notice of Proceedings and Opportunity for Hearing by certified mail and service of process was not possible since the address could not be located. Accordingly, pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), the Notice of Proceedings and Opportunity for Hearing is being issued as follows:

NOTICE OF PROCEEDINGS AND OPPORTUNITY FOR HEARING

I. The Secretary in administrating the Interstate Land Sales Full Disclosure Act of 1968, 15 U.S.C. 1701, et seq., and its Regulations finds his public files disclose that:

A. Respondent is a limited partnership organized under the laws of the State of California and has its principal office in San Francisco, California.

B. Douglass H. Perry is president of the Respondent.

C. The last known mailing address of Respondent is Berryessa Highlands Development Corporation, 418 Clay Street, San Francisco, California 94111.

D. The Respondent, Berryessa Highlands Development Corporation, filed a Statement of Record and Property Report for Berryessa Highlands, located in Napa County, California, which became effective on March 15, 1972 and is still effective.

II. The Office of Interstate Land Sales Registration (OILSR) from its records or from other sources has obtained information which tends to show, and it so alleges, that the Statement of Record and Property Report of the subdivision captioned above omits provisions in certain documents required by law affecting the rights of purchasers and notifying purchasers of said rights; which provisions are required to be included in said Statement of Record and Property Reports not only to meet such requirements but also to make the said Statement of Record and Property Report not misleading, to wit:

Failure to file the revised first page of the Property Report and revised form of contract in the form and with the language as prescribed by Regulations 24 CFR 1710.110, Part B, 2, 4, 5 and 6 and 24 CFR 1710.105, Part VI C 1 or 24 CFR 1710.120 Section II B, as amended, to disclose and conform to the amendments made in the Interstate Land Sales Full Disclosure Act (15 USC 1701 et seq.) by subsection 812 (c) (1) of the Housing and Community Development Act of 1974 (Public Law 93-383) which subsection became effective October 21, 1974, to wit:

1. Contract voidance and revocation language not printed in boldface type as required.

III. In view of the allegations contained in Part II above, the Secretary will provide an opportunity for a public hearing to determine:

A. Whether the allegations set forth in Part II are true and in connection therewith to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest and for the protection of purchasers pursuant to the Interstate Land Sales Full Disclosure Act.

IV. If the Respondent desires a hearing, he shall file a request for hearing accompanied by an answer within fifteen days after service of this Notice of Proceedings. Respondent is HEREBY NOTIFIED that if he fails to file an answer, motion or other appropriate response within 15 days after service of this Notice of Proceedings, Respondent shall be deemed in default, and the proceedings shall be determined against him, the allegations of which shall be determined to be true, and an ORDER SUSPENDING the Statement of Record and Property Report hereinabove identified shall be issued pursuant to 24 CFR 1710.45(b)(1) and 24 CFR 1720.160(c). Such ORDER shall remain in effect until the Settlement of Record and Property Report have been amended in accordance therewith, and thereupon the Order shall cease to be effective.

V. Any request for hearing, answer, motion, amendment to pleadings, offer of settlement or correspondence forwarded during the pendency of this proceeding shall be filed with the General Counsel's Clerk for Administrative Proceedings, Room 10150, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410. All such papers shall clearly identify the type of matter and the docket number as set forth in this Notice of Proceedings.

VI. IT IS HEREBY ORDERED that upon request of the Respondent a public hearing for the purpose of taking evidence on the questions set forth in Part III hereof be held before Administrative Law Judge James W. Mast or such other Judge as may be designated, in Room 7146, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410, at 10:00 a.m. on the 30th day after receipt of the answer or at such other time as the Secretary or his designee may fix by further order.

This Notice of Proceeding shall be served upon the Respondent pursuant to 24 CFR 1720.440.

Dated: July 22, 1975.

JOHN A. McDOWELL,
Authorized Designee.

[FR Doc.75-19612 Filed 7-28-75;8:45 am]

[Docket No. N-75-397]

CANAVERAL PROPERTIES, INC.

Proceedings and Opportunity for Hearing

In the matter of Canaveral Properties, Land Sales Enforcement Division File No. Y-801 IS.

Notice is hereby given that:

On February 27, 1975, the Department of Housing and Urban Development, Office of Interstate Land Sales Registration, attempted to serve upon Frederick Hyman, President Canaveral Properties, Inc., 975 West 49th Street, Hialeah, Florida 33012, a Notice of Proceedings and Opportunity for Hearing by certified mail and service of process was not possible since the address could not be located. Accordingly, pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), the Notice of Proceedings and Opportunity for Hearing is being issued as follows:

NOTICE OF PROCEEDINGS AND OPPORTUNITY FOR HEARING

I. The Secretary in administering the Interstate Land Sales Full Disclosure Act of 1968, 15 U.S.C. 1701, et seq., and its Regulations finds his public files disclose that:

A. Respondent is a corporation organized under the laws of the State of Florida and has its principal office in Hialeah, Florida.

B. Frederick Hyman is president of the Respondent.

C. The last known mailing address of Respondent is Canaveral Properties, Inc., 975 West 49th Street, Hialeah, Florida 33012.

D. The Respondent, Canaveral Properties, Inc., filed a Statement of Record and Property Report for Canaveral Properties, located in Brevard County, Florida, which became effective on January 13, 1970 and is still effective.

II. The Office of Interstate Land Sales Registration (OILSR) from its records or from other sources has obtained information which tends to show, and it so alleges, that the Statement of Record and Property Report of the subdivision captioned above omits provisions in certain documents required by law affecting the rights of purchasers and notifying purchasers of said rights; which provisions are required to be included in said Statement of Record and Property Reports not only to meet such requirements but also to make the said Statement of Record and Property Report not misleading to wit:

Failure to file the revised first page of the Property Report and revised form of contract in the form and with the language as prescribed by Regulations 24 CFR 1710.110, Part B, 2, 4, 5 and 6 and 24 CFR 1710.105, Part VI C 1 or 24 CFR CFR 1710.120 Section II B, as amended, to disclose and conform to the amendments made in the Interstate Land Sales Full Disclosure Act (15 USC 1701 et seq.) by subsection 812(c)(1) of the Housing and Community Development Act of 1974 (Public Law 93-383) which subsection became effective October 21, 1974, to wit:

1. Respondent failed to insert "Florida" and "Public Offering Statement" in spec-

ified blanks in the first paragraph of the Property Report face page.

III. In view of the allegations contained in Part II above, the Secretary will provide an opportunity for a public hearing to determine:

A. Whether the allegations set forth in Part II are true and in connection therewith to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest and for the protection of purchasers pursuant to the Interstate Land Sales Full Disclosure Act.

IV. If the Respondent desires a hearing, he shall file a request for hearing accompanied by an answer within fifteen days after service of this Notice of Proceedings. Respondent is HEREBY NOTIFIED that if he fails to file an answer, motion or other appropriate response within 15 days after service of this Notice of Proceedings, Respondent shall be deemed in default, and the proceedings shall be determined against him, the allegations of which shall be determined to be true, and an ORDER SUSPENDING the Statement of Record and Property report hereinabove identified shall be issued pursuant to 24 CFR 1710.45(b)(1) and 24 CFR 1720.160(c. Such ORDER shall remain in effect until the Statement of Record and Property Report have been amended in accordance therewith, and thereupon the Order shall cease to be effective.

V. Any request for hearing, answer, motion, amendment to pleadings, offer of settlement or correspondence forwarded during the pendency of this proceeding shall be filed with the General Counsel's Clerk for Administrative Proceedings, Room 10150, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410. All such papers shall clearly identify the type of matter and the docket number as set forth in this Notice of Proceedings.

VI. IT IS HEREBY ORDERED that upon request of the Repondent a public hearing for the purpose of taking evidence on the questions set forth in Part III hereof be held before Administrative Law Judge James W. Mast or such other Judge as may be designated, in Room 7146, HUD Building, 451 Seventh Street SW., Washington, D.C. 20410, at 10:00 a.m. on the 30th day after receipt of the answer or at such other time as the Secretary or his designee may fix by further order.

This Notice of Proceeding shall be served upon the Respondent pursuant to 24 CFR 1720.440.

Dated: July 22, 1975.

JOHN A. MCDOWELL,
Authorized Designee.

[FR Doc.75-19613 Filed 7-28-75;8:45 am]

[Docket No. N-75-399]

GROVELAND HIGHLANDS

Proceedings and Opportunity for Hearing

In the matter of Groveland Highlands, Land Sales Enforcement Division File No. Y-919IS.

Notice is hereby given that:

On February 27, 1975, the Department of Housing and Urban Development, Office of Interstate Land Sales Registration, attempted to serve upon James A. Joss, President, Groveland Ranch Acres, Inc., Suite 403, Dupont Plaza Building, Miami, Florida, a Notice of Proceedings and Opportunity for Hearing by certified mail and service of process was not possible since the address could not be located. Accordingly, pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), the Notice of Proceedings and Opportunity for Hearing is being issued as follows:

NOTICE OF PROCEEDINGS AND OPPORTUNITY FOR HEARING

I. The Secretary in administrating the Interstate Land Sales Full Disclosure Act of 1968, 15 U.S.C. 1701, et seq., and its Regulations finds his public files disclose that:

A. Respondent is a corporation organized under the laws of the State of Florida and has its principal office in Miami, Florida.

B. James A. Joss is president of the Respondent.

C. The last known mailing address of Respondent is Groveland Ranch Acres, Inc., Suite 403, Dupont Plaza Building, Miami, Florida.

D. The Respondent, Groveland Ranch Acres, Inc., filed a Statement of Record and Property Report for Groveland Highlands, located in Polk County, Florida, which became effective on December 30, 1970, and is still effective.

II. The Office of Interstate Land Sales Registration (OILSR) from its records or from other sources has obtained information which tends to show, and it so alleges, that the Statement of Record and Property Report of the subdivision captioned above omits provisions in certain documents required by law affecting the rights of purchasers and notifying purchasers of said rights; which provisions are required to be included in said Statement of Record and Property Reports not only to meet such requirements but also to make the said Statement of Record and Property Report not misleading, to wit:

Failure to file the revised first page of the Property Report and revised form of contract in the form and with the language as prescribed by Regulations 24 CFR 1710.110, Part B, 2, 4, 5 and 6 and 24 CFR 1710.105, Part VI C 1 or 24 CFR 1710.120 Section II B, as amended, to disclose and conform to the amendments made in the Interstate Land Sales Full Disclosure Act (15 USC 1701 et seq.) by subsection 812(c)(1) of the Housing and Community Development Act of 1974 (Public Law 93-383) which subsection became effective October 21, 1974, to wit:

1. Face page of Property Report not submitted as required.

III. In view of the allegations contained in Part II above, the Secretary will provide an opportunity for a public hearing to determine:

A. Whether the allegations set forth in Part II are true and in connection therewith to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest and for the protection of purchasers pursuant to the Interstate Land Sales Full Disclosure Act.

IV. If the Respondent desires a hearing, he shall file a request for hearing accompanied by an answer within fifteen days after service of this Notice of Proceedings. Respondent is HEREBY NOTIFIED that if he fails to file an answer, motion or other appropriate response within 15 days after service of this Notice of Proceedings, Respondent shall be deemed in default, and the proceedings shall be determined against him, the allegations of which shall be determined to be true, and an ORDER SUSPENDING the Statement of Record and Property Report hereinabove identified shall be issued pursuant to 24 CFR 1710.45(b)(1) and 24 CFR 1720.160(c). Such ORDER shall remain in effect until the Statement of Record and Property Report have been amended in accordance therewith, and thereupon the Order shall cease to be effective.

V. Any request for hearing, answer, motion, amendment to pleadings, offer of settlement or correspondence forwarded during the pendency of this proceeding shall be filed with the General Counsel's Clerk for Administrative Proceedings, Room 10150, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410. All such papers shall clearly identify the type of matter and the docket number as set forth in this Notice of Proceedings.

VI. IT IS HEREBY ORDERED that upon request of the Respondent a public hearing for the purpose of taking evidence on the questions set forth in Part III hereof be held before Administrative Law Judge James W. Mast or such other Judge as may be designated, in Room 7146, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410, at 10:00 a.m. on the 30th day after receipt of the answer or at such other time as the Secretary or his designee may fix by further order.

This Notice of Proceeding shall be served upon the Respondent pursuant to 24 CFR 1720.440.

Dated: July 22, 1975.

JOHN A. MCDOWELL,
Authorized Designee.

[FR Doc.75-19614 Filed 7-28-75;8:45 am]

[Docket No. N-75-396]

NORTHMOOR ACRES

Proceedings and Opportunity for Hearing

In the matter of Northmoor Acres Second Filing, Land Sales Enforcement Division File No. Y-979IS.

Notice is hereby given that:

On May 15, 1975, the Department of Housing and Urban Development, Office of Interstate Land Sales Registration, attempted to serve upon Robert P. Marx, President, Northmoor Realty and Development Corporation, 7290 Samuel Drive, Denver, Colorado 80221, a Notice of Proceedings and Opportunity for Hearing by certified mail and service of process was not possible since the ad-

dress could not be located. Accordingly, pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), the Notice of Proceedings and Opportunity for Hearing is being issued as follows:

NOTICE OF PROCEEDINGS AND OPPORTUNITY FOR HEARING

I. The Secretary in administrating the Interstate Land Sales Full Disclosure Act of 1968, 15 U.S.C. 1701, et seq., and its Regulations finds his public files disclose that:

A. Respondent is a corporation organized under the laws of the State of Colorado and has its principal office in Denver, Colorado.

B. Robert P. Marx is president of the Respondent.

C. The last known mailing address of Respondent is Northmoor Realty and Development Corporation, 7290 Samuel Drive, Denver, Colorado 80221.

D. The Respondent, Northmoor Realty and Development Corporation, filed a Statement of Record and Property Report for Northmoor Acres Second Filing, located in Weld County, Colorado, which became effective on July 27, 1972 and is still effective.

II. The Office of Interstate Land Sales Registration (OILSR) from its records or from other sources has obtained information which tends to show, and it so alleges, that the Statement of Record and property Report of the subdivision captioned above omits provisions in certain documents required by law affecting the rights of purchasers and notifying purchasers of said rights; which provisions are required to be included in said Statement of Record and Property Reports not only to meet such requirements but also to make the said Statement of Record and Property Report not misleading, to wit:

Failure to file the revised first page of the Property Report and revised form of contract in the form and with the language as prescribed by Regulations 24 CFR 1710.110, Part B, 2, 4, 5 and 6 and 24 CFR 1710.105, Part VI C 1 or 24 CFR 1710.120 Section 11 B, as amended, to disclose and conform to the amendments made in the Interstate Land Sales Full Disclosure Act (15 USC 1701 et seq.) by subsection 812(c)(1) of the Housing and Community Development Act of 1974 (Public Law 93-383) which subsection became effective October 21, 1974, to wit:

1. Contract voidance and revocation language not printed in boldface type and not incorporated on face or signature page of document as required.

2. Incorrect name of developer cited on face page of Property Report.

III. In view of the allegations contained in Part II above, the Secretary will provide an opportunity for a public hearing to determine:

A. Whether the allegations set forth in Part II are true and in connection therewith to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest and for the protection of purchasers pursuant to the Interstate Land Sales Full Disclosure Act.

IV. If the Respondent desires a hearing, he shall file a request for hearing accompanied by an answer within fifteen days after service of this Notice of Proceedings. Respondent is HEREBY NOTIFIED that if he fails to file an answer, motion or other appropriate response within 15 days after service of this Notice of Proceedings, Respondent shall be deemed in default, and the proceedings shall be determined against him, the allegations of which shall be determined to be true, and an ORDER SUSPENDING the Statement of Record and Property Report hereinabove identified shall be issued pursuant to 24 CFR 1710.45(b)(1) and 24 CFR 1720.160(c). Such ORDER shall remain in effect until the Statement of Record and Property Report have been amended in accordance therewith, and thereupon the Order shall cease to be effective.

V. Any request for hearing, answer, motion, amendment to pleadings, offer of settlement or correspondence forwarded during the pendency of this proceeding shall be filed with the General Counsel's Clerk for Administrative Proceedings, Room 10150, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410. All such papers shall clearly identify the type of matter and the docket number as set forth in this Notice of Proceedings.

VI. IT IS HEREBY ORDERED that upon request of the Respondent a public hearing for the purpose of taking evidence on the questions set forth in Part III hereof be held before Administrative Law Judge James W. Mast or such other Judge as may be designated, in Room 7146, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410, at 10:00 a.m. on the 30th day after receipt of the answer or at such other time as the Secretary or his designee may fix by further order.

This Notice of Proceeding shall be served upon the Respondent pursuant to 24 CFR 1720.440.

Dated: July 22, 1975.

JOHN A. MCDOWELL,
Authorized Designee.

[FR Doc.75-19615 Filed 7-28-75;8:45 am]

[Docket No. N-75-395]

QUAIL MOUNTAIN TRAILS

Order of Suspension

In the matter of Quail Mountain Trails, OILSR No. 0-1033-04-171. Land Sales Enforcement Division Doc. No. Y-542.

Notice is hereby given that:

On or about November 15, 1974, the Department of Housing and Urban Development, Office of Interstate Land Sales Registration, mailed by certified mail to Technology Development, Inc., 15840 Ventura Boulevard, Suite 200, Encino, California 91316, a letter requesting certain documents and that the return receipt requested was returned showing delivery had been made; that the requested documents were not furnished and on or about January 30, 1975, the Department attempted to serve upon Albert Rosen, President, Technology Development, Inc. an Order of Suspension by certified mail and service of process was not possible. Accordingly, pursuant to 15 U.S.C. 1706(e) and 24 CFR 1710.45(b)(2), the Order of Suspension is being issued as follows:

ORDER OF SUSPENSION

1. The Developer, having filed a Statement of Record for the above captioned subdivision pursuant to the provisions of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 *et seq.* and the Rules and Regulations lawfully promulgated thereto pursuant to 15 U.S.C. 1718, had its Statement of Record become effective pursuant to 24 CFR 1710.21 of the Interstate Land Sales Regulations. Said Statement is still in effect.

2. As authorized by 15 U.S.C. 1715, the authority and responsibility for administration of the Interstate Land Sales Full Disclosure Act has been delegated to the Interstate Land Sales Administrator.

3. Pursuant to 15 U.S.C. 1706(e) and 24 CFR 1710.45(b)(2), the Interstate Land Sales Administrator may make an examination to determine whether a Suspension Order should be issued under 15 U.S.C. 1706(d), and if a developer or any agents thereof shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of an order suspending the Statement of Record.

4. Under the authority of 15 U.S.C. 1706(e) and 24 CFR 1710.45(b)(2), a letter dated *on or about November 15, 1974*, was sent to the Developer, the body of said letter being in the form and substance of the form letter attached hereto and made part hereof as Exhibit A. The Developer has failed to comply with the request for the documents referred to in the third paragraph of said letter.

5. Therefore, pursuant to the provisions of 15 U.S.C. 1706(e) and 24 CFR 1710.45(b)(2), the Statement of Record filed by the Developer covering its subdivision is hereby suspended, effective as of the date of the receipt of this Order of Suspension by the said Developer. This Order of Suspension shall remain in full force and effect until the Developer has complied with the requirements of the order.

6. If the Developer desires a hearing in this matter, he shall file a request for hearing accompanied by an answer and three copies thereof within fifteen days after service of this order pursuant to 24 CFR 1720.145 and 24 CFR 1720.165. Any request for hearing, answer, motion, amendment to pleading, offer of settlement or correspondence during the pendency of this proceeding shall be filed with the General Counsel's Clerk for Administrative Proceedings, Room 10150, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410. All such papers shall clearly identify the subdivision, the type of matter and

the docket number as set forth in this order.

Issued in Washington, D.C.

Dated: July 22, 1975.

JOHN R. MCDOWELL,
Interstate Land Sales Administrator (Acting).

EXHIBIT A

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
OFFICE OF INTERSTATE LAND SALES REGISTRATION,
Washington, D.C.

Subject: Submission of Property Reports and Contracts.

GENTLEMEN: On or about September 12, 1974, you were advised by letter from this Office of the necessity for mailing to us, not later than midnight, October 20, 1974, revised Property Report cover pages and lot sales or lease contract revisions. The revisions were, as explained in that letter, caused by the amendments by Congress to Section 1404(b) of the Interstate Land Sales Full Disclosure Act which extended the 48 hour rescission period to 3 business days and also abolished the provisions for waiver of this time by purchasers. These amendments were signed into law August 22 and became effective October 21, 1974. They apply to all sales or leases made on or after that date.

As of today the required revisions to your Property Report and contracts have not been received by us as required by the above referenced letter and the amended Regulations, published October 29, 1974, in the FEDERAL REGISTER on pages 38098-38101. Therefore, we are conducting an examination to determine what further action is warranted by us pursuant to Section 1407 (e) of the Interstate Land Sales Full Disclosure Act. You will note that Section 1407(e) also provides "If the developer or any agents shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuing of an order suspending the Statement of Record."

You are hereby requested to send to this Office, within 15 days of the receipt of this letter (1) a copy of the Property Report or Reports presently on file in your office and used in your lot sales or leasing program, and (2) a copy of the sales or lease contract or agreement presently on file in your office and used in your lot sales or leasing program. Failure to respond as requested will result in issuance of an order suspending your Statement or Statements of Record with our Office under the authority of Section 1407(e) of the Interstate Land Sales Full Disclosure Act (15 USC 1706(e)).

In your response, please put your OILSR file number or numbers on your letter and copies of the Property Report and contract.

Sincerely,

GEORGE K. BERNSTEIN,
Interstate Land Sales Administrator.

[FR Doc.75-19616 Filed 7-28-75;8:45 am]

[Docket No. N-75-400]

LAKE TIMBERLINE

Notice of Hearing

In the matter of Lake Timberline, OILSR No. 0-0326-29-7 (A-D) Doc. No. 75-67-IS.

Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), notice is hereby given that:

1. Lake Timberline, Inc., Ray Neimeyer, President, its officers and agents, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90-448) (15 U.S.C. 1701 et seq), received a Notice of Proceedings and Opportunity for Hearing issued May 20, 1975, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Lake Timberline, located in St. Francois County, Missouri, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received July 14, 1975, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), it is hereby ordered that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW., Washington, D.C., on August 13, 1975, at 10 a.m.

The following time and procedure is applicable to such hearing:

All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before August 6, 1975.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45 (b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: July 22, 1975.

By the Secretary.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.75-19686 Filed 7-28-75; 8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX75-20; Notice 2]

BENLEE INDUSTRIAL SALVAGE COMPANY, INC.

Petition for Temporary Exemption from Federal Motor Vehicle Safety Standard

This notice denies the petition by Benlee Industrial Salvage Company, Inc. for temporary exemption from Motor Vehicle Safety Standard No. 121, *Air Brake Systems.*

Notice of the petition was published on June 5, 1975 (49 FR 24229), and an opportunity afforded for comment.

Benlee produces 20 to 30 trailers a year though is has manufactured none since January 1, 1975. The vehicles are special-purpose in nature, "used as a conveyance of solid waste material, both rubbish and scrap iron from the city location to scrap yards and dumps in the immediate area * * *." The retail price of each trailer is $17,000 and Benlee estimates that conformance to Standard No. 121 would increase this price by $10,000. This increase includes the cost of setting up "proper testing facilities to certify." Benlee has contacted Fruehauf Corporation for cost and delivery estimates of conforming parts, but has received no promise of delivery. It is "not aware of any test facilities in the Detroit area that would certify our compliance" with Standard No. 121. The company's net income in 1972, 1973, and 1974 was, respectively, $2,910, $5,635, and $25,683. If the petition is denied the company "would have to discontinue manufacture of this unit." Benlee estimates that this would reduce its net income by $48,800, which would result in a "substantial loss."

No comments were received on the petition.

Pursuant to 15 U.S.C. 1410(a)(1)(A) the Administrator may grant a temporary exemption upon a finding "that compliance would cause [a] manufacturer substantial economic hardship and that the manufacturer has, in good faith, attempted to comply with each standard from which it requests to be exempted." Thus, the governing statute provides that before an exemption can be granted, a petition must demonstrate that the petitioner has in good faith attempted to comply with the standard from which it seeks exemption. Benlee stated in its petition of May 7, 1975, that it had been "in the trailer building business for a short, 2 year, period," or since early 1973. It claims:

". . . it was difficult to receive information, relative to the 121 law, on a regular basis as we belong to no trade organizations. I received a copy of the law with copy of Bulletin 1767 Truck Trailer Manufacturers Association Jan. 2, 1975, as my first actual information with regard to S121. Prior to this printed matter I attended a meeting in November 1974 conducted by a local parts supplier with the Kelsey-Hayes Company presenting 121 law to truckers."

Actual compliance efforts appear to have begun in December 1974, less than 30 days before the effective date of Standard No. 121 with respect to trailers.

Standard No. 121 was the subject of extensive public rulemaking proceedings conducted over a period of years, affording interested persons ample opportunity for comment. NHTSA files do not contain any correspondence from Benlee during the rulemaking period asking what its responsibilities were under Federal law, or asking for guidance in com-

plying with the standard. The Administrator concludes that Benlee has failed to exercise due diligence in meeting its responsibilities, and is therefore unable to find the requisite element of good faith in its petition.

For the reasons described above the Administrator finds that insufficient justification has been shown for a temporary exemption from 49 CFR 571.121, Motor Vehicle Safety Standard No. 121, and the petition by Benlee Industrial Salvage Company, Inc. is denied.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegation of authority at 49 CFR 1.51).

Issued on July 23, 1975.

JAMES B. GREGORY,
Administrator.

[FR Doc.75-19670 Filed 7-28-75;8:45 am]

[Docket No. EX 75-14; Notice 4]

HARNISCHFEGER CORP.

Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard

The National Highway Traffic Safety Administration has decided to deny the request by Harnischfeger Corporation for reconsideration of the denial of its petition for temporary exemption from Motor Vehicle Safety Standard No. 121, *Air Brake Systems* (49 CFR 571.121).

Notice of the original petition was published on March 10, 1975 (40 FR 11019) and notice of the denial on April 25, 1975 (40 FR 18209). Notice of the request for reconsideration was published on May 25, 1975 (40 FR 22578) and an opportunity afforded for comment.

The motor vehicles for which Harnischfeger requested exemption are its crane carrier trucks, models T 150/200. Approximately five units a month are manufactured for sale in the United States, representing approximately six percent of Harnischfeger's overall vehicle production. Harnischfeger estimated that "the loss of five T-150 machines per month at $78,000 per machine is $390,000 per month. The company also stated that none of its competitors (Grove Corportation, Bucyrus-Erie, Koehring Company, Crane Carrier Corporation, and Hendrickson Manufacturing Company) had "assembled a prototype, tested and approved the combination of the new axle and electronic skid control device." Harnischfeger argued that it had in good faith attempted to comply in a timely manner with Standard No. 121, and blamed its compliance problems on vendor delay.

Comments were received from four of the competitors that Harnischfeger named as unable to conform: Grove Manufacturing Company, Crane Carrier Corporation, Koehring Company, and Bucyrus-Erie. Oshkosh Truck Corporation and Clark Equipment Company also commented on Harnischfeger's petition. All commenters except Koehring contested the accuracy of Harnischfeger's remarks. Three commenters specifically opposed the petition while the remaining three made no recommendation. Clark states that its 720 CM truck "is of similar size and sold in direct competition to the Harnischfeger model T 100/200." Clark's 720 has conformed with Standard No. 121 since its effective date, March 1, 1975, and the company is "puzzled by Harnischfeger's statement of vendor problems as the reason for its inability to comply." It states that "Neither we nor our suppliers have had problems obtaining the necessary components to meet the requirements of Standard 121 for truck cranes in the 720 CM size range." Crane Carrier states that it "uses the same model components (as used on the Harnischfeger Model T150) and received complying materials before March 1, 1975." In its view, "we do not believe that Harnischfeger Corporation has presented any valid excuse for failure to comply with the standard." Grove cites an initial unavailability of components from major suppliers for its light carrier-mounted mobile hydraulic cranes, but states that the materials did become available around March 1, 1975. It feels "that Harnischfeger's statements are somewhat unfounded due to their unawareness of our specific program and approach." Bucyrus-Erie stated that it does not manufacture a complete vehicle as Harnischfeger does, being only the final-stage manufacturer, building and mounting cranes to the carriers. But it commented that "we are advised by our carrier vendors that the carriers delivered after March 1, 1975, will conform to the Standard and will be so certified . . ." Oshkosh expressed its skepticism at Harnischfeger's argument of vendor delay and asks "whether Harnischfeger has placed a low priority on its 121 development program." Koehring, recipient of an exemption from Standard No. 121, expressed the conservative view that it cannot as of this date be absolutely certain of compliance as its prototype has not yet been tested.

Pursuant to 15 U.S.C. 1410(d), the Administrator may grant a temporary exemption upon a finding that compliance would cause the manufacturer substantial economic hardship, and that the manufacturer has in good faith attempted to comply with the standard from which relief is sought. Although Harnischfeger estimates its loss at $78,000 per vehicle, this appears to represent the retail sales price of the machine, rather than the net profit, which would provide a truer picture of the effect of a denial on the company's fortunes. The company had a net income in fiscal 1974 of $11,645,639, and the Administrator again finds that compliance would not cause Harnischfeger substantial economic hardship. Although Harnischfeger argues that it has attempted in good faith to comply in a timely manner with Standard No. 121, its arguments are not convincing in light of the comments submitted by its competitors.

Having reconsidered the petition by Harnischfeger Corporation for temporary exemption from 49 CFR 571.121, Motor Vehicle Safety Standard No. 121, the Administrator finds that insufficient justification has been shown for a temporary exemption, for the reasons stated above as well as those set forth in the previous denial (40 FR 18209).

(Sec. 3, Pub. L. 92-548, 86 Stat 1159 (15 USC 1410); delegation of authority at 49 CFR 1.51)

Issued on July 23, 1975.

JAMES B. GREGORY,
Administrator.

[FR Doc.75-19671 Filed 7-28-75;8:45 am]

VACUUM BRAKE HOSE

Petition To Commence Defect Proceedings; Denial

This notice sets forth the reasons for the denial of a petition to commence a proceeding to determine whether to issue an order pursuant to section 152(b) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1412(b). This notice is published in accordance with section 124 of the Act, 15 U.S.C. 1410a, which provides that the National Highway Traffic Safety Administration (NHTSA) must grant or deny such petitions within 120 days, and publish in the FEDERAL REGISTER the reasons for the denial.

On March 28, 1975, the NHTSA received a petition from Mr. Edward C. Radley to commence a defect proceeding with respect to an alleged vacuum brake hose failure on a 1974 GMC 2500 Series truck. The petition alleged that the hose ruptured, causing erratic braking which caused or contributed to a two-vehicle accident. The NHTSA conducted a thorough review of all available information, including consumer letters, accident investigation reports, Parts Return Program Records, and General Motors records. No other reports of vacuum brake hose failure were discovered. Based on this information, the NHTSA has determined that the type of hose failure described in the petition is not likely to occur in similar vehicles. As a result, there is no reasonable possibility that the order requested in the petition would be issued at the conclusion of an investigation. Accordingly, the petition is denied.

(Secs. 124, 152, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1410a, 1412); delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on July 24, 1975.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.75-19672 Filed 7-28-75;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 27573, Agreement C.A.B. 25202, etc.; Order 75-7-88]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Erratum

Issued under delegated authority July 17, 1975.

Agreements adopted by the Joint Traffic Conferences of the International Air

Transport Association relating to cargo rates.

In the matter of Docket 27573, Agreement C.A.B. 25202 R–1 through R–13, Agreement C.A.B. 25203 R–1 through R–10, Agreement C.A.B. 25204 R–1 through R–10, Agreement C.A.B. 25207 R–1 through R–6, Agreement C.A.B. 25220 R–1 through R–5.

In order 75–7–88, 40 FR 31023, July 24, 1975, change ordering paragraphs 3 and 4 both to read ". . . after the date *of service* of this order."

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

JULY 23, 1975.

[FR Doc.75–19661 Filed 7–28–75;8:45 am]

[Docket No. 26876]

OVERSEAS NATIONAL AIRWAYS, INC., ET AL.

Enforcement Proceeding; Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matter is assigned to be held on October 1, 1975, at 10 a.m. (local time) in Room 503, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge Richard M. Hartsock.

Any requests for field hearings, including the justifications therefor, shall be addressed to Judge Hartsock.

Dated at Washington, D.C., July 24, 1975.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.75–19662 Filed 7–28–75;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Public Law 92–463, "Federal Advisory Committee Act," Radio Technical Commission for Marine Services (RTCM) meeting scheduled for the future is as follows:

Special Committee No. 68, "Marine Radiotelephone Operator Education."

Notice of Special Meeting.

NOTE: This meeting will deal exclusively with the revision of the RTCM handbook, "MARINE RADIO TELEPHONY" (MRT).

Wednesday, August 20, 1975—10:00 a.m. (All-day meeting).

Conference Room 752, 1919 M Street, N.W., Washington, D.C.

AGENDA

1. Call to Order.
2. Adoption of Agenda.
3. Reports on MRT Handbook Work Assignments.
4. Other business.
5. Establishment of next meeting date.

A. Newell Garden, Chairman, SC–68, Raytheon Company, 141 Spring Street, Lexington, Mass. 02173, Phone: (617) 862–6600 (Ext. 414).

To Comply with the advance notice requirements of Public Law 92–463, a comparatively long interval of time occurs between publication of this notice and the actual meeting. Consequently, there is no absolute certainty that the listed meeting room will be available on the day of the meeting. Those planning to attend the meeting should report to the room listed in the notice. If a room substitution has been made, the new meeting room location will be posted at the room listed in this notice.

Agendas, working papers, and other appropriate documentation for the meeting is available at that meeting. Those desiring more specific information may contact either the designated Chairman or the RTCM Secretariat. (Phone (202) 632–6490)

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. Problems are studied by Special Committees and the final report is approved by the RTCM Executive Committee. All RTCM meetings are open to the public.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75–19654 Filed 7–28–75;8:45 am]

FEDERAL MARITIME COMMISSION

BOSTON SHIPPING ASSOCIATION, INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 10 days after publication of this notice in the Federal Register. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Michael R. Brown, Esq., Herrick, Smith, Donald, Farley & Ketchum, 100 Federal Street, Boston, Massachusetts 02110.

Agreement No. T–3122, between the members of the Boston Shipping Association, Inc. (BSA) is the BSA tonnage assessment formula for Guaranteed Annual Income (GAI) for the period commencing April 1, 1975, and ending September 30, 1977. The agreement provides the means to meet BSA's obligations under a GAI program contained in its current collective bargaining agreement with the International Longshoremen's Association (ILA) and its affiliated Locals 799, 800, 805 and 1066. Under Agreement No. T–3122, each vessel carrier will be responsible for an assessment amount per ton on each ton of manifested cargo discharged or loaded in the Port of Boston during the term of the agreement. The tonnage assessment will be calculated by: (a) estimating the total liabilities for the contract years 1975–1976 and 1976–1977 for the obligations set forth in the BSA/ILA GAI program; (b) estimating the total tons of manifested cargo to be loaded or discharged in the Port of Boston during these periods; and (c) computing the assessment per ton by dividing into the total estimated liability the total estimated tonnage, using the following factors:

General cargo	10	Bulk scrap	1
Packaged lumber	2.5	Bulk tallow	1

The agreement provides that the BSA Board of Governors will modify the above tonnage assessment from time to time, on the basis of experience with respect to tonnage developed during the period. The agreement also provides for a Tonnage Review Committee, which will be a qualified neutral group selected by the BSA Board of Governors to hear and determine requests by any carrier, direct employer, shipper or other interested party for modification of the above tonnage definition with respect to any specific cargo which is believed to be unduly burdened by the above tonnage definition.

By Order of the Federal Maritime Commission.

Dated: July 23, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75–19667 Filed 7–28–75;8:45 am]

FLOTA MERCANTE GRANCOLOMBIANA, S.A. AND NORTHERN PAN-AMERICA LINE A/S

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, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Renato C. Gialorenzi, Esquire, 67 Broad Street, New York, New York 10004.

Agreement No. 10169, between Flota Mercante Grancolombiana, S.A. (Flota) and Northern Pan-American Line A/S (Nopal), establishes a space chartering arrangement, in the trade between ports of Miami, Florida and Puerto Rico on the one hand, and on the other, those on the Atlantic Coast of Colombia, whereby Nopal will provide Flota with a specified number of container spaces pursuant to terms and conditions spelled out in the Agreement.

By order of the Federal Maritime Commission.

Dated: July 23, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-19666 Filed 7-28-75;8:45 am]

INDEPENDENT OCEAN FREIGHT FORWARDER LICENSE

Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to Section 44(a) of the Shipping Act, 1916, (75 Stat. 522 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

International Kam, 3082 Jetero Blvd., Houston Intercontinental Airport, P.O. Box 60583, Houston, Texas 77205. Officers: Joseph E. Kennedy, President; Angelo L. Mourino, Vice President.

Pablo Fernando Guevara, 53-20 90th Street, Elmhurst, New York 11373.

Sang H. Choo, 13 Crestview Court, Orinda, California 94563.

Expedair International, Inc., d/b/a Pro Service Forwarding Co., 145-03 156th Street, Jamaica, New York 11434. Officers: R. P. Weinrib, President; H. A. Tamulonis, Secretary/Treasurer; P. J. Meahan, Vice President.

By the Federal Maritime Commission.

Dated: July 24, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-19669 Filed 7-28-75;8:45 am]

THOS. & JAS. HARRISON LTD. COMPAGNIE GENERALE TRANSATLANTIQUE HAPAG-LLOYD AG KONINKLIJKE NEDERLANDSCHE STOOMBOOT MAATSCHAPPIJ

Cooperative Working Arrangement

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, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. P. M. A. Carden, Director, Thos & Jas. Harrison Ltd., Mersey Chambers, Liverpool L2 8UF, England.

Agreement No. 10168, among the abovenamed lines, provides for the establishment of a collective service between Europe, the United Kingdom and Ireland on the one hand and Puerto Rico and the U.S. Virgin Islands on the other. The parties may space sailings, share revenues and expenses, cross charter vessel space, cover berths, rotate port calls, use common feeder services, jointly handle inland cargo movements, interchange containers and equipment and use common terminal facilities and delivery vehicles.

By Order of the Federal Maritime Commission.

Dated: July 24, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-19668 Filed 7-28-75;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CI76-23]

APEXCO, INC. (OPERATOR), ET AL.

Notice of Application

JULY 22, 1975.

Take notice that on July 15, 1975, Apexco, Inc. (Operator), *et al.* (Applicant), 1121 First Place, Tulsa, Oklahoma 74103, filed in Docket No. CI76-23 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Transcontinental Gas Pipe Line Corporation (Transco) from the Northwest Cameron Field Area, Cameron Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to sell natural gas to Transco at 85.032078 cents per Mcf at 15.025 psia for at least six months but no more than one year within the contemplation of Section 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicant states that the gas from the subject acreage is dedicated to a contract for a nonjurisdictional sale but that the purchaser under that contract does not presently have facilities available to take the gas and that it is anticipated that such facilities will not be completed for six months to one year. Applicant states further that it and those for whom it is making the instant application are holders of small producer certificates or qualify as small producers and that the proposed rate is equal to 150 percent of the nationwide rate set forth in Section 2.56a of the Commission's General Policy and Interpretations (18 CFR 2.56a).

Any person desiring to be heard or to make any protest with reference to said application should on or before August 13, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appro-

priate 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.75-19627 Filed 7-28-75;8:45 am]

[Docket No. RI76-2]

ATLANTIC RICHFIELD CO. (OPERATOR), ET AL.

Notice of Petition for Special Relief

JULY 22, 1975.

Take notice that on June 23, 1975, Atlantic Richfield Company (Petitioner), P.O. Box 2819, Dallas, Texas 75221, filed a petition for special relief in Docket No. RI76-2, seeking a rate above the applicable area ceiling under Opinion No. 662. Petitioner seeks a rate of 46 cents per Mcf for residue gas sold to Northern Natural Gas Company under its FPC Gas Rate Schedule No. 566 from the Robinson Gas Unit No. 1 Well, Schleicher County, Texas. Petitioner states that it is currently collecting a rate of 17.5525 cents per Mcf for the gas, which is produced by Bill J. Graham and processed in Petitioner's Eldorado Gas Plant and sold by Petitioner in accordance with a percentage of proceeds type contract.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 8, 1975, 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 ules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-19628 Filed 7-28-75;8:45 am]

[Docket No. ER76-12]

CENTRAL TELEPHONE & UTILITIES CORP., WESTERN POWER DIVISION

Notice of Attachments to Interconnection Contract

JULY 22, 1975.

Take notice that Central Telephone & Utilities Corporation, Western Power Division (CT&U) tendered for filing on July 14, 1975, Agreements between CT&U and the City of Attica covering Service Schedules A, Firm Power Service, and B, Emergency Service, which are attachments to the Interconnection Contract dated December 17, 1974.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 5, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-19629 Filed 7-28-75;8:45 am]

[Docket No. CP76-15]

CITIES SERVICE GAS CO.

Notice of Application

JULY 22, 1975.

Take notice that on July 15, 1975, Cities Service Gas Company, (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP76-15 an application pursuant to Sections 7 (b) and (c) of the Natural Gas Act, and for permission and approval to abandon certain facilities and service on its Wichita-Cambridge pipeline system in Sedgwick, Butler and Crowley Counties, Kansas and for a certificate of public convenience and necessity authorizing the construction and operation of certain replacement facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests the following:

(1) Permission and approval to abandon by reclaim or in place approximately 32.80 miles of 12-inch natural gas pipeline in the Wichita-Cambridge pipeline system in Sedgwick, Butler and Crowley Counties, Kansas. Applicant states that this pipeline was constructed in 1906 and is operationally obsolete. The stated total reclaim cost of the proposed abandonment is approximately $120,000, and the estimated salvage value of the facilities proposed to be abandoned is approximately $161,000.

(2) A certificate authorizing the construction of approximately 7.89 miles of 8-inch pipeline in the Wichita-Cambridge pipeline in Sedgwick and Butler Counties, Kansas, to replace the westermost 7.89 miles of pipeline proposed to be abandoned, from Sedgwick County to the point of delivery to The Gas Service Company at the Augusta tap. The estimated cost of the proposed construction is approximately $395,000.

(3) A certificate authorizing the construction of approximately 2.66 miles of 3-inch pipeline in the Wichita-Cambridge pipeline in Butler County, Kansas, commencing at the Augusta tap and extending to the Douglas town border. The estimated cost of the proposed construction is approximately $91,000.

(4) A certificate authorizing the construction of approximately 7.47 miles of 3-inch pipeline in the Wichita-Cambridge pipeline to replace the easternmost 7.47 miles of pipeline proposed to be abandoned. The proposed construction would extend from Cambridge Junction to the Atlanta town border. The estimated cost of the proposed construction is approximately $234,000.

Applicant states that the proposed changes would result in a rerouting of the gas service so that the towns of Rose Hill, Augusta, and Douglas would be served through the Wichita area, then southeast, rather than from the Cambridge Junction to the northwest.

Applicant states that the proposed abandonment would cause discontinuance of service to seven rural domestic customers now furnished gas by sales and deliveries from Applicant to The Gas Service Company, which in turn resells the gas to such customers. Applicant proposes to discontinue service to nine direct sales customers. It is stated that eight of such customers are residential customers and that one such customer is a small commercial customer. A would terminate service sixty days after permission and approval to abandon the Wichita-Cambridge pipeline is received. Applicant proposes to reimburse each of the customers up to $630 for costs of converting to LPG, which service Applicant states would be available to the discontinued customers.

Applicant states that the total estimated cost of the proposed facilities would be approximately $720,000, and would be paid from treasury cash.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 13, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in ac-

cordance 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 permission and approval for the proposed abandonment and a grant of the certificate are 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.75-19630 Filed 7-28-75;8:45 am]

[Docket Nos. RP64-9 (1971 Phase) and RP65-21]

CITIES SERVICE GAS CO.

Notice of Compliance Filing

JULY 22, 1975.

Take notice that on July 7, 1975, Cities Service Gas Company filed herein a report as required by ordering paragraph (E) of the Commission's May 30, 1975, order approving a rate settlement agreement in the above-referenced dockets. Said report shows the derivation and flow-through of producer refunds resulting from the May 30 settlement order.

Any person wishing to do so may file comments on Cities' refund report. All such comments should be submitted in writing to the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before August 15, 1975.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-19631 Filed 7-28-75;8:45 am]

[Docket No. E-9286]

CLEVELAND ELECTRIC ILLUMINATING CO. ET AL. (CAPCO GROUP)

Notice of Filing of Supplemental Data and Petition for Waiver of Notice Requirements

JULY 22, 1975.

Take notice that on July 11, 1975, the CAPCO Group, The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company, tendered supplemental data intended to make complete its original tender for filing of February 24, 1975. CAPCO states that this action is in response to a deficiency letter of June 2, 1975, issued by the Secretary of the Federal Power Commission.

The CAPCO Group requests that the CAPCO Basic Operating Agreement be permitted to become effective as of January 1, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 5, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-19632 Filed 7-28-75;8:45 am]

[Docket No. CP76-11]

COLUMBIA GAS TRANSMISSION CORP. ET AL.

Notice of Application

JULY 22, 1975.

Take notice that, on July 9, 1975, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301; and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, jointly Applicants, filed in Docket No. CP76-11, an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the rendition of services to implement for Elizabethtown Gas Company (Elizabethtown) its 1975-1976 natural gas husbanding program, in conjunction with related services for which authorization is sought in pending certificate applications filed by National Fuel Gas Supply Corporation (National Fuel) in Docket No. CP75-348[1] and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), in Docket No. CP75-373,[2] all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant seeks authorizations to render services which, in conjunction with the services proposed in the applications filed May 28, 1975, by National Fuel in Docket CP75-348 and June 24, 1975, by Tennessee in Docket CP75-373, respectively, would implement Elizabethtown's 1975-1976 gas husbanding program, whereunder National Fuel would store up to 1,500,000 Mcf of natural gas during the summer and fall of 1975 for husbanding and return the gas to Elizabethtown during the summer of 1976, for ultimate use by Elizabethtown to render high-priority firm services during the 1976-1977 winter heating season. The handling of the gas under the proposed program would be accomplished by utilizing existing facilities of Columbia, Consolidated, National Fuel, Tennessee and Transco.

The application states that to enable Elizabethtown to utilize the storage services to be made available by National Fuel at the Ellisburg Storage Field (jointly owned by Consolidated, National Fuel and Tennessee) in Potter County, Pennsylvania, the following exchanges and operations are proposed:

First, Transco, during the summer period of 1975, would deliver to Columbia such quantities of gas as Elizabethtown might designate from its Rate Schedule CD-3 entitlement, up to 10,000 Mcf per day, one half of such deliveries to be made at Transco's Downingtown delivery point in Chester County, Pennsylvania, and one half at the Muncy and Old Lycoming delivery points in Lycoming County, Pennsylvania.

Second, Columbia, during this same period, would reduce the volumes it receives from Tennessee at its South Ceredo delivery point in Wayne County, West Virginia (or, from time to time, if operating conditions require, at such other existing delivery points as mutually agreed upon by Tennessee and Columbia) below the level Columbia would otherwise receive from Tennessee by amounts equivalent to the volumes received from Transco for the account of Elizabethtown. The reduction of volumes taken from Tennessee by Columbia would constitute delivery for the account of Elizabethtown of volumes delivered by Transco as described in the paragraph next preceding. Tennessee would transport such "back-off" volumes, up to 10,000 Mcf per day and not exceed 1,500,000 Mcf for the period, to National Fuel at Ellisburg Storage Field, for the account of Elizabethtown.

Third, the return of the gas to Elizabethtown from National Fuel would be accomplished during the period from April 16 through November 16, 1976, by National Fuel's reducing its takes from Tennessee and arranging with Tennessee for daily nominated volumes to be delivered by Tennessee at Ellisburg to Consolidated which, in turn, would make equivalent quantities available to Transco from (a) volumes otherwise deliverable by Transco to Consolidated under Transco's Rate Schedule X-56, or (b) volumes physically delivered to Transco at the Leidy Storage Field (jointly owned by Consolidated, Transco and Texas Eastern Transmission Corporation), utilizing storage capacity which Elizabethtown has available under its

[1] Notice published in the FEDERAL REGISTER June 11, 1975, (40 FR 24942).

[2] Notice published in the FEDERAL REGISTER July 7, 1975, (40 FR 29351).

service agreement with Transco under the latter's Rate Schedule GSS.

Finally, such equivalent volumes would be withdrawn from storage during the 1976–77 winter heating season and then transported and delivered by Transco to Elizabethtown in the usual manner under Transco's Rate Schedule GSS.

Applicants state that the services which they propose, in conjunction with the services covered by the applications of National Fuel and Tennessee in Docket Nos. CP75–348 and CP75–373, are designed to enable Elizabethtown to achieve a gas husbanding program whereunder Elizabethtown would curtail during the summer and fall of 1975 lower-priority interruptible industrial consumption of natural gas and gain additional winter deliverability for servicing essential high-priority consumer requirements during the 1976–1977 winter heating season when Elizabethtown anticipates increasingly severe curtailments by its natural gas suppliers.

Applicants request that the instant application be consolidated with the applications in Docket Nos. CP75–348 and CP75–373.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 11, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75–19633 Filed 7–28–75;8:45 am]

[Project No. 2507]

THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA; THE MONTANA POWER CO.

Notice of Extension of Time

JULY 22, 1975.

On July 11, 1975, The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana filed a motion to extend the time within which to respond to the Motion of Commission Staff Counsel to Dismiss Application for License, filed on July 1, 1975, in the above-designated matter. The motion states that the parties have been notified and have no objection.

Upon consideration, notice is hereby given that the date within which to respond to Staff Counsel's motion is extended to and including September 15, 1975.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75–19634 Filed 7–28–75;8:45 am]

[Docket No. CP76–9]

DISTRIGAS CORP.

Notice of Application

JULY 22, 1975.

Take notice that on July 8, 1975, Distrigas Corporation (Applicant), 125 High Street, Boston, Massachusetts 02110, filed in Docket No. CP76–9 an application pursuant to Section 3 of the Natural Gas Act for an order of the Commission authorizing the importation of 950,000 cubic meters of liquefied natural gas (LNG), equivalent to approximately 21 trillion Btu purchased from Alocean Limited (Alocean), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the LNG proposed to be imported is from natural gas produced from reserves in Algeria. Applicant further states that the proposed purchases would be made from Alocean, a Bermuda corporation owned by Gazocean International S.A., a Swiss corporation, and Sonatrach, the Algerian national oil company, in accordance with a protocol executed by Applicant and Sonatrach on June 6, 1975. It is stated that the protocol provides for Applicant to receive 200,000 cubic meters of LNG between July 1, 1976, and December 31, 1976, 300,000 cubic meters of LNG between January 1, 1977, and June 30, 1977, and 450,000 cubic meters of LNG between July 1, 1977 and December 31, 1977. It is proposed that the LNG would be delivered to Applicant at a deep water terminal in Everett, Massachusetts, owned and operated by Distrigas of Massachusetts Corporation, an affiliate of Applicant, by cyrogenic tankers provided by the seller. Applicant would pay $2.30 (U.S.) per million Btu CIF Everett, subject to variations in the average exchange rate of the U.S. dollar.

Applicant states that the LNG would relieve shortages of gas for peak shaving and winter supplemental supplies for Applicant's customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 11, 1975, 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 Rule of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75–19635 Filed 7–28–75;8:45 am]

[Docket No. E–9379]

NIAGARA MOHAWK POWER CORP.

Order Granting Rehearing and Clarifying Prior Order

JULY 23, 1975.

On June 23, 1975, the Town of Massena, New York (Massena), pursuant to Section 1.34 of our Regulations, applied for rehearing and/or clarification of an order issued June 2, 1975, in the above-captioned proceedings. In that order we accepted for filing Niagara Mohawk Power Corporation's (Niagara) April 14, 1975, proposed transmission agreement and permitted it to become effective October 27, 1974, thereby waiving the prior notice requirement, denied Massena's motion to reject or suspend Niagara's rate filing and granted Massena's petition to intervene. Massena is requesting rehearing of the order issued June 2, 1975, based on their belief that the Commission retains jurisdiction where complaints of discriminatory treatment are lodged against a regulated utilities' practices in connection with transmission agreements and further clarification of that order vis-a-vis Massena's position as intervenor.

Massena's May 5, 1975, protest, petition, and motion, incorporated by reference in their application, contended that Niagara's rate filing was part of an interstate program and combination to unlawfully monopolize the electric utility industry. That contention is premised on Niagara's alleged refusal to enter into negotiations leading to a contract by which Niagara would wheel energy to Massena, thereby enabling Massena to establish a municipally owned and operated electric system. Massena concludes that the revenues Niagara would receive from the filing in the above-referenced docket would be unlawfully used by the Company to strengthen its alleged monopolistic position over transmission in the Mas-

sena service area to the detriment of Massena.

The basis upon which the Commission denied Massena's motion to reject or suspend the Niagara rate filing was a finding that ". . . a reasonable and sufficient nexus has not been established by Massena between the alleged monopolistic, anticompetitive practices and designs of Niagara and the proposed electric transmission service agreement . . ." and on a finding that Massena has not established ". . . substantial anticompetitive practices . . ." thus failing ". . . to indicate what possible harm it will experience as the result of the instant rate schedule filing" (Order at 3).

Massena maintains that they have suffered discrimination at the hands of Niagara in the latter's failure to execute voluntarily a transmission agreement with Massena. Niagara has not denied Massena's allegation that it refused to agree in principle to wheel power to Massena upon their establishing a municipal utility. Niagara does in fact enter into transmission agreements with investor owned and consumer owned utilities and with governmental agencies.

In view of the allegation raised by the intervenor Massena herein, that Niagara's rate filing is part of an interstate program to unlawfully monopolize the electric utility industry and discriminate against the establishment by Massena of a municipal energy system, we find it is proper and appropriate in the public interest that the Application for Rehearing should be granted and an investigation pursuant to Section 206 of the Federal Power Act be instituted.

The Commission finds: The Application for Rehearing should be granted, and an investigation under Section 206 of the Federal Power Act should be instituted.

The Commission orders: (A) Pursuant to the authority of the Federal Power Act, particularly Section 206 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Federal Power Act, a public hearing shall be held on December 16, 1975 at 10:00 A.M., in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(B) On or before October 21, 1975 Niagara shall serve its direct testimony. On or before November 4, 1975, the Commission Staff shall serve its prepared testimony and exhibits. Any intervenor evidence will be filed on or before November 18, 1975. Any company rebuttal evidence shall be served on or before December 2, 1975.

(C) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in Section 2.59 of the Commission's Rules of Practice and Procedure.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-19636 Filed 7-28-75;8:45 am]

[Docket No. E-8224]

SIERRA PACIFIC POWER CO.

Notice of Filing of Revised Tariff Sheets

JULY 22, 1975.

Take notice that Sierra Pacific Power Company on July 11, 1975, tendered for filing its revised tariff sheets. The filing was made in compliance with the Commission's Order Setting Rate Of Return And Treating Various Proposed Adjustments In Rate Filing Proceeding issued May 15, 1975, in this docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before August 5, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-19637 Filed 7-28-75;8:45 am]

[Rate Schedule Nos. 150, etc.]

TEXACO, INC., ET AL.

Notice of Rate Change Filings

JULY 22, 1975.

Take notice that the producers listed in the Appendix attached hereto have filed proposed increased rates to the applicable new gas national ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 699-H, issued December 4, 1974. Pursuant to Opinion No. 699-H the rates, if accepted, will become effective as of the date of filing.

The information relevant to each of these sales is listed in the Appendix.

Any person desiring to be heard or to make any protest with reference to said filing should on or before August 1, 1975, 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). A protest will not serve to make the protestant a party to the proceeding. Any party wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission Rules.

KENNETH F. PLUMB, *Secretary.*

Appendix

Filing date	Producer	Rate schedule No.	Buyer	Area
July 1, 1975	Texaco, Inc., P.O. Box 52332, Houston, Tex. 77052.	150	Tennessee Gas Pipeline Co.	Texas Gulf Coast.
July 7, 1975	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	1	National Fuel Gas Supply Corp.	Do.
Do	Cities Service Oil Company, P.O. Box 300, Tulsa, Okla. 74102.	245	Northern Natural Gas Co.	Hugoton-Anadarko.
Do	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	68	El Paso Natural Gas Co.	Rocky Mountain.
July 9, 1975	General American Oil Company of Texas, Meadows Building, Dallas, Tex. 75206.	37	United Gas Pipe Line Co.	South Louisiana.
Do	do	[1] 99	do	Do.

[1] Tentative designation of rate schedule proposed to supersede General American Oil Co. of Texas, FPC Gas Rate Schedule Nos. 42, 43, 59, and 79.

[FR Doc.75-19639 Filed 7-28-75;8:45 am]

[Docket No. CP76-3]

TRANSCO GAS SUPPLY CO.

Notice of Application

JULY 22, 1975.

Take notice that on July 2, 1975, Transco Gas Supply Company (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP76-3 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it is a newly formed corporation with no existing operations but would be a "natural-gas company" under the Natural Gas Act upon commencement of the proposed sales. Applicant states that it was formed for the primary purpose of contracting for supplies of natural gas from suppliers pursuant to advance payment agreements and otherwise and selling

such gas for resale. Applicant would assume Transco's obligations under certain advance agreements presently in effect between Transco and certain producers and would sell to Transco all natural gas purchased under gas purchase agreements entered into by Applicant pursuant to advance payment agreements or otherwise.

Gas would be sold to Transco at an amount equal to the sum of the actual cost of gas purchased by Applicant, the return and income tax on Applicant's rate base (including, *inter alia*, advance payments) determined by multiplying such rate base by 13.99 percent,[1] and all other costs of Applicant on a cost of service basis. Applicant states that Transco would include the gas cost component of Applicant's charge to Transco in Transco's purchased gas adjustment and would file to amend its advance payment tracking provision in Docket Nos. RP74–48 and RP75–3 to permit the tracking of advance payments assigned to or made by Applicant in the same manner and under the same terms and conditions as if continued or made by Transco and would include all other components of Applicant's charge in future Transco rate proceedings. It is stated that Transco's customers would be charged in the same manner and under the same scrutiny of the Commission as if Transco were to purchase the gas from producers and continue to maintain and make advance payments to producers.

Applicant alleges that the purpose of the instant proposal is to allow Transco to transfer to Applicant existing commitments to make additional advance payments that could amount to several hundred million dollars, depending upon the success of exploratory and development drilling, and advance payments outstanding of $103,300,000. Applicant states that restrictions on Transco's long term debt instruments are expected to prevent it from borrowing the additional funds to make further advances to producers in 1976 and thereafter. It is stated that Transco would face serious uncertainties regarding the continued availability of gas reserves if it were unable to meet its continuing commitments. It is stated that Applicant is not subject to the restrictions placed on Transco's debt instruments and that Applicant may have superior ability to obtain funds for the financing of the advance payment program. The reasons stated for this superior ability is that Applicant would have both the obligation of the producers to repay sums advanced and also the obligation of Transco to make payments pursuant to its contract with Applicant. The stated result of such an arrangement would allow Transco to add to its system reserves.

The application states that Applicant's capital structure would be composed of 90 percent debt and 10 percent equity. It is said that the equity capital would be supplied by Applicant's parent, Transco Companies, Inc., and that it is contemplated that the capital debt would be borrowed from lending institutions and secured by and liquidated from repayments under the advance payment agreements of Applicant and revenues received from the sale of gas. The application states that all of the voting securities of Applicant are owned by Transco Companies, Inc.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 8, 1975, 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.75–19638 Filed 7–28–75;8:45 am]

[1] This is said to be the same percentage as the return and income tax component on Transco's rate base as that provided in the pending proposal to settle Transco's rate cases in Docket Nos. RP74–48 and RP75–3. It is said that the percentage would be adjusted to reflect that in any rate filing of Transco.

INTERNATIONAL TRADE COMMISSION

[TA–201–4]

ASPARAGUS

Notice of Investigation and Hearing

Investigation instituted. Following receipt of a petition filed by the California Asparagus Growers Association, Inc., Stockton, Calif., the Washington Asparagus Growers Association, Sunnyside, Wash., and certain unaffiliated California growers, the U.S. International Trade Commission, on July 22, 1975, instituted an investigation under section 201(b) of the Trade Act of 1974 to determine whether asparagus, fresh, chilled or frozen or otherwise prepared or preserved, provided for in items 137.85, 138.00, and 141.81 of the Tariff Schedules of the United States, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Public hearings ordered. Public hearings in connection with this investigation will be held in San Francisco, California, on October 14, 1975, at a time and place to be announced in a subsequent notice; and in Washington, D.C., at 10 a.m., e.d.t., on Tuesday, October 21, 1975, in the Hearing Room, U.S. International Trade Commission, Eighth and E Streets NW. Requests for appearances at the hearings should be received in writing by the Secretary of the Commission at his offices in Washington not later than noon of the fifth calendar day prior to the hearing.

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission, and at the New York City office of the U.S. International Trade Commission located at 6 World Trade Center.

By order of the Commission.

Issued: July 24, 1975.

KENNETH R. MASON,
Secretary.

[FR Doc.75–19626 Filed 7–28–75;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (75–48)]

STRATOSPHERIC RESEARCH ADVISORY COMMITTEE

Date and Place of Meeting

The name of the Atmospheric Sciences Advisory Committee, which was previously announced to meet on July 31 and August 1, 1975 (Notice 75–46), is being changed to the Stratospheric Research Advisory Committee. The meeting of the Committee will be held as scheduled in Room 6004, NASA Headquarters, 400 Maryland Avenue, S.W., Washington, DC as previously announced.

DUWARD L. CROW,
Assistant Administrator for DOD and Interagency Affairs, National Aeronautics and Space Administration.

JULY 25, 1975.

[FR Doc.75–19785 Filed 7–28–75;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Docket No. P–499–A]

DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES, ET AL.

Notice of Receipt of Partial Application for Construction Permits and for Facility Licenses; Time for Submission of Views an Antitrust Matters

The Department of Water and Power of the City of Los Angeles, the State of

California Department of Water Resources, the City of Anaheim, the City of Glendale, the City of Pasadena, the City of Riverside, the Northern California Power Agency, the Pacific Gas and Electric Company and the Southern California Edison Company, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, have filed one part of an application, which was docketed on May 21, 1975, in connection with plans to construct and operate four generating units of an undetermined type, each with a net electrical output of approximately 1170 meagwatts. The proposed facilities, designated as the San Joaquin Nuclear Project, are to be located near Wasco, approximately 33 miles northwest of Bakersfield, in Kern County, California. The portion of the application filed contains the information requested by the Attorney General for the purpose of an antitrust review of the application as set forth in 10 CFR Part 50, Appendix L.

Pursuant to § 2.101 of Part 2, the remaining portion of the application consisting of an Environmental Report is expected to be filed in August 1976, and the Preliminary Safety Analysis Report in December 1976. Upon receipt of the portions of the application dealing with environmental and radiological health and safety matters, separate notices of receipt will be published, by the Nuclear Regulatory Commission (the Commission), including an appropriate notice of hearing.

A copy of the partial application is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555; the Nuclear Regulatory Commission, Inspection and Enforcement, Region V, 1990 N California Boulevard, Walnut Creek, California 94596; the Federal Records Center, Reading Room, 4747 Eastern Avenue, Bell, California 90201; and the Kern County Library, 1315 Truxtun Avenue, Bakersfield, California 93301. Docket No. P-499-A has been assigned to the application and it should be referenced in any correspondence relating to it.

Any person who wishes to have his views on the antitrust matters of the application presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Office of Antitrust and Indemnity, Office of Nuclear Reactor Regulation, on or before August 12, 1975.

Dated at Bethesda, Maryland, this 5th day of June 1975.

For the Nuclear Regulatory Commission.

JOHN F. STOLZ,
Chief, Light Water Reactors Project Branch No. 2-1, Division of Reactor Licensing.

[FR Doc.75-15287 Filed 6-12-75;8:45 am]

[Docket Nos. 50-280 and 50-281]

VIRGINIA ELECTRIC & POWER CO.

Issuance of Amendments to Facility Operating Licenses

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments No. 8 to Facility Operating Licenses No. DPR-32 and DPR-37 issued to Virginia Electric & Power Company which revised Technical Specifications for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia. The amendments are effective as of the date of issuance.

The amendments revise the provisions in the Technical Specifications relating to 20 miscellaneous items. Seven of the revisions involve the Administrative Controls section of the Technical Specifications, another six correct errors of various types, and the remaining seven revisions involve minor changes to bring the Technical Specifications in line with the "as-built" plant, to clarify the specifications or to make the specifications consistent with the Final Safety Analysis Report (FSAR).

The applications for amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments is not required since the amendments do not involve a significant hazards consideration.

For further details with respect to this action, see (1) the applications for amendments dated September 6, 1974 and September 24, 1974, (2) Amendments No. 8 to Licenses No. DPR-32 and DPR-37, with Change No. 23, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. and at the Swem Library, College of William & Mary, Williamsburg Virginia.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 22nd day of July 1975.

For the Nuclear Regulatory Commission.

VERNON L. ROONEY,
Acting Branch Chief, Operating Reactors Branch #1, Division of Reactor Licensing.

[FR Doc.75-19657 Filed 7-28-75;8:45 am]

[Docket No. 50-29]

YANKEE ATOMIC ELECTRIC CO.

Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Facility Operating License No. DPR-3 issued to Yankee Atomic Electric Company which revised Technical Specifications for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts. The amendment is effective as of its date of issuance.

This amendment adds the requirement in the Technical Specifications that the time interval between succeeding instrumentation calibrations shall not exceed 18 months.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment dated January 3, 1974, as supplemented July 1, 1975, (2) Amendment No. 14 to License No. DPR-3, with Change No. 119, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Greenfield Public Library, 402 Main Street, Greenfield, Massachusetts 01581.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 23rd day of July 1975.

For the Nuclear Regulatory Commission.

VERNON L. ROONEY,
Acting Chief, Operating Reactors Branch #1, Division of Reactor Licensing.

[FR Doc.75-19658 Filed 7-28-75;8:45 am]

[Docket No. 50-298]

NEBRASKA PUBLIC POWER DISTRICT

Order for Modification of License

In the matter of Nebraska Public Power District (Cooper Nuclear Station). I. Nebraska Public Power District (the Licensee) is the holder of Facility Operating License No. DPR-46 which authorizes operation of the Cooper

Nuclear Station (the Cooper Station or the Facility) at steady-state reactor core power levels not in excess of 2381 megawatts thermal (rated power). The Facility is a boiling water reactor (BWR) located at the Licensee's site near Brownville in Nemaha County, Nebraska.

II. 1. The Licensee's Facility is one of eleven United States BWR facilities which are similarly designed in that each design provides for coolant flow through bypass holes in the reactor lower core support plate. Fuel inspections conducted in April 1975 in a similarly designed foreign BWR revealed significant wear and some cracking of several Zircaloy fuel channel boxes.[1] The discovery of this damage had been preceded by anomalous incore nuclear detector instrument readings from the traversing incore probe (TIP),[2] the anomaly consisting of a band of "noise" with a characteristic frequency, superimposed on the normal signal. Both the TIP noise and the associated channel box damage appeared to be the result of vibration of the instrument tubes produced by coolant flow through the bypass holes.

2. In the period since April 1975, the eleven affected BWRs have been under surveillance by the NRC Staff, by GE, and by the individual reactor operators. Based on the experience of the foreign reactor, the NRC Staff has been of the view that a noise-to-signal ratio of 0.06 or more indicates the need for remedial action in the form of reduced core flow with a resultant reduction in core power. TIP readings at or above the 0.06 criterion were found in April 1975 at the Cooper Station, and in May 1975 at the Duane Arnold Energy Center and at the Peach Bottom Atomic Power Station Unit 3. The operators of the three facilities agreed—later confirmed by NRC Order—to limit operation to core flow and power levels not exceeding 50% of design levels without prior written approval of the NRC Staff.[3]

3. The 50% power and 50% flow limitations were interim measures to provide assurance of safety while further data were being developed in tests, studies and investigations then in progress. The 50% power limitation was derived from the 50% flow limitation on the basis of certain inherent operating characteristics of BWRs.[4] The flow limitation in turn was based on the results of tests conducted by GE in 1973 in connection with channel box damage due to control curtain vibration which had been observed in the Vermont Nuclear Power Station, in the Pilgrim Nuclear Power Station, and in a foreign reactor.[5] The 1973 GE data was supported by observations made at the Cooper Station over a short period prior to the issuance of the NRC Staff's April 26 order while the Facility was operating at a limited flow of about 55% of full core flow. Similar observations were made in May 1975 in tests conducted at the Duane Arnold reactor.

4. Through an exchange of letters dated June 2, 1975, the operators of Duane Arnold requested and the NRC Staff approved a plan to operate that reactor for a short period of time to obtain TIP readings at core power levels up to 100% of rated power and core flow rates up to 100% of design flow rate. The objective of these measurements was to permit a determination, following a shutdown and inspection of the reactor, whether TIP noise data and channel box damage data could be correlated. After receiving and analyzing the Duane Arnold data, the NRC Staff concluded that such a correlation does indeed exist. The correlation also supports continued use of the 0.06 noise-to-signal ratio as a test of the need for remedial action.

5. In the period since April 1975 there have been additional studies concerning the relationship of TIP noise to coolant flow rate. New relevant data are available from accelerometer tests, from TIP readings at Cooper and Duane Arnold, and from experiments conducted by GE on prototype TIP tube-channel box configurations. These data all point to the conclusion that TIP noise is significantly attenuated, if not arrested, at a coolant flow rate of about 40% of design flow. The NRC Staff has therefore concluded that a 40% flow rate limitation should apply to sustained operation of a reactor that has reached the action threshold of a 0.06 noise-to-signal ratio. However, considering *inter alia* the rate at which channel box wear occurs, limited operation at higher flows (for, *e.g.*, the conduct of tests) may be permitted without endangering the health and safety of the public.

6. Investigations have also continued with respect to the appropriateness of the 50% core power limit on affected reactors. GE prepared, and forwarded to the NRC Staff by letter dated July 11, 1975, a proposal to substitute a maximum bundle power limit for the overall 50% core power limit now in use. GE's July 11 submission included supporting analyses performed with the assumption of a coolant flow of 40% of design flow, and with the further, conservative assumption of a cracked channel box.

7. By letter dated July 16, 1975, as supplemented by two additional letters dated July 17, the licensee formally proposed a plan, previously discussed with the NRC Staff, for operation of the Facility in the short term, and for a determination of the conditions, if any, under which operation should be allowed in the longer term. The plan entails a reduction of coolant flow to 40% of design flow and a substitution of a 3.20 MWt maximum bundle power limit for the present 50% limit on core power. Operation within these limits would continue, under the plan, for the balance of a period of approximately 45 equivalent full flow days from April 26, 1975. During that time the licensee would operate the Facility at rated flow and power for approximately 48 hours to obtain TIP traces, to conduct accelerometer tests, and to obtain certain water quality data.[6] At the end of approximately 45 effective full flow days from April 26, the Licensee would shutdown the Facility unless the efficacy of the 40% flow limit had been verified by accelerometer data. Finally, the limits on flow and bundle power would be re-evaluated in light of data collected during the interim period under consideration.

8. The Licensee's plan has been reviewed by the NRC Staff. As discussed in the NRC Staff's Safety Evaluation Report on the matter dated July 22, 1975, and in a letter to the Licensee of the same date, the Facility can be operated without endangering the health and safety of the public at the proposed core flow and maximum bundle power limits for a period of approximately 45 effective full flow days from April 26, 1975. The operation of the Facility at higher flow and power levels is acceptable under the same standard for certain tests, including the proposed 48 hours of operation at rated flow and power to collect flow vibration and water quality data.[7] The NRC Staff believes the Licensee's plan described above is appropriate under the circumstances and should be confirmed by NRC order.

III. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulation in 10 CFR Parts 2 and 50, IT IS ORDERED THAT Facility Operating License

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[1] This information was conveyed to the Staff of the Nuclear Regulatory Commission (hereinafter referred to as the "NRC Staff") by the General Electric Company (GE) by telephone calls on April 17, 18, and 21, 1975, and by letter dated April 22, 1975. Copies of the April 22 letter and copies of all other documents referred to in this order are available or are being made available for public inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and the Commission's Local Public Document Room, Auburn Public Library, 1118 15th Street, Auburn, Nebraska.

[2] *Ibid.*

[3] For the details of these actions, see *Order for Modification of License, In the Matter of Nebraska Public Power District* (Cooper Nuclear Station), Docket No. 50-298, dated April 26, 1975; *Order for Modification of License, In the Matter of Iowa Electric Light and Power Company, Central Iowa Power Cooperative, and Corn Belt Power Cooperative* (Duane Arnold Energy Center), Docket No. 50-331, dated May 21, 1975; and *Order for Modification of License, In the Matter of Philadelphia Electric Company* (Peach Bottom Atomic Station, Unit 3) Docket No. 50-278, dated June 2, 1975.

[4] See Safety Evaluation by the Director of Licensing, U.S. Atomic Energy Commission, Relating to Channel Box Wear in the Vermont Yankee Nuclear Power Station (Docket No. 50-271) and the Pilgrim Nuclear Power Station (Docket No. 50-293) dated October 26, 1973, pp. 16-18.

[5] For details concerning the earlier matter affecting the Vermont Yankee and Pilgrim facilities see the AEC Regulatory Staff's related Safety Evaluation, n. 4, *supra*.

[6] In one of its supplementary letters dated July 17, the Licensee proposed an extension of such operation beyond that required for TIP traces and accelerometer tests (approximately 12 hours) to a total of 48 hours to obtain data in support of a request pending before a state agency for relief from a requirement to install cooling towers. The Licensee represents that the relief sought from the state agency would obviate an expenditure of $1,000,000.

[7] *See* n. 6, *supra*.

No. DPR–46 is hereby amended by adding the provisions set out in Appendix A hereto. IT IS FURTHER ORDERED THAT Facility Operating License No. DPR–46 is amended by deleting the provision added by the Commission's Order for Modification of License dated April 26, 1975.

Dated at Bethesda, Maryland this 22nd day of July, 1975.

For the Nuclear Regulatory Commission.

BENARD C. RUSCHE,
Director, Office of Nuclear Reactor Regulation.

APPENDIX A

1. The Licensee shall not, without prior written approval of the Director, Office of Nuclear Reactor Regulation, operate the facility at a flow rate exceeding 40 percent of rated flow, or at a maximum bundle power exceeding 3.20 MWt or at a maximum average planar linear heat generation rate (MAPLHGR) exceeding 85 percent of the limit established by the Order for Modification of License dated December 27, 1974, except that:

a. The flow limit may be exceeded, up to a maximum of 50 percent of rated flow, for such period of time as is necessary to establish the appropriate mechanical limit setpoint on the pump speed control in compliance with paragraph 2 below.

b. The flow and bundle power limits may be exceeded by such amount and for such period of time as is necessary to establish appropriate control rod patterns after undergoing a change in power or change in flow, and to accommodate xenon buildup.

c. The flow and bundle power limits may be exceeded by such amount and for such period of time as is necessary to perform the control rod operability requirements of Section 4.3.A.2.a of the Technical Specifications, Appendix A to Operating License No. DPR–46.

d. The flow, bundle power, and MAPLHGR limits may be exceeded by such amount and for such period of time as is necessary to establish appropriate conditions for and to perform traversing incore probe (TIP) maps for the purpose of establishing an accelerometer test program, and to establish appropriate conditions for and to conduct the accelerometer test program.

e. The operation authorized by subparagraph d. above may be extended to a total of 48 hours if necessary to allow thermal discharge data to be obtained to support the licensee's pending application for relief from the requirement to install cooling towers.

2. The Licensee shall adjust the mechanical limits on the pump speed control to preclude an unrestricted flow increase above 50 percent for operations with flow rates limited to 40 percent of rated flow.

3. The Licensee shall shut down the facility following 45 equivalent full flow days from April 26, 1975, unless within such period a traversing incore probe surveillance program as specified in Section VIII of the Evaluation of Channel Box Wear dated July 22, 1975, has been completed and accelerometer tests performed with appropriate requirements specified in Section VII of the Evaluation of Channel Box Wear dated July 22, 1975 have been completed which indicate the efficacy of the 40 percent flow limit.

4. The Licensee shall inform the Director, Office of Nuclear Reactor Regulation, of the details of the proposed accelerometer test program prior to installation of the accelerometers.

5. The Licensee shall, during power operation with flow rates equal to 40 percent of rated or during operations with flow rates greater than 40 percent as allowed by paragraph 1 above, obtain unfiltered TIP traces as specified in Section VIII of the Evaluation of Channel Box Wear dated July 22, 1975, such that all operable TIP positions are traversed at least once during the course of each thirty-day period and shall report the results thereof.

6. The Licensee shall submit brief analyses of TIP readings, including sample traces, to the Director, Nuclear Reactor Regulation within 30 days of obtaining such TIP readings.

7. The Licensee shall submit an analysis of the accelerometer data (a) within 10 days of obtaining the first indication of channel box impact, and (b) within 10 days of completing the accelerometer tests performed for an interval of approximately 10 effective full flow days.

[FR Doc.75-19656 Filed 7-28-75;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON INSPECTION AND ENFORCEMENT ACTIVITIES

Meeting

In accordance with the purposes of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the ACRS Subcommittee on Inspection and Enforcement Activities will hold a meeting on August 13, 1975 at 1 p.m. in room 1062, 1717 H St., N.W., Washington, D.C., 20555. The purpose of the meeting is to discuss third-party inspection and related topics.

The agenda for the subject meeting shall be as follows:

Wednesday, August 13, 1975, 1:30 p.m. until conclusion of business. The Subcommittee will hold discussions with invited participants and the NRC Staff on third-party inspection and related topics.

In connection with the above agenda item, the Subcommittee will hold Executive Sessions, not open to the public, at 1 p.m. and at the end of the day to consider matters relating to the above. These sessions will involve an exchange of opinions and discussion of preliminary views and recommendations of Subcommittee Members and internal deliberations for the purpose of formulating recommendations to the ACRS.

In addition to the Executive Sessions, the Subcommittee will hold closed sessions with the NRC Staff to discuss preliminary, intra-agency opinions and positions relative to third-party inspection, to exchange initial reactions to the commentary of the invited participants, and to consider possible future activities of the two parties concerning review of inspection and enforcement activities.

I have determined, in accordance with Subsection 10(d) of Public Law 92–463, that the above-noted Executive Sessions will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552 (b) and that a closed session may be held, if necessary, to discuss certain documents and information which are privileged and fall within exemption (4) of 5 U.S.C. 552(b). Further, any non-exempt material that will be discussed during the above closed sessions will be inextricably intertwined with exempt material, and no further separation of this material is considered practical. It is essential to close such portions of the meeting to protect the free interchange of internal views and to avoid undue interference with agency or Subcommittee operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing a readily reproducible copy thereof, postmarked no later than August 6, 1975, to the Executive Secretary, ACRS, NRC, Wash., D.C. 20555, ATTN: Mr. Paul T. Burnett. Comments which fail to meet the specified mailing date noted above will be considered to the extent practicable.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement so that appropriate arrangements can be made. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for opportunity to present oral statements and the time allotted, can be obtained by a prepaid telephone call on August 12, 1975 to the Office of the Executive Secretary of the Committee, (telephone 202/634–1394, ATTN: Mr. Paul T. Burnett) between 8:15 a.m. and 5 p.m., Eastern Daylight Time.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) Seating for the public will be available on a first-come, first-served basis.

(f) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(g) A copy of the transcript of the open portion of the meeting will be available for inspection on or after August 18, 1975 at the NRC Public Document Room, 1717 H St., N.W., Wash., D.C. 20555. Copies of the transcript may be reproduced in the Public Document Room or may be obtained from Ace Federal Reporters, Inc., 415 Second St., N.E., Wash., D.C. 20002 (telephone 202/547-6222) upon payment of appropriate charges.

(h) On request, copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Wash., D.C. 20555 after November 13, 1975. Copies may be obtained upon payment of appropriate charges.

Dated: July 25, 1975.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.75-19738 Filed 7-28-75;75 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REGULATORY GUIDES

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Guides will hold a meeting on August 13, 1975 in Room 1062, 1717 H Street, N.W., Washington, D.C. 20555. This meeting will have both open and closed sessions.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

Wednesday, August 13, 1975, 8:45 a.m. until about 11 a.m. The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to its review of the following Regulatory Guides:

1. Revision 2 to Regulatory Guide 1.35, "Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containment Structures."

2. Revision 1 to Regulatory Guide 1.92, "Combination of Modes and Spatial Components in Seismic Response Analysis."

3. Revision 1 to Regulatory Guide 1.89, "Qualification of Class IE Equipment for Nuclear Power Plants."

In connection with the above agenda items, the Subcommittee may hold one or more Executive Sessions, not open to the public, at approximately 8:30 a.m. and 11 a.m. on August 13 to consider matters related to the above review. These sessions will involve an exchange of opinions and discussion of preliminary views and recommendations of Subcommittee members and internal deliberations for the purpose of formulating recommendations to the ACRS.

After the above portion of the meeting is concluded, the Subcommittee will meet in closed session with the NRC Staff and any consultants at about 11 a.m. until the close of business to discuss the following working papers:

1. Periodic Testing of Diesel Generators Used on Onsite Electric Power Systems at Nuclear Power Plants.

2. Protection Against Low Trajectory Turbine Missiles.

3. Revision 1 to Regulatory Guide 1.13, "Fuel Storage Facility Design Basis."

This portion of the meeting may include Executive Sessions both before and after the closed session with the NRC Staff.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that the Executive Sessions will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b) and that other closed sessions will be held to discuss and exchange views on working papers which fall within exemption (5) of 5 U.S.C. 552(b). Further, any non-exempt material that will be discussed during the above closed sessions will be inextricably intertwined with exempt material, and no further separation of this material is considered practical. It is essential to close such portions of the meeting to protect the free interchange of internal views and to avoid undue interference with agency or Subcommittee operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the Regulatory Guides to be discussed in open session may do so by mailing a readily reproducible copy thereof, postmarked no later than August 6, 1975, to the Executive Secretary, ACRS, NRC, Wash., D.C. 20555, ATTN: Mr. G. R. Quittschreiber. Background information concerning the items to be discussed can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Wash., D.C. 20555. Comments which fail to meet the specified mailing date noted above will be considered to the extent practicable.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement so that appropriate arrangements can be made. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements at an appropriate time, chosen by the Chairman of the Subcommittee.

(c) Further, information regarding the Regulatory Guides to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted, can be obtained by a prepaid telephone call on August 12, 1975 to the ACRS (telephone 202/634-1374, Attn: Mr. G. R. Quittschreiber) between 8:15 a.m. and 5 p.m., Eastern Daylight Time.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) Seating for the public will be available on a first-come, first-served basis.

(f) The use of still, motion picture, and television camera, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(g) A copy of the transcript of the open portion of the meeting will be available for inspection on or after August 20, 1975 at the NRC Public Document Room, 1717 H St., N.W., Wash., D.C. 20555. Copies of the transcript may be reproduced in the Public Document Room or may be obtained from Ace Federal Reporters, Inc., 415 Second Street, N.E., Wash., D.C. 20002 (telephone 202/547-6222) upon payment of appropriate charges.

(h) On request, copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Wash., D.C. 20555 after November 13, 1975. Copies may be obtained upon payment of appropriate charges.

Dated: July 28, 1975.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.75-19739 Filed 7-28-75;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS WORKING GROUP ON HYPOTHETICAL CORE DISRUPTIVE ACCIDENT (HCDA)

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards Working Group on HCDA will hold a meeting on August 13, 1975 in room 1046, 1717 H St., N.W., Wash., D.C. 20555. The purpose of the meeting will be to discuss post-accident heat removal from liquid metal fast breed reactors after a hypothetical core disruptive accident.

The following constitutes that portion of the Working Group's agenda for the above meeting which will be open to the public:

Wednesday, August 13, 1975, 9 a.m. until the conclusion of business. Presentations will be made on the various aspects of post-accident heat removal. Discus-

sions will be held with representatives of the Argonne National Laboratory, the General Electric Company, the Energy Research and Development Administration, and the NRC Staff.

In connection with the above agenda item, the Working Group will hold Executive Sessions, not open to the public, at 8:30 a.m. and at the end of the day to consider matters relating to the above topic. These sessions will involve an exchange of opinions and discussions of preliminary views and recommendations of Working Group members and internal deliberations for the purpose of formulating recommendations to the ACRS.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that the above-noted Executive Sessions will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C 552 (b). Further, any non-exempt material that will be discussed during the above closed sessions will be inextricably intertwined with exempt material, and no further separation of this material is considered practical. It is essential to close such portions of the meeting to protect the free interchange of internal views, to avoid undue interference with agency or Working Group operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Working Group is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open sesssion from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing a readily reproducible copy thereof, postmarked no later than August 6, 1975 to the Executive Secretary, ACRS, NRC, Wash., D.C. 20555, Attn: Mr. T. G. McCreless. Comments which fail to meet the specified mailing date noted above will be considered to the extent practicable.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement so that appropriate arrangements can be made.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled the Chairman's ruling on requests for opportunity to present oral statements, and the time allotted can be obtained by a prepaid telephone call on August 12 to the Office of the Executive Secretary of the Committee (telephone 202/634-1374, ATTN: Mr. T. G. McCreless) between 8:15 a.m. and 5 p.m., Eastern Daylight Time.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) Seating for the public will be available on a first-come, first-served basis.

(f) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(g) A copy of the transcript of the open portion of the meeting will be available for inspection on or after August 18, 1975 at the NRC Public Document Room, 1717 H St., N.W., Wash., D.C. 20555. Copies of the transcript may be reproduced in the Public Document Room or may be obtained from Ace Federal Reporters, Inc., 415 Second St., N.E., Wash., D.C. 20002 (telephone 202/547-6222) upon payment of appropriate charges.

(h) On request, copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Wash., D.C. 20555 after November 13, 1975. Copies may be obtained upon payment of appropriate charges.

Dated: July 25, 1975.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.75-19740 Filed 7-28-75;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on July 23, 1975 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

FEDERAL TRADE COMMISSION

Cigar Wrapper Tobacco:
- Importers' Questionnaire, single-time, importers, Evinger, S. K., 395-3710.
- Cigar Manufacturers' Questionnaire, single-time, cigar manufacturers, Evinger, S. K., 395-3710.
- Growers' Questionnaire, single-time, tobacco growers, Evinger, S. K., 395-3710.

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Public Information Request, on occasion, news media and requesters of ERDA information, Caywood, D. P., 395-3443.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Cost Economies of Scale in the School Food Service Industry, single-time, food service system operators, Human Resources Division, Sunderhauf, M. B., 395-3532.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit, Settlement Cost Booklet Evaluation Survey, single-time, households in seven areas, Community and Veterans Affairs Division, 395-3532.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration, Intersection Signal Control To Improve Traffic Operations and Reduce Accidents, RFP-340, single-time, State, city and/or county highway agencies and driving public, Strasser, A., 395-5867.

National Highway Traffic Safety Administration, National Driver Register User Needs Survey, single-time, State officials, Economics and General Government Division, Strasser, A., 395-3451.

REVISIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Monthly Report of Participation and Coupon Issuance—Food Stamp Program, FNS 256, monthly, food stamp project areas, Lowry, R. L., 395-3772.

EXTENSIONS

DEPARTMENT OF THE INTERIOR

BUREAU OF MINES:
- Capacity of Petroleum Refineries, 6-1334-A, annually, all known petroleum refineries which process crude oil, Marsha Traynham, 395-4529.
- Pennsylvania Anthracite Production, 6-1387-A, annually, Pennsylvania Anthracite contractors, Marsha Traynham, 395-4529.

BUREAU OF LAND MANAGEMENT:
- Military Service Notice, 2033-3, on occasion, Caywood, D. P., 395-3443.
- Grazing Lease Application, 4120-1, on occasion, Marsha Traynham, 395-4529.

BUREAU OF MINES:
- Distribution of Pennsylvania Anthracite, 6-1392-A, annually, distribution of Pa. anthracite, Marsha Traynham, 395-4529.
- Pennsylvania Anthracite (production), 6-1385-A, annually, producers of Pennsylvania anthracite, Marsha Traynham, 395-4529.
- Pennsylvania Anthracite Production, 6-1386-A, annually, producers of Pa. anthracite, Marsha Traynham, 395-4529.

Fuel Consumed for All Purposes at Refineries, 6–1335–A, annually, all known petroleum refineries, Marsha Traynham, 395–4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.75–19723 Filed 7–28–75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 19094; 70–5647]

MIDDLE SOUTH UTILITIES, INC. AND MIDDLE SOUTH ENERGY, INC.

Notice of Post-Effective Amendment

JULY 23, 1975.

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Middle South Energy, Inc. ("MSEI"), an electric utility subsidiary of Middle South, 225 Baronne Street, New Orleans, Louisiana 70112, have filed a post-effective amendment to their previously amended application-declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9, (a), 10 and 12(f) of the Act and Rules 43 and 50(a)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

MSEI proposes to issue and sell to Middle South (the holder of all of the issued and outstanding shares of MSEI's common stock no par value per share), and Middle South proposes to acquire, 25,000 additional shares of MSEI's common stock, for an aggregate purchase price of $25,000,000 in cash. Middle South and MSEI believe it preferable for the additional common stock to be sold at times coinciding with MSEI's cash needs, which are primarily determined by the nature and pace of the construction work on its Grand Gulf Nuclear Electric Station near Vicksburg, Mississippi. Accordingly, the applicants-declarants request authority to consummate the proposed transactions at various times through December 31, 1975.

It is stated that no State commission, and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. It is further stated that no special or separate expenses are anticipated in connection with the issuance and sale of the common stock.

Notice is further given that any interested person may, not later than August 18, 1975, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the amended application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.75–19620 Filed 7–28–75;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 10/13–0023]

CAPITAL INVESTORS CORP.

Notice of License Surrender

Notice is hereby given that Capital Investors Corporation (Capital), 1101 Dexter, Horton Building, Seattle, Washington 98104 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Capital was licensed by the Small Business Administration on October 12, 1962.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on July 8, 1975, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

Dated: July 18, 1975.

JAMES THOMAS PHELAN,
Deputy Associate Administrator for Investment.

[Declaration of Disaster Loan Area No. 1157]

[Declaration of Disaster Loan Area No. 1157]

MARYLAND

Declaration of Disaster Area

Harford and adjacent counties within the State of Maryland constitute a disaster area because of damage resulting from heavy rains and flooding on June 28, 1975. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 15, 1975, and for economic injury until the close of business on April 19, 1976, at:

Small Business Administration, District Office, 7800 York Road, Towson, Maryland 21204.

or other locally announced locations.

Dated: July 16, 1975.

LOUIS F. LAUN,
Acting Administrator.

[FR Doc.75–19589 Filed 7–28–75;8:45 am]

[Declaration of Disaster Loan Area #1159]

MARYLAND

Declaration of Disaster Area

Baltimore City, Baltimore County, and adjacent counties within the State of Maryland constitute a disaster area because of damage resulting from high wind, heavy rains and flooding on July 10 and 11, 1975. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 15, 1975, and for economic injury until the close of business on April 19, 1976, at:

Small Business Administration, District Office, 7800 York Road, Towson, Maryland 21204.

or other locally announced locations.

Dated: July 17, 1975.

LOUIS F. LAUN,
Acting Administrator.

[FR Doc.75–19588 Filed 7–28–75;8:45 am]

[Declaration of Disaster Loan Area #1158]

NEVADA

Declaration of Disaster Area

Clark and adjacent counties within the State of Nevada constitute a disaster area because of damage resulting from flooding on July 3, 1975. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 15, 1975, and for economic injury until the close of business on April 19, 1976, at:

Small Business Administration, District Office, 301 East Stewart, Las Vegas, Nevada 89101.

or other locally announced locations.

Dated: July 17, 1975.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.75–19590 Filed 7–28–75;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

PENNSYLVANIA SHOE CO.

Determination Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA–

W-29; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on May 27, 1975 in response to a worker petition received on May 27, 1975 which was filed by the Boot and Shoe Workers' Union on behalf of workers formerly producing footwear for women at Pennsylvania Shoe Company, Altoona, Pennsylvania, a subsidiary of Cosmos Footwear Corporation, New York, New York.

The notice of investigation was published in the Federal Register (40 FR 23946) on June 3, 1975. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Pennsylvania Shoe, its customers, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant Total or Partial Separation. A significant number or proportion of the hourly, piecework, and salaried workers of Pennsylvania Shoe Company became totally or partially separated in the third quarter of 1974 when employment declined 42 percent. All employment of production workers was terminated at the plant by the end of May 1975.

Sales or Production, or Both, Have Decreased Absolutely. Sales and production at Pennsylvania Shoe Company declined steadily from 1972 to 1974. All production of footwear was ceased at the company in May 1975.

Increased Imports Contributed Importantly. Imports of articles like or directly competitive with women's footwear produced by Pennsylvania Shoe increased both absolutely and relatively in recent years. Imports of women's nonrubber footwear increased from 165 million pairs comprising 39 percent of the domestic market in 1970 to 216 million pairs comprising 52 percent of the domestic market in 1973. Imports increased their share of domestic consumption and production fractionally in 1974.

The evidence developed in the Department's investigation indicates that increased import competition contributed importantly to the closing of Pennsylvania Shoe. In recent years imports of women's footwear in the price range of footwear sold by Pennsylvania Shoe have steadily increased their share of the domestic market. As a result, several of Pennsylvania Shoe's major customers increasingly reduced their purchases from Pennsylvania Shoe and increased their purchases of lower-priced imported footwear. Officials of Pennsylvania Shoe and its parent firm, Cosmos Footwear Corporation, determined that continued operation of the Pennsylvania Shoe plant at increasing under capacity was not economically feasible. Company officials decided to cease all production at Pennsylvania Shoe Company.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's footwear produced by Pennsylvania Shoe contributed importantly to the total or partial separation of the workers of that firm. Section 223(b)(2) of the Trade Act of 1974 provides that a certification of eligibility to apply for worker adjustment assistance may not apply to any worker last separated from the firm or subdivision more than six months before April 3, 1975, the effective date of the new program. In accordance with this provision of the Act I make the following certification:

"All hourly, piecework, and salaried employees of Pennsylvania Shoe Company, Altoona, Pennsylvania, who became totally or partially separated from employment on or after October 3, 1974, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 22d day of July 1975.

GLORIA PRATT,
Director, Office of Foreign Economic Policy.

[FR Doc.75-19595 Filed 7-28-75;8:45 am]

[TA-W-89]

SKF INDUSTRIES, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On July 18, 1975, the Department of Labor received a petition filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America, on behalf of the workers and former workers of Hanover Bearing Division of SKF Industries, Inc., Hanover, Pennsylvania (TA-W-89). Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ball and spherical bearings produced by SKF Industries, Inc., or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 8, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of July 1975.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-19596 Filed 7-28-75;8:45 am]

[TA-W-90]

SKF INDUSTRIES, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On July 18, 1975, the Department of Labor received a petition filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America, on behalf of the workers and former workers of Nice Bearing Division of SKF Industries, Inc., Kulpsville and Philadelphia, Pennsylvania (TA-W-90). Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ball and spherical bearings produced by SKF Industries, Inc., or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the de-

termination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 8, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of July 1975.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-19597 Filed 7-28-75;8:45 am]

[TA-W-26]

ROHR INDUSTRIES, INC.

Determination Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-26: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on May 19, 1975 in response to a worker petition received on May 19, 1975 which was filed by the International Association of Machinists, AFL-CIO, on behalf of workers producing parts and subassemblies for aircraft nacelles and weldments for transit cars at the Chula Vista facility of Rohr Industries, Inc., Chula Vista, California.

The notice of investigation was published in the Federal Register (40 FR 23128) on May 28, 1975. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Rohr Industries, the U.S. International Trade Commission, U.S. Department of Commerce, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated,

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales of production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Significant Total or Partial Separation. Significant total separations of hourly and salaried workers at the Chula Vista plant occurred beginning in October 3, 1974 and December 1, 1974 respectively. Average employment for the first quarter of 1975 decreased 19 percent for hourly employees and 3 percent for salaried employees below their 1974 averages.

Sales or Production, or Both, Have Decreased Absolutely. Although the dollar value of shipments of nacelles and related structures remained stable in the first quarter of 1975, the rise in material and other costs reduced total physical production by 6 to 11 percent from the same period in 1974. Because the company's product mix fluctuates with changes in the types of aircraft ordered, a more accurate comparison of yearly physical output is not possible. It can reasonably be estimated, however, that physical output of parts and subassemblies declined by a like amount for the same period.

Increased Imports Contributed Importantly. Rohr Industries imports parts and subassemblies for aircraft nacelles and weldments for transit cars from subsidiaries located in Mexico. The company also has a Mexican facility that provides its Chula Vista plant with a variety of clerical, typing and keypunch services. The value of Rohr parts, subassemblies and weldments imported from its Mexican facilities increased 150 percent in January-April 1975 over the same period for 1974. The value of both imports and services taken as a percent of total Rohr aircraft product sales was 1.2 percent in 1974 as compared with .7 percent in both 1972 and 1973.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports of parts, assemblies and weldments like those produced at Rohr's Chula Vista plant have contributed importantly to the separation of workers and decline in production at the Chula Vista plant. After consideration I make the following certification:

"All hourly workers of the Chula Vista, California facility of Rohr Industries, Inc. who were both employed in the below listed job classifications and who became totally or partially separated from employment in the below listed departments on or after October 3, 1974, and those salaried workers of the Chula Vista facility who were engaged in employment related to such production in the above designated departments and job classifications who became totally or partially separated from employment on or after December 1, 1974, are certified as eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

JOB CLASSIFICATION	
Code	*Title*
2-4033	Assembler—Structures A.
2-4034	Assembler—Structures B.
2-5733	Assembler—Thrust Reverser A.
2-5734	Assembler—Thrust Reverser B.
2-5723	Automatic Reveting Machine Operator.
2-5743	Contour Forming Roll Operator-Precision.
2-5744	Contour Forming Roll Operator.
2-5963	Coremaker/Adjuster A.
2-5964	Coremaker/Adjuster B.
2-4103	Degreaser.
2-6523	Die Fabricator—PBT & Steel Rule A.
2-6524	Die Fabricator—PBT & Steel Rule B.
2-4133	Drill Press Operator A.
2-4134	Drill Press Operator B.
2-4143	Drop Hammer Operator A.
2-4144	Drop Hammer Operator B.
2-5273	Engine Lathe Machinst.
2-5274	Engine Lathe Operator A.
2-5275	Engine Lathe Operator B.
2-6833	Fabricator—Sheet Metal Parts.
2-4193	Filer & Burrer—Machine Parts.
2-5263	Grinder—Precision A.
2-5264	Grinder—Precision B.
2-5183	Hand Finisher A.
2-5284	Hand Finisher B.
2-5253	Hand Finisher—Precision A.
2-5254	Hand Finisher—Precision B.
2-6403	Heat Treater—Production A.
2-6404	Heat Treater—Production B.
2-4263	Heat Treater—Steel A.
2-4264	Heat Treater—Steel B.
2-4283	Horizontal Boring Mill Operator A.
2-4284	Horizontal Boring Mill Operator B.
2-6493	Hot Sizing Press Operator A.
2-6494	Hot Sizing Press Operator B.
2-4293	Hydraulic Press Operator A.
2-4294	Hydraulic Press Operator B.
2-5773	Inspector—General—Final.
2-5774	Inspector—General A.
2-5775	Inspector—General B.
2-4353	Inspector—Machined Parts.
2-4354	Inspector—Machined Parts A.
2-4355	Inspector—Machined Parts B.
2-4483	Lift Truck Operator.
2-4563	Mechanic—Maintenance A.
2-4564	Mechanic—Maintenance B.
2-5283	Milling Machine Machinist.
2-5284	Milling Machine Operator A.
2-5285	Milling Machine Operator B.
2-4613	Molder A.
2-4614	Molder B.
2-4623	Oiler—Maintenance.
2-5653	Parts Identifier.
2-4693	Planishing Hammer Operator A.
2-4694	Planishing Hammer Operator B.
2-4713	Power Brake Operator A.
2-4714	Power Brake Operator B.
2-4733	Processor—General A.
2-4734	Processor—General B.
2-6753	Production Mechanic I-ISG.
2-6754	Production Mechanic II-ISG.
2-4753	Punch Press Operator A.
2-4754	Punch Press Operator B.
2-4763	Radial Drill Press Operator A.
2-4764	Radial Drill Press Operator B.
2-5303	Router Operator—Precision.
2-5304	Router Operator.
2-6413	Saw Operator—Production.
2-6373	Stretch Bender Operator A.
2-6374	Stretch Bender Operator B.
2-5353	Stretch Wrap Forming Machine Operator—Heavy A.
2-5354	Stretch Wrap Forming Machine Operator—Heavy B.
2-4923	Surface Grinder A.

Code	Title
2-4924	Surface Grinder B.
2-4973	Tool & Cutter Grinder—General.
2-4974	Tool & Cutter Grinder.
2-5023	Truck Driver—Semi.
2-5024	Truck Driver.
2-5053	Turret Lathe Operator A.
2-5054	Turret Lathe Operator B.
3-9093	Stock Dispatcher—Fabrication & Processing A.
3-9094	Stock Dispatcher—Fabrication & Processing B.

DEPARTMENTS

Dept. No.	Fabrication and Assembly
029	Fabrication—Hand Finishing.
031	Assembly—Processing.
033	Fabrication—Punch Press.
034	Fabrication—Forming and Planish.
041	Assembly—Assembly Processing.
043	Assembly—Sub-Assembly.
044	Fabrication—Trim and Drill.
053	Fabrication—Production Die.
090	Assembly—Processing.
092	Part Assembly.

Dept. No.	Tool Manufacturing
036	Foundry.
071	Pattern Shop—Excluding plastic tool building.
075	Tool Machine Shop.
076	Jig and Fixture.
080	Tool and Die.
081	Form Blocks.
083	Cutter Control—Direct.
086	Layout and Development.
088	Tool Fabrication—Excluding plastic tool fabrication.

Dept. No.	Material Handling
401	Forming Dispatch.
426	Product Control Dispatch.
427	Processing Dispatch.
479	Part Accountability Group.

Signed at Washington, D.C. this 18th day of July 1975.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for Trade and Adjustment Policy.

[FR Doc.75-19481 Filed 7-28-75;8:45 am]

INTERSTATE COMMERCE COMMISSION

[AB 99]

ARKANSAS WESTERN RAILWAY CO.

Abandonment of Services

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available to the public upon request; and

It appearing, That no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, *et seq.*; and good cause appearing therefor:

It is ordered, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Scott County, Ark., on or before August 8, 1975 and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 17th day of July 1975.

By the Commission, Commissioner Deason.

[SEAL] ROBERT L. OSWALD,
Secretary.

INTERSTATE COMMERCE COMMISSION
AB 99

ARKANSAS WESTERN RAILWAY COMPANY ABANDONMENT AT WALDRON, SCOTT COUNTY, ARK.

The Interstate Commerce Commission hereby gives notice that by order dated July 17, 1975, it has been determined that the proposed abandonment, by the Arkansas Western Railway, of the Waldron Line Terminus, a total length of 1.73 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, *et seq.*, and that preparation of a detailed environmental impact statement will not be required under section 4332 (2) (C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because the traffic carried by the line has already ceased, due to the relocation of the industries formerly located along the subject right-of-way. The State of Arkansas has expressed an interest in obtaining this right-of-way, should the action be approved, for a public use trail.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-2086.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before August 22, 1975.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

[FR Doc.75-19683 Filed 7-28-75;8:45 am]

[AB 1 (Sub-No. 32)]

CHICAGO AND NORTH WESTERN TRANSPORTATION CO.

Abandonment Between Watertown and Doland, in Codington, Clark, and Spink Counties, S. Dak.

JULY 25, 1975.

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available to the public upon request; and

It appearing, That no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, et seq.; and good cause appearing therefor:

It is ordered, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Codington, Clark and Spink Counties, S.D., on or before August 8, 1975 and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the Federal Register.

Dated at Washington, D.C., this 16th day of July, 1975.

By the Commission, Commissioner Deason.

[SEAL] ROBERT L. OSWALD,
Secretary.

The Interstate Commerce Commission hereby gives notice that by order dated July 16, 1975, it has been determined that the proposed abandonment by the Chicago and North Western Transportation Company (C&NW) of its line of railroad between Watertown and Doland, a distance of 48.2 miles, all in Codington, Clark, and Spink Counties, S.D., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because the volume of traffic on the subject line is low, the principal highway serving the affected area is adequate to accommodate the slight diversion of traffic by trucks, and there is the absence of any historic, safety or ecological effects associated with the proposal. In addition, the State of South Dakota has expressed an interest in obtaining said right-of-way property for public use facilities.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-2086.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before August 22, 1975.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

[FR Doc.75-19682 Filed 7-28-75;8:45 am]

[AB 98 (Sub-No. 1)]

CLAREMONT AND CONCORD RAILWAY CO., INC.

Abandonment Between Claremont and Newport, in Sullivan County, N.H.

JULY 25, 1975.

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available to the public upon request; and

It appearing, That no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, *et seq.*; and good cause appearing therefor:

It is ordered, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Sullivan County, N.H., on or before August 8, 1975 and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the Federal Register.

Dated at Washington, D.C., this 16th day of July, 1975.

By the Commission, Commissioner Deason.

[SEAL] ROBERT L. OSWALD, *Secretary.*

The Interstate Commerce Commission hereby gives notice that by order dated July 16, 1975, it has been determined that the proposed abandonment of the 11 mile line of the Claremont and Concord Railway Company, Inc., between Claremont and Newport, in Sullivan County, N.H., is approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because adequate highways exist in the area to accommodate any resulting diversion of traffic from rail to motor carriers, the associated air pollution, intrusive noise, fuel consumption, and safety hazard alterations would be minor, there would be no historic sites affected, and there are no major ecological impacts involved.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-2086.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before August 22, 1975.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

[FR Doc.75-19681 Filed 7-28-75;8:45 am]

[Notice No. 77]

TEMPORARY AUTHORITY TERMINATION

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a Certificate or Permit in a corresponding application for permanent authority, on the date indicated below:

Temporary authority application	Final action or certificate or permit	Date of action
Interstate Dress Carriers, Inc., MC-50307 Sub-72	MC-50307 Sub-71	June 9, 1975
Allyn Transportation Co., MC-97357 Sub-52	MC-97357 Sub-53	June 25, 1975
Matlack, Inc., MC-107403 Sub-893	MC-107403 Sub-911	Do.
Frozen Food Express, Inc., MC-108207 Sub-404	MC-108207 Sub-406	June 9, 1975
Roy Bros., Inc., MC-112963 Sub-42, Sub-45, Sub-47	MC-112963 Sub-40	Do.
Warren Transport, Inc., MC-114211 Sub-216	MC-114211 Sub-206	Do.
Willis Shaw Frozen Express, MC-117119 Sub-506	MC-117119 Sub-513	June 6, 1975
Schultz Transit, Inc., MC-118202 Sub-16	MC-118202 Sub-20	Do.
N.A.B. Trucking Co., Inc., MC-119726 Sub-38	MC-119726 Sub-40	Do.
Sam Towler, MC-125025 Sub-12	MC-125025 Sub-13	June 25, 1975
Santee Cement Carriers, Inc. MC-127625 Sub-16	MC-127625 Sub-17	Do.
D.b.a. Latham Trucking Co., MC-128220 Sub-11	MC-128220 Sub-12	June 9, 1975
Crete Carrier Corp., MC-128375 Sub-100	MC-128375 Sub-101	Do.
Birmingham-Nashville Express, MC-128521 Sub-5	MC-128521 Sub-6	June 11, 1975
International Transportation, MC-133146 Sub-9	MC-133146 Sub-10	Do.
Hearin Transportation, MC-133478 Sub-12	MC-133478 Sub-14	June 25, 1975
Minn-Cal MC-139110 Sub-3	MC-139110 Sub-2	June 9, 1975
Direct Courier, Inc., MC-139759 Sub-1	MC-139759 Sub-2	June 25, 1975
Transportation Service, Inc., MC-140016 Sub-1	MC-140016 Sub-2	Do.

[SEAL] JOSEPH M. HARRINGTON, *Acting Secretary.*

[FR Doc.75-19685 Filed 7-28-75;8:45 am]

[Notice No. 75]

TEMPORARY AUTHORITY TERMINATION

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a Certificate or Permit in a corresponding application for permanent authority, on the date indicated below:

Temporary authority application	Final action or certificate or permit	Date of action
N. S. DeShong, MC-71642 Sub-9	MC-71642 Sub-10	Mar. 24, 1975
N. S. DeShong, MC-71642 Sub-12	MC-71642 Sub-13	Jan. 5, 1972
Fikse Bros., Inc., MC-133708 Sub-12	MC-133708 Sub-13	May 20, 1975
George Appel, MC-133796 Sub-11	MC-133796 Sub-15	May 12, 1975
Gene's, Inc., MC-134238 Sub-7	MC-134238 Sub-8	May 30, 1975
Schanno Transportation, Inc., MC-134477 Sub-44	MC-134477 Sub-46	May 19, 1975
Schanno Transportation, Inc., MC-134477 Sub-77	MC-134477 Sub-76	Do.
American Transport, Inc., MC-135007 Sub-42	MC-135007 Sub-45	Do.
D.b.a. Roadrunner Trucking, Inc., MC-135082 Sub-7	MC-135082 Sub-10	May 7, 1975
Tri-State Associates, Inc., MC-135170 Sub-2	MC-135170 Sub-3	May 29, 1975
Good Transportation, MC-135213 Sub-3	MC-135213 Sub-4	May 22, 1975
D.b.a. Dees Transportation, MC-135748 Sub-6, Sub-9, Sub-12	MC-135748 Sub-7	May 7, 1975
Refrigerated Trucking, MC-135760 Sub-8, Sub-11	MC-135760 Sub-10	May 21, 1975
J. B. Hunt Transport, Inc., MC-135797 Sub-6	MC-135797 Sub-9	May 29, 1975
LTL Perishables, Inc., MC-135874	MC-135874 Sub-1	May 28, 1975
Joe Brown Company, Inc., MC-136008 Sub-29	MC-136008 Sub-34	Do.
Merchants Home Delivery Service, MC-136211 Sub-24	MC-136211 Sub-25	May 7, 1975
Chance Corp., MC-136941 Sub-2	MC-136941 Sub-3	Do.
Jamison Motor Lines, Inc., MC-138192 Sub-1	MC-138192 Sub-2	May 19, 1975
Cyclone Transport, Inc., MC-138255 Sub-2	MC-138255 Sub-3	May 12, 1975
Chisek Elevator & Transport, Inc., MC-138420 Sub-9	MC-138420 Sub-11	May 27, 1975
Rountree Transfer, Inc., MC-138516 Sub-1	MC-138516 Sub-2	May 12, 1975
Makovsky Brothers, Inc., MC-138543 Sub-1	MC-138643 Sub-5	May 8, 1975
Beauferd Schmidt, MC-138752 Sub-1	MC-138752 Sub-2	May 19, 1975
Zip Trucking, Inc., MC-138807 Sub-1	MC-138807 Sub-1	June 5, 1975
D.b.a. Bennettville Farms, MC-138840 Sub-2	MC-138840 Sub-3	May 21, 1975
Deuts & Crow Concrete Corp., MC-138933 Sub-1	MC-138933 Sub-2	May 28, 1975
New (Trans) Port, Inc., MC-138982 Sub-1	MC-138982 Sub-2	May 12, 1975
Western General Trucking, Inc., MC-138988 Sub-1	MC-138988 Sub-2	May 2, 1975
D.b.a. Tri City Delivery, MC-139022 Sub-2	MC-139022 Sub-3	May 28, 1975

Temporary authority application	Final action or certificate or permit	Date of action
Logan Motor Lines, Inc., MC-139091 Sub-3	MC-139091 Sub-4	Do.
Gloucester Dispatch, Inc., MC-139123	MC-139123 Sub-1	May 5, 1975
Gerald Koch, MC-139190 Sub-1	MC-139190	May 8, 1975
John Perry Trucking, MC-139192 Sub-1	MC-139192 Sub-2	May 12, 1975
Roberts & Oake, Inc., MC-139193 Sub-10	MC-139193 Sub-15	May 28, 1975
McNabb Wadsworth, MC-139207 Sub-1	MC-139207	May 12, 1975
Lane Trucking, Inc., MC-139219	MC-139219 Sub-1	May 1, 1975
D & T Limousine Service, MC-139242 Sub-1, Sub-3, Sub-4	MC-139242 Sub-2	May 7, 1975
Davis & Burton Contractors, MC-139245	MC-139245 Sub-1	Do.
Colle Contract Carriers, Inc., MC-139321 Sub-1, Sub-3	MC-139321 Sub-2	May 27, 1975
D.b.a. Pielemeir Transportation, MC-139479 Sub-1	MC-139479 Sub-2	Do.
R. A. Harmon Trucking Co., MC-139517	MC-139517 Sub-1	May 21, 1975
H. C. Kocot & Sons, d.b.a., MC-139545 Sub-1	MC-139545 Sub-2	May 27, 1975
Art Nickas Trucking, MC-139586 Sub-1	MC-139586 Sub-2	May 1, 1975
Robert L. Havlicek, MC-139598 Sub-1	MC-139598 Sub-2	May 7, 1975
D.b.a. Allen Coal Co., Inc., MC-139668 Sub-1	MC-139668 Sub-3	Do.
D.b.a. Dow's Main Street Chevron, MC-139718	MC-139718 Sub-1	May 12, 1975
Gus Matonek, Inc., MC-139757 Sub-1	MC-139757 Sub-2	May 28, 1975
American Security Storage of Annapolis, Inc., MC-139780	MC-139780 Sub-1	May 19, 1975
Robert Page Trucking, MC-139795	MC-139795 Sub-1	May 7, 1975
North Branford Coach Co., Inc., MC-139827 Sub-1	MC-139827 Sub-2	May 19, 1975
Beselaere Cartage and Fuels Ltd., MC-139845 Sub-1	MC-139845	May 29, 1975
L. Capone Trucking, Inc., MC-139900 Sub-1	MC-139900 Sub-2	May 2, 1975
Roy Broadfoot Trucking Ltd., Invermere, MC-139963 Sub-1	MC-139963 Sub-2	May 21, 1975
Willie E. Petty, d.b.a., Petty Trucking, MC-140040 Sub-1	MC-140040	

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.75-19553 Filed 7-28-75;8:45 am]

[Notice No. 76]

TEMPORARY AUTHORITY TERMINATION

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a Certificate or Permit in a corresponding application for permanent authority, on the date indicated below:

Temporary authority application	Final action or certificate or permit	Date of action
Mawson & Mawson, Inc., MC-76 Sub-6	MC-76 Sub-5	June 5, 1975
Bird Trucking Co., Inc., MC-720 Sub-11	MC-720 Sub-10	June 27, 1975
Hutchins Trucking Co., MC-16061 Sub-5	MC-16061 Sub-6	June 6, 1975
Leonard Bros. Trucking Co., Inc., MC-19227 Sub-188	MC-19227 Sub-201	June 27, 1975
Royal Truck Line, Inc., MC-28056 Sub-17	MC-28056 Sub-18	Do.
Interstate Motor Freight System, MC-35628 Sub-353	MC-35628 Sub-354	June 23, 1975
Artim Transportation System, Inc., MC-41406 Sub-36	MC-41406 Sub-34	June 4, 1975
Consolidated Freightways Corp., MC-42487 Sub-828	MC-42487 Sub-830	June 20, 1975
Southwestern Transportation Co., MC-59488 Sub-40	MC-59488 Sub-41	June 6, 1975
Motor Freight Express, MC-59957 Sub-43	MC-59957 Sub-44	June 27, 1975
J. Miller Express, Inc., MC-78228 Sub-47	MC-78228 Sub-48	June 4, 1975
Hunt Transportation, Inc., MC-82841 Sub-110	MC-82841 Sub-122	Do.
Northern Neck Transfer, Inc., MC-95304 Sub-17, Sub-18	MC-95304 Sub-19	Do.
Knudsen Trucking, Inc., MC-105159 Sub-26	MC-105159 Sub-29	June 27, 1975
Ruan Transport Corp., MC-107496 Sub-890, Sub-903, Sub-908, Sub-911, Sub-924.	MC-107496 Sub-915	June 30, 1975
Don Ware, Inc., MC-111434 Sub-87	MC-111434 Sub-88	June 4, 1975
P.I. & I. Motor Express, MC-112063 Sub-17	MC-112063 Sub-18	Do.
Bankers Dispatch Corp., MC-114533 Sub-296	MC-114533 Sub-303	June 30, 1975
Donald Moore, MC-115242 Sub-11	MC-115242 Sub-12	June 27, 1975
Joyce Trucking Co., MC-119434 Sub-4	MC-119434 Sub-5	June 30, 1975
Tempco Transportation, Inc., MC-119669 Sub-49	MC-119669 Sub-50	June 5, 1975
Frick Transport, Inc., MC-124062 Sub-8	MC-124062 Sub-9	June 3, 1975
Schwerman Trucking Co., MC-124078 Sub-506	MC-124078 Sub-508	Do.
Frostways, Inc., MC-124170 Sub-36	MC-124170 Sub-39	June 5, 1975
Chemical Express Carriers, Inc., MC-124236 Sub-64	MC-124236 Sub-68	June 26, 1975
John F. Oliver, MC-124511 Sub-11	MC-124511 Sub-12	June 3, 1975
Sigma-4 Express, Inc., MC-125023 Sub-24	MC-125023 Sub-27	Do.
Sigma-4 Express, Inc., MC-125023 Sub-25	MC-125023 Sub-26	Do.
Peninsula Products, Inc., MC-126038 Sub-12	MC-126038 Sub-7	Do.
Richard B. Rudy, Inc., MC-126881 Sub-12	MC-126881 Sub-13	Do.
F. Paul Purdy, MC-127366 Sub-2	MC-127366 Sub-3	June 6, 1975
Hofer, Inc., MC-128007 Sub-55, Sub-57	MC-128007 Sub-58	June 5, 1975
Van De Hogen Cartage Limited, MC-133318 Sub-5, Sub-7	MC-133318 Sub-6	Do.
Floyd Wild, Inc., MC-133542 Sub-4	MC-133542 Sub-6	Do.
Polar Express, Inc., MC-134467 Sub-2	MC-134467 Sub-3	June 3, 1975
D.b.a. Yates Trucking Co., MC-135328 Sub-4	MC-135328 Sub-5	June 26, 1975
D.b.a. McCorkle Truck Line, MC-136711 Sub-14	MC-136711 Sub-13	June 5, 1975
D.b.a. Werner Enterprises, MC-138328 Sub-14	MC-138328 Sub-17	Do.
Jade Air Cargo, MC-138442 Sub-1	MC-138442 Sub-2	Apr. 28, 1975
D.b.a. City Delivery Service, MC-138610	MC-138610 Sub-1	June 27, 1975
Roberts & Oake, Inc., MC-139193 Sub-14	MC-139193 Sub-17	June 3, 1975
D.b.a. Tri-J Trucking, MC-139477 Sub-1	MC-139477 Sub-2	June 26, 1975
Afro-Urban Transportation, Inc., MC-139539 Sub-1	MC-139539 Sub-2	June 3, 1975
Ruse Transfer Co., MC-139626	MC-139626 Sub-1	June 30, 1975
Delmar R. Shaner, MC-139732 Sub-2	MC-139732 Sub-1	June 3, 1975
Searr Moving & Storage, Inc., MC-139811	MC-139811 Sub-1	June 30, 1975
George H. Ratchford, MC-140414 Sub-1	MC-140414 Sub-2	June 27, 1975

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.75-19548 Filed 7-28-75;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY—ELIMINATION OF GATEWAY LETTER NOTICES

Notice

JULY 24, 1975.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission within 10 days from the date of this publication. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 41951 (Sub-No. E2), filed May 30, 1974. Applicant: WHEATLEY TRUCKING INC., P.O. Box 458, Cambridge, Md. 21613. Applicant's representative: Marion L. Wheatley (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from points in Michigan and points in Ohio on and west of a line beginning at Ironton, Ohio, and extending along the Ohio River to Marietta, thence along Ohio Highway 60 to McConnellsville, thence along Ohio Highway 37 to Lancaster, thence along U.S. Highway 33 to Columbus, thence along U.S. Highway 23 to junction U.S. Highway 23 and Ohio Highway 15 at a point one mile below Carey, Ohio, thence along Ohio Highway 15 to junction Interstate Highway 75 at Findlay, Ohio, thence along Interstate Highway 75 through Toledo, Ohio, to the boundary line of the State of Michigan, to points in Pennsylvania, New Jersey, New York, and Connecticut on and east of a line beginning at U.S. Highway 202 from the Delaware-Pennsylvania State line in a northerly direction to U.S. Highway 1, thence along U.S. Highway 1 to junction U.S. Highway 206, thence along U.S. Highway 206 to Princeton, N.J., to junction New Jersey Highway 27, thence along New Jersey Highway 27 through New Brunswick, N.J., Edison, N.J., to junction with the New Jersey Garden State Parkway, thence along the New Jersey Garden State Parkway to junction New Jersey Highway 4 near Paramus, N.J., thence along New Jersey Highway 4 to junction U.S. Highway 95 (Interstate), thence along Interstate Highway 95 across the George Washington Bridge to the east bank of the Hud-

son River at New York City, thence along the east bank of the Hudson River to junction Interstate Highways 87 and 268 at the Tappan Zee Bridge, thence along Interstate Highways 87 and 287 to the point where Interstate Highways 87 and 287 separate approximately two miles from the Tappan Zee Bridge, thence along Interstate Highway 287 to junction with the Hutchinson River Parkway (Interstate Highway 678), thence along the Hutchinson River Parkway through the New York-Connecticut State line where Hutchinson River Parkway becomes Merritt Parkway, continue with Connecticut Highway 10 near Hamden, Conn., thence along Connecticut Highway 10 through Plainville, Conn., to junction U.S. Highway 202, two miles above Plainville, Conn., thence along Connecticut Highway 10 and U.S. Highway 202 to the Connecticut-Massachusetts State line above Granby, Conn. The purpose of this filing is to eliminate the gateway of Cambridge, Md.

No. MC 43963 (Sub-No. E7) (Correction), filed April 18, 1975, published in the FEDERAL REGISTER June 18, 1975. Applicant: CHIEF TRUCK LINES, INC., Joliet Road & 79th St., Hindale, Ill. 60521. Applicant's representative: James C. Hardman, Suite 2108, 33 N. LaSalle St., Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel-angles, bars, channels, conduits, fencing, flooring, joists, lath, mesh, piling, pipe, parts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts*, and *tubing and wire* in coils (except articles requiring specialized handling or rigging because of size or weight); (a) from points in Illinois on and south of Illinois Highway 64 and within 40 miles of Grant Park, Chicago, Ill., and points in Indiana within 40 miles of Grant Park, Chicago, Ill., to points in Wisconsin in and north of La-Crosse, Monroe, Jackson, Wood, Portage, Waupaka, Winnebago, Fond du Lac, Sheboygan, Ozaukee, and Milwaukee Counties, and points in Racine and Kenosha Counties on and east of U.S. Highway 45. The purpose of this filing is to eliminate the gateway of Chicago, Ill. The purpose of this partial correction is to correct the destination area. The remainder of this letter-notice remains as previously published.

No. MC 59292 (Sub-No. E1), filed May 17, 1974. Applicant: MARYLAND TRANSPORTATION CO., 1111 Frankfurst Ave., Baltimore, Md. 21225. Applicant's representative: Charles J. Braun, Jr., (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such general merchandise* as is dealt in by wholesale grocery business houses, between Baltimore, Md., on the one hand, and, on the other, points in Allegheny, Washington, Greene, and Beaver Counties, Pa., and points in Butler and Lawrence Counties, Pa., which are on and south of U.S. Highway 422. The purpose of this filing is to eliminate the gateway of Brunswick, Md., or points within five miles thereof, and Pittsburgh, Pa.

No. MC 61825 (Sub-E67), filed May 13, 1974. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Joe Clyde Wilson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, Classes A and B Explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading from points in Maryland on, north, and east of a line beginning at the Pennsylvania-Maryland State line and extending south along U.S. Highway 15 to junction U.S. Highway 40 at Frederick, Md., thence east along U.S. Highway 40 to junction Maryland 144 (formerly U.S. Highway 40), thence east along Maryland Highway 144 to Baltimore, Md., thence along the shores of Chesapeake Bay and Elk River to the Chesapeake and Delaware Canal, thence along the Chesapeake and Delaware Canal, thence along the Chesapeake and Delaware Canal, to the Maryland-Delaware State line, to points in North Carolina on and west of a line beginning at the Virginia-North Carolina State line and extending south along U.S. Highway 15 to junction North Carolina Highway 50, thence along North Carolina Highway 50 to junction U.S. Highway 70, thence east along U.S. Highway 70 Alternate, thence along U.S. Highway 70 Alternate to junction Interstate Highway 95, thence south along Interstate Highway 95, to junction U.S. Highway 701, thence along U.S. Highway 701 to junction North Carolina Highway 24, thence east along North Carolina Highway 24 to junction North Carolina Highway 50, and thence along North Carolina Highway 50 to the Atlantic Ocean.

No. MC 95490 (Sub-E2), filed May 3, 1974. Applicant: UNION CARTAGE COMPANY, 9A Southwest Cutoff, Worchester, Mass. 01604. Applicant's representative: Edward J. Kiley, Suite 501, 1730 M Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from Middlesex, Essex, and Suffolk Counties, Mass., to those points in Anne Arundel and Prince Georges Counties, Md., South of U.S. Highway 50, and points in Calvert, Charles, and St. Mary's County, Md. The purpose of this filing is to eliminate the gateway of Springfield, Mass., and Cranston, Rhode Island.

No. MC 102567 (Sub-No. E17) (Correction), filed June 3, 1974, published in the FEDERAL REGISTER July 2, 1975. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Jo E. Shaw, Houston First Saving Bldg., Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such petroleum products as are liquid chemicals* (except liquefied petroleum gases), in bulk, in tank vehicles, from those points in Texas within 150 miles of Henderson, Tex., including Henderson, and which are south of a line beginning at Chilton, Tex., and extending along Texas Highway 7 to junction U.S. Highway 287, thence along U.S. Highway 287 to junction U.S. Highway 190, thence along U.S. Highway 190 to the Texas-Louisiana State line, to those points in Illinois north of a line beginning at the Illinois-Iowa State line and extending along U.S. Highway 30 to junction Illinois Highway 38, thence along Illinois Highway 38 to Lake Michigan. The purpose of this filing is to eliminate the gateway of the plant site of American Cyanamid Company at Avondale, La. The purpose of this correction is to correct the exception.

No. MC 102567 (Sub-No. E21), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe E. Shaw, Houston First Saving Bldg., Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Such petroleum products as are *liquid chemicals* (petrochemicals), in bulk, in tank vehicles, from those points in Arkansas and Louisiana within 150 miles of Henderson, Tex., which are east and north of a line beginning at Camden, Ark., and extending along U.S. Highway 79 to junction Arkansas Highway 132, thence along Arkansas Highway 132 to junction Louisiana Highway 157, thence along Louisiana Highway 157 to junction Louisiana Highway 2, thence along Louisiana Highway 2 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction Interstate Highway 20, thence along Interstate Highway 20 to Monroe, La., to those points in Texas west of a line beginning at the Texas-Oklahoma State line and extending along U.S. Highway 62 to junction U.S. Highway 87, thence along U.S. Highway 87 to junction Texas Highway 349, thence along Texas Highway 349 to junction U.S. Highway 80, thence along U.S. Highway 80 to junction U.S. Highway 385, thence along U.S. Highway 385 to junction Texas Highway 118, thence along Texas Highway 118 to the United States-Mexico International Boundary line. The purpose of this filing is to eliminate the gateway of the plant site of Dow Chemical Co., U.S.A., in Columbia County, Ark.

No. MC 102567 (Sub-No. E24), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC. P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Jo E. Shaw, Houston First Savings Bldg., Houston, Tex., 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such petroleum products*, as are liquid chemicals (petrochemicals), in bulk, in tank vehicles, from those points in Arkansas within 150 miles of Henderson, Tex., which are east

of a line beginning at Guerden, Ark., and extending along U.S. Highway 67 to junction Arkansas Highway 53, thence along Arkansas Highway 53 to junction Arkansas Highway 160, thence along Arkansas Highway 160 to junction Arkansas Highway 19, thence along Arkansas Highway 19 to the Arkansas-Louisiana State line. The purpose of this filing is to elimfnate the gateway of the plant site of Dow Chemical Co., U.S.A., in Columbia County, Ark.

No. MC 102567 (Sub-No. E49), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Jo E. Shaw, Houston First Saving Bldg., Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk, in tank vehicles (except liquefied petroleum gas, anhydrous ammonia, and asphalt), from those points in Texas, Louisiana, and Arkansas within 150 miles of Henderson, Tex., to those points in Florida east and south of a line beginning at the Gulf of Mexico and extending along Florida Highway 84 to junction U.S. Highway 27, thence along U.S. Highway 27 to junction U.S. Highway 441, thence along U.S. Highway 441 to junction Florida Turnpike, thence along Florida Turnpike to junction Florida Highway 710, thence along Florida Highway 710 to the Atlantic Ocean. The purpose of this filing is to eliminate the gateway of El Dorado, Ark., Cotton Valley, La., and Waskom and Mt. Pleasant, Tex.

No. MC 102567 (Sub-No. E146), filed June 3, 1974. Applicant: McNAIR TRANSPORT, P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such petroleum products* as are liquid chemicals (petrochemicals) as defined in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (except liquefied petroleum gases), in bulk, in tank vehicles, from Lake Charles, La., to those points in Tennessee (except those south of a line beginning at the Alabama-Tennessee State line and extending along U.S. Highway 72 to junction U.S. Highway 64, thence along U.S. Highway 64 to the North Carolina-Tennessee State line, including Chattanooga, Tenn.). The purpose of this filing is to eliminate the gateway of the plant site of Dow Chemical Co., U.S.A., in Columbia County, Ark.

No. MC 102567 (Sub-No. E147), filed June 3, 1974. Applicant: McNAIR TRANSPORT, P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Such petroleum products as are *dry chemicals*, in bulk, in tank vehicles, from those points in Texas, Arkansas, and Louisiana, within 150 miles of Henderson, Tex., which are west of a line beginning at Mena, Ark., and extending along Arkansas Highway 375 to junction Arkansas Highway 4, thence along Arkansas Highway 4 to junction Arkansas Highway 29, thence along Arkansas Highway 29 to junction Louisiana Highway 3, thence along Louisiana Highway 3 to junction Louisiana Highway 2, thence along Louisiana Highway 2 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 84, thence along U.S. Highway 84 to junction Louisiana Highway 1, thence along Louisiana Highway 1 to junction Louisiana Highway 174, thence along Louisiana Highway 174 to junction Louisiana Highway 175, thence along Louisiana Highway 175 to junction U.S. Highway 171, thence along U.S. Highway 171 to junction Louisiana Highway 12, thence along Louisiana Highway 12 to the Texas-Louisiana State line, to points in Florida. The purpose of this filing is to eliminate the gateways of points in Texas within 150 miles of Henderson, Tex., and Baton Rouge, La.

No. MC 102567 (Sub-No. E148), filed June 3, 1974. Applicant: McNAIR TRANSPORT, P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Such petroleum products as *dry chemicals*, in bulk, in tank vehicles, from those points in Texas, Arkansas, and Louisiana, within 150 miles of Henderson, Tex., which are west of a line beginning at Mena, Ark., and extending along U.S. Highway 59 to junction U.S. Highway 84, thence along U.S. Highway 84 to junction U.S. Highway 171, thence along U.S. Highway 171 to junction Louisiana Highway 12, thence along Louisiana Highway 12 to the Texas-Louisiana Stte line, to those points in Georgia south of a line beginning at the Alabama-Georgia State line and extending along Georgia Highway 22 to junction Georgia Highway 57, thence along Georgia Highway 57 to junction Georgia Highway 68, thence along Georgia Highway 68 to junction Georgia Highway 24, thence along Georgia Highway 24 to junction Georgia Highway 80, thence along Georgia Highway 80 to the Georgia-South Carolina State line. The purpose of this filing is to eliminate the gateways of points in Texas within 150 miles of Henderson, Tex., and Baton Rouge, La.

No. MC 102567 (Sub-No. E149), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (except liquefied petroleum gas, anhydrous ammonia, and asphalt), in bulk, in tank vehicles, from those points in Texas, Arkansas, and Louisiana, within 150 miles of Henderson, Tex., which are south of a line beginning at the junction of the Oklahoma-Texas State line and U.S. Highway 377 and extending along the Red River to junction Arkansas Highway 41 to junction Arkansas Highway 32, thence along Arkansas Highway 32 to junction U.S. Highway 59/71, thence along U.S. Highway 59/71 to junction Interstate Highway 30, thence along Interstate Highway 30 to junction Arkansas Highway 24, thence along Arkansas Highway 24 to Camden, Ark., to points in Tennessee (except those in Shelby County). The purpose of this filing is to eliminate the gateways of El Dorado, Ark., Cotton Valley, La., and Waskom and Mt. Pleasant, Tex.

No. MC 102567 (Sub-No. E150), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as described in Appendix XIII to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 (except liquefied petroleum gas, anhydrous ammonia, and asphalt), in bulk, in tank vehicles, from those points in Arkansas within 150 miles of Henderson, Tex, which are north of a line beginning at the Oklahoma-Arkansas State line and extending along Arkansas Highway 32 to junction U.S. Highway 59/71, thence along U.S. Highway 59/71 to junction Interstate Highway 30, thence along Interstate Highway 30 to junction Arkansas Highway 24, thence along Arkansas Highway 24 to Camden, Ark., to those points in Tennessee east of a line beginning at the Kentucky-Tennessee State line and extending along Interstate Highway 65 to junction U.S. Highway 31, thence along U.S. Highway 31 to the Tennessee-Alabama State line. The purpose of this filing is to eliminate the gateway of El Dorado, Ark., Cotton Valley, La., and Waskom and Mt. Pleasant, Tex.

No. MC 102567 (Sub-No. E151), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except liquefied petroleum gases), as defined in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk, in tank vehicles, from those points in Texas, Arkansas, and Louisiana within 150 miles of Henderson, Tex., which are south of a line beginning at Ft. Worth, Tex., and extending along U.S. Highway 80 to junction U.S. Highway 67, thence along U.S. Highway 67 to junction Texas Highway 77, thence along Texas Highway 77 to junction Texas Highway 249, thence along Texas Highway 249 to junction Arkansas Highway 160, thence

along Arkansas Highway 160 to junction Arkansas Highway 132, thence along Arkansas Highway 132 to junction U.S. Highway 82, thence along U.S. Highway 82 to junction U.S. Highway 167, thence along U.S. Highway 167 to Calion, Ark., to those points in Missouri within 200 miles of Conway, Ark., except those on and west of Missouri Highway 5. The purpose of this filing is to eliminate the gateways of points in that part of Louisiana bounded by a line beginning at junction the Arkansas-Louisiana State line and the Louisiana-Texas State line, and extending along the Louisiana-Texas State line to junction U.S. Highway 84, thence along U.S. Highway 84 to junction U.S. Highway 167, thence along U.S. Highway 167 to the Arkansas-Louisiana State line, thence along the Arkansas-Louisiana State line to the point of beginning, including points on the specified boundary line, and the site of the pipeline terminal of the Oklahoma-Mississippi River Products, Inc., at or near Conway, Ark.

No. MC 102567 (Sub-No. E152), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such petroleum products*, as are dry chemicals, in bulk, in tank vehicles, from those points in Texas, Arkansas, and Louisiana within 150 miles of Henderson, Tex., which are west of a line beginning at Mena, Ark., and extending along U.S. Highway 71 to junction U.S. Highway 171, thence along U.S. Highway 171 to junction Louisiana Highway 12, thence along Louisiana Highway 12 to the Texas-Louisiana State line, to those points in Alabama south of a line beginning at the Mississippi-Alabama State line and extending along Alabama Highway 96 to junction U.S. Highway 43, thence along U.S. Highway 43 to junction Interstate Highway 65, thence along Interstate Highway 65 to junction U.S. Highway 84, thence along U.S. Highway 84 to junction Alabama Highway 51, thence along Alabama Highway 51 to junction Alabama Highway 10, thence along Alabama Highway 10 to junction Alabama Highway 131, thence along Alabama Highway 131 to junction U.S. Highway 431, thence along U.S. Highway 431 to junction U.S. Highway 82, thence along U.S. Highway 82 to the Alabama-Georgia State line. The purpose of this filing is to eliminate the gateways of points in Texas within 150 miles of Henderson, Tex., and Baton Rouge, La.

No. MC 102567 (Sub-No. E153), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such petroleum products* as are dry chemicals, in bulk, in tank vehicles, from points in Texas within 150 miles of Henderson, which are south of a line beginning at Caldwell, Tex., and extending along Texas Highway 21 to junction Texas Highway 30, thence along Texas Highway 30 to junction U.S. Highway 190, thence along U.S. Highway 190 to junction Texas Highway 63, thence along Texas Highway 63 to the Texas-Louisiana State line, to those points in Mississippi east of a line beginning at the Louisiana-Mississippi State line, and extending along U.S. Highway 51 to junction Mississippi Highway 7, thence along Mississippi Highway 7 to the Mississippi-Tennessee State line. The purpose of this filing is to eliminate the gateway of Baton Rouge, La.

No. MC 102567 (Sub-No. E154), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except liquefied petroleum gases), as defined in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk, in tank vehicles, from Destrehan, La., to those points in Arkansas, north and west of a line beginning at the Oklahoma-Arkansas State line and extending along U.S. Highway 270 to junction U.S. Highway 70, thence along U.S. Highway 70 to junction U.S. Highway 67, thence along U.S. Highway 67 to the Arkansas-Missouri State line. The purpose of this filing is to eliminate the gateways of points in Arkansas within 150 miles of Henderson, Tex., and points in that part of Arkansas north of a line beginning at the Arkansas-Oklahoma State line and extending along U.S. Highway 270 to junction U.S. Highway 70, thence along U.S. Highway 70 to the Arkansas-Tennessee State line.

No. MC 102567 (Sub-No. E155), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except liquefied petroleum gases) as defined in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk, in tank vehicles, from Lake Charles, La., to points in Arkansas. The purpose of this filing is to eliminate the gateways of points in that part of Arkansas north of a line beginning at the Arkansas-Oklahoma State line and extending along U.S. Highway 270 to junction U.S. Highway 70, thence along U.S. Highway 70 to the Arkansas-Tennessee State line.

No. MC 102567 (Sub-156), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as *a common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as described in Appendix XIII, to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (except liquefied petroleum gas, anhydrous ammonia, and asphalt), in bulk, in tank vehicles, from those points in Texas, Louisiana, and Arkansas, within 150 miles of Henderson, Tex., north of a line beginning at Caldwell, Tex., and extending along Texas Highway 21 to junction Texas Highway 30, thence along Texas Highway 30 to junction Texas Highway 19, thence along Texas Highway 19 to junction Texas Highway 94, thence along Texas Highway 94 to junction U.S. Highway 59, thence along U.S. Highway 59 to junction Texas Highway 7, thence along Texas Highway 7 to junction Louisiana Highway 5, thence along Louisiana Highway 5 to junction U.S. Highway 171, thence along U.S. Highway 171 to junction U.S. Highway 80, thence along U.S. Highway 80 to junction U.S. Highway 79, thence along U.S. Highway 79 to junction Louisiana Highway 9, thence along Louisiana Highway 9 to junction U.S. Highway 167, thence along U.S. Highway 167 to Calion, Ark., to points in Florida. The purpose of this filing is to eliminate the gateways of El Dorado, Ark., Cotton Valley, La., Waskom and Mt. Pleasant, Tex.

No. MC 102567 (Sub-No. E157), filed June 3, 1974. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Joe Day (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Such petroleum products, as are *dry chemicals*, in bulk, in tank vehicles, from those points within 150 miles of Henderson, Tex., which are north and west of a line beginning at Ft. Worth, and extending along Interstate Highway 20 to junction U.S. Highway 59, thence along U.S. Highway 59 to junction Texas Highway 8, thence along Texas Highway 8 to the Oklahoma-Texas State line to those points in Alabama south of a line beginning at the Alabama-Mississippi State line and extending along U.S. Highway 84 to junction Interstate Highway 85, thence along Interstate Highway 85 to junction Alabama Highway 10, thence along Alabama Highway 10 to junction U.S. Highway 331, thence along U.S. Highway 331 to junction U.S. Highway 29, thence along U.S. Highway 29 to junction U.S. Highway 80, thence along U.S. Highway 80 to the Alabama-Georgia State line. The purpose of this filing is to eliminate the gateway of Baton Rouge, La.

No. MC 102616 (Sub-E2), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Delaware to points in Illinois, Indiana, Kansas, Kentucky, Ohio, Kanawha County, W. Va., and points in Tennessee west of U.S. Highway 27. The purpose of this filing is to eliminate the gateway of points within 5 miles of Nitro, W. Va., within the commercial zone of Institute, W. Va.

No. MC 102616 (Sub-E6), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Illinois, Indiana, Iowa, Michigan, Missouri, and Ohio (except points in Cuyahoga, Hamilton, Mahoning, Stark, Summit, and Trumbull Counties). The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., which are within the commercial zone of Altoona, and the Allied Chemical Co. plantsites near Moundsville, W. Va.

No. MC 102616 (Sub-E7), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Cuyahoga, Hamilton, Mahoning, Stark, Summit, and Trumbull Counties, Ohio; points in Allegheny, Beaver, Butler, Cambria, Fayette, and McKean Counties, Pa.; and points in Brooke, Hampshire, Hancock, Kanawha, Marion, Marshall, Monongalia, Pleasants, and Wetzel Counties, W. Va. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the commercial zone of Altoona.

No. MC 102616 (Sub-E8), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from New Castle County, Del., to points in Arizona, California, Idaho, Oregon, Utah, Washington, and points in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming west of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the commercial zone of Altoona, the Allied Chemical Co. plantsites near Moundsville, W. Va., and Midland, Mich.

No. MC 102616 (Sub-E20), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petrochemicals*, in bulk, in tank vehicles, from Wilmington, Del., to points in Allegheny, McKean Counties, Pa. The purpose of this filing is to eliminate the gateway of Baltimore, Md., and points in Cambria County, Pa., within the Altoona, Pa., commercial zone.

No. MC 102616 (Sub-E23), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal tar products*, in bulk, in tank vehicles, from points in Cuyahoga, Hamilton, Mahoning, Stark, Summit, and Trumbull Counties, Ohio. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the Altoona, Pa., commercial zone.

No. MC 102616 (Sub-E24), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daley (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal tar products*, in bulk, in tank vehicles, from points in New Castle County, Del., to points in Brooke, Hampshire, Hancock, Kanawha, Marion, Marshall, Monongalia, Pleasants, and Wetzel Counties, W. Va. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the commercial zone of Altoona, Pa.

No. MC 102616 (Sub-E25), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid asphalt*, in bulk, in tank vehicles, from Delaware City, Del., to points in Michigan. The purpose of this filing is to eliminate the gateway of Baltimore, Md.

No. MC 102616 (Sub-E40), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from the District of Columbia to points in Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and points in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming which are west of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of Institute or South Charleston, W. Va., and Midland, Mich.

No. MC 102616 (Sub-E50), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Illinois on and bounded by a line beginning at junction U.S. Highways 41 and 30 and extending along U.S. Highway 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning, to points in North Carolina, Virginia, and the District of Columbia. The purpose of this filing is to eliminate the gateway of Chicago, Ill., Indiana, and South Charleston or Institute, W. Va.

No. MC 102616 (Sub-E53), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Illinois on and bounded by a line beginning at junction U.S. Highways 41 and 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning, to points in Kentucky on and east of U.S. Highway 25. The purpose of this filing is to eliminate the gateway of Chicago, Ill., and Huntington, Ind.

No. MC 102616 (Sub-E55), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Illinois on and bounded by a line beginning at junction U.S. Highways 41 and 30 and extending along U.S. Highway 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning, to points in Connecticut, Maine, Vermont, New Hampshire, Rhode Island, and Massachusetts. The purpose of this filing is to eliminate the gateway of Chicago, Ill., and Midland, Mich.

No. MC 102616 (Sub-E58), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Illinois on and bounded by a line beginning at junction U.S. Highways 41 and 30 and extending along U.S. Highway 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning, to points in Florida. The purpose of this filing is to eliminate the gateway of Chicago, Ill., Kalamazoo, Mich., and Marshall, Ill., or points within 5 miles.

No. MC 102616 (Sub-E61) filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from points in Illinois (a) on and bounded by a line beginning at junction U.S. Highways 41 and 30 and extending along U.S. Highway 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning; (b) on U.S. Highway 41 beginning at Chicago and extending to the Illinois-Wisconsin State line; (c) on Illinois Highway 42 beginning at Chicago

and extending to the Illinois-Wisconsin State line; (d) on U.S. Highway 20 beginning at Chicago and extending to the Illinois-Indiana State line, to points in Lawrence, Erie, Crawford, Mercer, and Venango Counties, Pa. The purpose of this filing is to eliminate the gateway of Cleveland, Ohio.

No. MC 102616 (Sub-E62), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from points in Illinois (a) on and bounded by a line beginning at junction U.S. Highways 41 and 30 and extending along U.S. Highway 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning; (b) on U.S. Highway 41 beginning at Chicago and extending to the Illinois-Wisconsin State line; (c) on Illinois Highway 42 beginning at Chicago and extending to the Illinois-Wisconsin State line; (d) on U.S. Highway 20 beginning at Chicago and extending to the Illinois-Indiana State line, to points in the Baltimore, Md., commercial zone, and points in West Virginia on and north of U.S. Highway 50. The purpose of this filing is to eliminate the gateway of Akron, Ohio, and Neville Island, Pa.

No. MC 102616 (Sub-E64), filed June 3, 1974. Applicant: COASTAL TANK LINES INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petroleum products*, in bulk, in tank vehicles, from points in Illinois on and bounded by a line beginning at junction U.S. Highways 41 and 30 and extending along U.S. Highway 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning, to points in Florida, points in Louisiana on and south of U.S. Highway 190, points in New Mexico on and east of U.S. Highway 85, and points in Texas on and south of U.S. Highway 290 (except Harris County). The purpose of this filing is to eliminate the gateway of Chicago, Ill., Princeton, Ind., or points within 5 miles thereof.

No. MC 102616 (Sub-E73), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sea animal oils, animal oils, and vegetable oils* (except tall oil), in bulk, in tank vehicles, from points in Illinois: (a) on and bounded by a line beginning at junction U.S. Highways 41 and 30 and extending along U.S. Highway 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning; (b) on U.S. Highway 41 beginning at Chicago and extending to the Illinois-Wisconsin State line; (c) on Illinois Highway 42 beginning at Chicago and extending to the Illinois-Wisconsin State line; (d) on U.S. Highway 20 beginning at Chicago and extending to the Illinois-Indiana State line, to points in New Jersey, Pennsylvania, and Maryland. The purpose of this filing is to eliminate the gateway of Cleveland, Ohio.

No. MC 102616 (Sub-E83), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as defined by the Commission, in bulk, in tank vehicles, from Chicago, Ill., and points in Illinois (a) on and bounded by a line beginning at junction U.S. Highway 41 and 30 and extending along U.S. Highway 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning; (b) on U.S. Highway 41 beginning at Chicago and extending to the Illinois-Wisconsin State line; (c) on Illinois Highway 42 beginning at Chicago and extending to the Illinois-Wisconsin State line; (d) on U.S. Highway 20 beginning at Chicago and extending to the Illinois-Indiana State line, to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Rhode Island, points in Virginia on and north of U.S. Highway 60, the District of Columbia, and Buffalo, Niagara Falls, Lockport, and New York, N.Y. The purpose of this filing is to eliminate the gateway of Toledo, Ohio.

No. MC 102616 (Sub-E84), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Petroleum products, as defined by the Commission, in bulk, in tank vehicles, from points in Illinois (a) on and bounded by a line beginning at junction U.S. Highways 41 and 30 and extending along U.S. Highway 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning; (b) on U.S. Highway 41 beginning at Chicago and extending to the Illinois-Wisconsin State line; (c) on Illinois Highway 42 beginning at Chicago and extending to the Illinois-Wisconsin State line; (d) on U.S. Highway 20 beginning at Chicago and extending to the Illinois-Indiana State line, to points in Maryland, Massachusetts, Connecticut, Delaware, New York, N.Y., and points in New Jersey on and south of U.S. Highways 22 and 202. The purpose of this filing is to eliminate the gateway of Akron, Ohio.

No. MC 102616 (Sub-No. E85), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as defined by the Commission, in bulk, in tank vehicles, from points in Illinois on and bounded by a line beginning at junction U.S. Highways 41 and 30 and extending along U.S. Highway 30 to junction Illinois Highway 31, to junction U.S. Highway 41 to point of beginning, to points in Kentucky. The purpose of this filing is to eliminate the gateway of Chicago, Ill., and the plantsite of Texas Eastern Transmission Co. near Princeton, Ind.

No. MC 102616 (Sub-No. E128), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except petrochemicals), as defined by the Commission, in bulk, in tank vehicles, from Madison, Ind., the terminal of Texas Eastern Transmission Corp. near Princeton, Ind., and the terminal of LaGloria Oil and Gas Co. at Seymour, Ind., to points in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the District of Columbia, points in North Carolina on and east of U.S. Highway 1, and points in Virginia on and east of U.S. Highway 17.

No. MC 102616 (Sub-No. E132), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Maryland on and east of U.S. Highway 522 to points in Illinois, Kentucky, points in Indiana on and south of U.S. Highway 40, points in Ohio on and south of U.S. Highway 50, and points in Tennessee west of U.S. Highway 27. The purpose of this filing is to eliminate the gateway of South Charleston or Institute, W. Va.

No. MC 102616 (Sub-No. E138), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from Baltimore, Md., to points in Ohio (except Cuyahoga, Hamilton, Mahoning, Stark, Summit, and Trumbull Counties), Illinois, Indiana, Iowa, Michigan, and Missouri. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the commercial zone of Altoona, Pa., and the Allied Chemical Co. plantsites near Moundsville, W. Va.

No. MC 102616 (Sub-E139), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from Baltimore, Md., to points in Ohio (except Cuyahoga, Hamilton, Mahoning, Stark, Summit, and Trumbull Counties), Illinois, Indiana, Iowa, Michigan, and Missouri. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the commercial zone of Altoona, Pa., and the Allied Chemical Co. plantsites near Moundsville, W. Va.

No. MC 102616 (Sub-E140), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from Baltimore, Md., to points in Arkansas, Mississippi, Missouri, Nebraska, Oklahoma, and points in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming which are on and east of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the commercial zone of Altoona, Pa., the Allied Chemical Co. plantsites near Moundsville, W. Va., and Marshall, Ill., or points within 5 miles thereof.

No. MC 102616 (Sub-E141), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from Baltimore, Md., to points in Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and points in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming which are west of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the Altoona, Pa., commercial zone, the Allied Chemical Co. plantsites near Moundsville, W. Va., and Midland, Mich.

No. MC 102616 (Sub-E214), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Hudson, Union, Somerset, and Essex Counties, N.J., to points in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, Oklahoma, Texas (except Harris County), and points in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming which are on and east of U.S. Highway 85, restricted against the transportation of resins, paint, and paint materials to points in the Dallas, Tex., commercial zone. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the Altoona, Pa., commercial zone, the plantsites of Allied Chemical Co. near Moundsville, W. Va., and Marshall, Ill., or points within 5 miles thereof.

No. MC 102616 (Sub-E215), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Hudson, Union, Somerset, and Essex Counties, N.J., to points in Illinois, Indiana, Michigan, Missouri, and Ohio (except Cuyahoga, Mahoning, Hamilton, Stark, Summit, and Trumbull Counties). The purpose of this filing is to wliminate the gateway of points in Cambria County, Pa., within the Altoona, Pa., commercial zone, and the plantsite of Allied Chemical Co. near Moundsville, Wa. Va.

No. MC 102616 (Sub-E216), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Hudson, Union, Somerset, and Essex Counties, N.J., to points in Iowa, Minnesota, and Wisconsin. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the Altoona, Pa., commercial zone, Akron, Ohio, and Chicago, Ill.

No. MC 102616 (Sub-E217), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Hudson, Union, Somerset, and Essex Counties, N.J., to points in Hamilton, Mahoning, Stark, Summit, and Trumbull Counties, Ohio; Allegheny, Beaver, Butler, Cambria, Fayette, and McKean Counties, Pa.; and Brooke, Hampshire, Hancock, Kanawha, Marion, Marshall, Monongalia, Pleasants, and Wetzels Counties, W. Va. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the Altoona, Pa., Commercial zone.

No. MC 102616 (Sub-E218), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Hudson, Union, Somerset, and Essex Counties, N.J., to points in Montana, Oregon, Washington, and points in North Dakota, South Dakota, and Wyoming which are west of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the Altoona, Pa., Commercial zone, the plantsites of Allied Chemical Co. near Moundsville, W. Va., and Ludington or Bay City, Mich.

No. MC 102616 (Sub-E237), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as defined by the Commission, in bulk, in tank vehicles, from Bayonne, Tremley Point, Sewaren, Perth Amboy, and Paulsboro, N.J., and points within 5 miles of each, to points in Allegheny, Beaver, Butler, Cambria, Fayette, and McKean Counties, Pa. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the Altoona, Pa., commercial zone.

No. MC 102616 (Sub-E280), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from Akron, Columbus, and Toledo, Ohio, to points in Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and points in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming which are west of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of Ft. Wayne, Ind., and Midland, Mich.

No. MC 102616 (Sub-E288), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Cuyahoga, Mahoning, Hamilton, Stark, Summit, and Trumbull Counties, Ohio, to points in Hudson, Essex, Somerset, and Union Counties, N.J. The purpose of this filing is to eliminate the gateway of points in Cambria County, Pa., within the Altoona, Pa., commercial zone.

No. MC 102616 (Sub-E341), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal tar products*, in bulk, in tank vehicles, from points in Allegheny, Beaver, Butler, and Fayette Counties, Pa., to points in Delaware. The purpose of this filing is to eliminate the gateway of Aliquippa, Pa., and Baltimore, Md.

No. MC 102616 (Sub-No. E361), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry petroleum plastics*, in bulk, in tank vehicles, from points in Allegheny and Beaver Counties, Pa., to points in Illinois on and north of U.S. Highway 24. The purpose of this filing is to eliminate the gateway of Toledo, Ohio.

No. MC 102616 (Sub-No. E362), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry petroleum plastics*, in bulk, in tank vehicles, from points in Allegheny and Beaver Counties, Pa., to points in Arkansas, Iowa, Kansas, Minnesota, Missouri, Nebraska, and Wisconsin. The purpose of this filing is to eliminate the gateway of Toledo, Ohio, and the Foster Grant Co. plantsite at Peru, Ill.

No. MC 102616 (Sub-E372), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petrochemicals*, in bulk, in tank vehicles, from Freedom, Hays, Neville Island, and Delmont, Pa., to points in Alabama and Georgia. The purpose of this filing is to eliminate the gateway of the Allied Chemical Co. plantsites near Moundsville, W. Va., Nitro, W. Va., and Marshall, Ill., or points within 5 miles thereof.

No. MC 102616 (Sub-E395), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Minnesota and Wisconsin. The purpose of this filing is to eliminate the gateway of South Charleston or Institute, W. Va., and Chicago, Ill.

No. MC 102616 (Sub-E396), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Virginia to points in Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and points in Colorado, North Dakota, South Dakota, and Wyoming west of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of South Charleston or Institute, W. Va., the plantsites of Allied Chemical Co. near Moundsville, W. Va., and Midland, Mich.

No. MC 102616 (Sub-E398), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except petro acids and chemicals and asphalt and asphalt products), in bulk, in tank vehicles, from the Colonial pipeline terminals near Fairfax and Newington, Va. to points in Connecticut, Massachusetts, Rhode Island, Vestal, N.Y. (and points in New York within 5 miles thereof), and points in New York on and east of U.S. Highway 57 and U.S. Highway 11. The purpose of this filing is to eliminate the gateway of Baltimore, Md.

No. MC 102616 (Sub-E399), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from points in Virginia within 20 miles of Alexandria which are on and south of U.S. Highway 50, to points in Connecticut, Massachusetts, Rhode Island, points in New Jersey on and south of U.S. Highway 22 and U.S. Highway 202, Vestal, N.Y. and points in New York within 5 miles thereof, and points in New York on and east of U.S. Highway 57 and 11. The purpose of this filing is to eliminate the gateway of Baltimore, Md.

No. MC 102616 (Sub-E400), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from points in Virginia within 20 miles of Alexandria which are on and south of U.S. Highway 50, to (1) points in Delaware; (2) points in Pennsylvania bounded by a line beginning at the Maryland-Pennsylvania State line and extending along U.S. Highway 220 to junction Pennsylvania Highway 53, to junction Pennsylvania Highway 64, to junction U.S. Highway 220, to junction Pennsylvania Highway 147, to junction Pennsylvania Highway 61, to junction Pennsylvania Highway 10 to the Pennsylvania-Maryland State line, to the point of beginning; (3) points in Pennsylvania east of a line beginning at the Maryland-Pennsylvania State line and extending along U.S. Highway 122 to junction Pennsylvania Highway 147 to junction U.S. Highway 11, to the Pennsylvania-New York State line, including points on Pennsylvania Highway 147 and U.S. Highway 11; (4) points in Pennsylvania on, south, and west of a line beginning at the Maryland-Pennsylvania State line, and extending along U.S. Highway 220 to junction U.S. Highway 22, to junction U.S. Highway 422 to the Pennsylvania-Ohio State line; (5) Clarence, Clarion, and points in Clearfield County, Pa.

No. MC 102616 (Sub-E401), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as defined by the Commission, in bulk, in tank vehicles, from points in York County, Va., to points in Illinois on and north of U.S. Highway 24 and points in Indiana on and north of U.S. Highway 40 (except points on, north, and east of a line beginning at the Indiana-Michigan State line and extending along Indiana Highway 13 to junction U.S. Highway 24, to junction Indiana Highway 105, to junction Indiana Highway 124, to the Indiana-Ohio State line). The purpose of this filing is to eliminate the gateway of Baltimore, Md., and Toledo, Ohio.

No. MC 102616 (Sub-E403), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as defined by the Commission, in bulk, in tank vehicles, from points in Virginia on and east of U.S. Highway 29 which are within 20 miles of Alexandria, to points in Iowa, Kansas, Minnesota, Nebraska, points in Texas on and west of U.S. Highway 83, points in New Mexico, North Dakota, South Dakota, and Wyoming which are on and east of U.S. Highway 85, and points in Oklahoma on and north of U.S. Highways 44 and 277. The purpose of this filing to to eliminate the gateway of Baltimore, Md.; Toledo, Ohio; the plantsite of LaGloria Oil and Gas Co. near Seymour, Ind.; and Marshall, Ill.; or points within 5 miles thereof.

No. MC 102616 (Sub-E404), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as defined by the Commission, in bulk, in tank vehicles, from York County, Va., to points in New Jersey, New York, Pennsylvania, and Rhode Island. The purpose of this filing is to eliminate the gateway of Delaware City, Del.

No. MC 102616 (Sub-E405), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as defined by the Com-

mission, in bulk, in tank vehicles, from points in Virginia within 20 miles of Alexandria which are on and south of U.S. Highway 50, to points in New York on and east of U.S. Highway 57 and U.S. Highway 11. The purpose of this filing is to eliminate the gateway of Baltimore, Md.

No. MC 102616 (Sub-E406), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, as defined by the Commission, in bulk, in tank vehicles, from points in Virginia on and east of U.S. Highway 29 which are within 20 miles of Alexandria, to points in Ohio on and north of U.S. Highway 40. The purpose of this filing is to eliminate the gateway of Baltimore, Md.

No. MC 102616 (Sub-E407), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except petrochemicals), in bulk, in tank vehicles, from points in Virginia on and south of U.S. Highway 50 which are within 20 miles of Alexandria, to points in Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, Texas (except Harris County), and points in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming which are on and east of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of Baltimore, Md., Congo, W. Va., and Marshall, Ill., or points within 5 miles thereof.

No. MC 102616 (Sub-E408), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except petrochemicals), in bulk, in tank vehicles, from points in Virginia on and east of U.S. Highway 29 which are within 20 miles of Alexandria, to points in Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin, and points in Tennessee on and west of U.S. Highway 79. The purpose of this filing is to eliminate the gateway of Baltimore, Md., and Congo, W. Va.

No. MC 102616 (Sub-E409), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Brooke, Hampshire, Hancock, Kanawha, Marion, Marshall, Monongalia, Pleasants and Wetzel Counties, W. Va; to points in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, Oklahoma, Texas (except Harris County); points in Alabama on and south of U.S. Highway 78, and points in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming which are on and east of U.S. Highway 85, restricted against the transportation of resins, paint, and paint materials to points in the Dallas, Tex., commercial zone. The purpose of this filing is to eliminate the gateway of South Charleston or Institute, W. Va., and Marshall, Ill., or points within 5 miles thereof.

No. MC 102616 (Sub-E411), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Brooke, Hampshire, Hancock, Kanawha, Marion, Marshall, Monongalia, Pleasants, and Wetzel Counties, W. Va.; to points in Kentucky, North Carolina, Ohio, Virginia; points in Tennessee on and west of U.S. Highway 27. The purpose of this filing is to eliminate the gateway of South Charleston or Institute, W. Va.

No. MC 102616 (Sub-E412), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Brooke, Hampshire, Hancock, Kanawha, Marion, Marshall, Monongalia, Pleasants, and Wetzel Counties, W. Va.; to points in Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington; and points in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming west of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of the plantsites of Allied Chemical Co. near Moundsville, W. Va., and Midland, Mich.

No. MC 102616 (Sub-E413), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Brooke, Hampshire, Hancock, Kanawha, Marion, Marshall, Monongalia, Pleasants, and Wetzel Counties, W. Va.; to points in Iowa, Minnesota, and Wisconsin. The purpose of this filing is to eliminate gateway of the plantsites of Allied Chemical Co. near Moundsville, W. Va., and Chicago, Ill.

No. MC 102616 (Sub-E414), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in Kanawha County, W. Va., to points in Minnesota and Wisconsin. The purpose of this filing is to eliminate the gateway of South Charleston or Institute, W. Va., and Chicago, Ill.

No. MC 102616 (Sub-E415), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles from Institute and South Charleston, W. Va., to points in Arkansas, Louisiana, Mississippi, Nebraska, Oklahoma, Texas (except Harris County), points in Alabama on and south of U.S. Highway 65, and points in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming which are on and east of U.S. Highway 85, restricted against the transportation of resins, paint, and paint materials to points in Dallas, Tex., commercial zone. The purpose of this filing is to eliminate the gateway of Marshall, Ill., or points within 5 miles thereof.

No. MC 102616 (Sub-E420), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petroleum products*, in bulk, in tank vehicles, from points in West Virginia on and north of U.S. Highway 33 to points in Nebraska on and west of U.S. Highway 83, points in Oklahoma on and west of U.S. Highway 35, and points in Colorado and New Mexico on and east of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of Pittsburgh, Pa.; Toledo, Ohio; the plantsite of LaGloria Oil & Gas Co. near Seymour, Ind.; and Marshall, Ill.; or points within 5 miles thereof.

No. MC 102616 (Sub-E421), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petroleum products*, as defined by the Commission, in bulk, in tank vehicles, from points in Brooke, Hampshire, Hancock, Kanawha, Marion, Marshall, Monongalia, Pleasants, and Wetzel Counties, W. Va., to points in Connecticut, Massachusetts, and Rhode Island. The purpose of this filing is to eliminate the gateway of Pittsburgh, Pa.

No. MC 102616 (Sub-E422), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as

a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petroleum products*, in bulk, in tank vehicles, from points in Kanawha County, W. Va., to points in Connecticut, Massachusetts, and Rhode Island. The purpose of this filing is to eliminate the gateway of South Charleston or Institute, W. Va., and Paulsboro, N.J.

No. MC 102616 (Sub-E423), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petrochemicals*, in bulk, in tank vehicles, from points in West Virginia on and north of U.S. Highway 33 to points in Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and points in North Dakota, South Dakota, and Wyoming which are west of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of the Allied Chemical Co. plantsites near Moundsville, W. Va., and Midland, Mich.

No. MC 102616 (Sub-E424), filed June 3, 1976. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petrochemicals*, in bulk, in tank vehicles, from points in West Virginia on and north of U.S. Highway 33, to points in Minnesota. The puprose of this filing is to eliminate the gateway of Pittsburgh, Pa., Toledo, Ohio, and Chicago, Ill.

No. MC 102616 (Sub-E426), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except petrochemicals), in bulk, in tank vehicles, from points in West Virginia on and north of U.S. Highway 33 to points in Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Rhode Island, Tennessee, Vermont, Wisconsin, points in Maryland on and east of U.S. Highway 522, and the District of Columbia. The purpose of this filing is to eliminate the gateway of Congo, W. Va.

No. MC 102616 (Sub-E427), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except petrochemicals), in bulk, in tank vehicles, from points in West Virginia on and north of U.S. Highway 33 to points in Louisiana, and points in Colorado, New Mexico, North Dakota, and South Dakota which are on and east of U.S. Highway 85. The purpose of this filing is to eliminate the gateway of Congo, W. Va., and Marshall, Ill., or points within 5 miles thereof.

No. MC 102616 (Sub-E447), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal tar products*, in bulk, in tank vehicles, from points in Brooke, Hancock, Hampshire, Kanawha, Marion, Marshall, Monongalia, Pleasants, and Wetzel Counties, W. Va.; to points in Michigan, Indiana, Illinois, and Wisconsin; restricted against the transportation of benzol to Midland, Mich.; and points within 5 miles thereof; and of liquid tar used in road construction and maintenance to points in Michigan. The purpose of this filing is to eliminate the gateway of Canton, Ohio.

No. MC 102616 (Sub-E478), filed June 3, 1974. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Rd., Akron, Ohio 44319. Applicant's representative: Fred H. Daly (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals* (except liquid fertilizer solutions, liquid hydrogen, liquid oxygen and liquid nitrogen), in bulk, in tank vehicles, from the plantsite of Foster Grant Co. at North Carolina. The purpose of this filing is to eliminate the gateway of Cuyahoga, Stark, Mahoning, Summit, Trumbull, or Hamilton Counties, Ohio, and Institute or South Charleston, W. Va.

No. MC 106603 (Sub-E10), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8008, Grand Rapids, Mich. 49508. Applicant's representative: Martin Leavitt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Such building contractors materials as are *building and roofing materials*, from those points in Indiana bounded by a line beginning at Lake Michigan and extending along Interstate Highway 65, to junction Interstate Highway 69, to junction U.S. Highway 24, to junction U.S. Highway 35 to the Lake Michigan, to the point of beginning. The purpose of this filing is to eliminate the gateway of Joliet, Ill.

No. MC 106603 (Sub-E11), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8008, Grand Rapids, Mich. 49508. Applicant's representative: Martin Leavitt (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Such building contractor's materials and supplies as are *roofing and roofing materials and insulated brick siding*, from those points in Indiana north of U.S. Highway 6, to those points in Missouri within 10 miles of the west bank of the Mississippi River. The purpose of this filing is to eliminate the gateway of Whiting and Lowell, Ind.

No. MC 111320 (Sub-E115), filed May 31, 1974. Applicant: KEEN TRANSPORT, INC., P.O. Box 688, Hudson, Ohio 44236. Applicant's representative: L. E. Gresh (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New self-propelled road building equipment, and parts thereof*, in driveaway and truckaway service: (1) (a) Between points and places in Arizona on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia; (b) between points in that part of New Mexico on and west of U.S. Highway 54 beginning at the Texas-New Mexico State line to Jct. U.S. Highway 70, to the Texas-New Mexico State line near Texico, N. Mex., on the one hand, and, on the other, to points in that part of Virginia on and east of Interstate Highway 77; (c) between points in New Mexico, on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, and the District of Columbia.

(2) Between points in California and Nevada, on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, and North Carolina; (3) between points in Utah and Wyoming, on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, North and South Carolina; (4) between points in Idaho, Oregon, and Montana, on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, North Carolina, South Carolina, and Georgia; and (5) between points in Washington, on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Alabama, and Florida. The purpose of this filing is to eliminate the gateway of Lorain, Ohio.

No. MC 111823 (Sub-E14), filed June 4, 1974. Applicant: SHERWOOD VAN LINES, INC., 4322 Milling Road, San Antonio, Tex. 78219. Applicant's representative: Robert J. Gallagher, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between San Bernadino, Calif., on the one hand, and, on the other, Craig Air Force Base, Selma, Ala.; Ft. McClellan, Anniston, Ala.; Ft. Rucker, Ozark, Ala.; Gunter Air

Force Base, Montgomery, Ala.; Maxwell Air Force Base, Montgomery, Ala.; Redstond Arsenal, Huntsville, Ala.; Blytheville Air Force Base, Blytheville, Ark.; District of Columbia; Naval Sub Base, Groton, Conn.; Andrews Air Force Base, District of Columbia; Bolling Air Force Base, District of Columbia; Cameron Station, District of Columbia; Ft. Myer, District of Columbia; Ft. McNair, District of Columbia; Walter Reed Army Hospital, District of Columbia; National Naval Medical Center, District of Columbia; Naval Station, Distict of Columbia; Eglin Air Force Base, Valparliso, Fla.; Homestead Air Force Base, Fla.; McDill Air Force Base, Tampa, Fla.; McCoy Air Force Base, Orlando, Fla.; Naval Air Station Ceil Field, Jacksonville, Fla.; Naval Air Station, Jacksonville, Fla.; Naval Air Station, Pensacola, Fla.; Naval Station, Mayport, Fla.; Naval Supply Center, Key West, Fla.; Naval Training Center, Orlando, Fla.; Patrick Air Force Base, Cocoa Beach, Fla.; Tyndall Air Force Base, Panama City, Fla.; Atlanta Army Depot, Forrest Park, Ga.; Ft. Benning, Columbus, Ga.; Ft. Gordon, Augusta, Ga.; Ft. McPherson, Atlanta, Ga.; Ft. Stewart, Hinsville, Ga.; Hunter Air Force Base, Savannah, Ga.

Marine Corp. Supply Center, Albany, Ga.; Dobbins Air Force Base, Marietta, Ga.; Moody Air Force Base, Valdosta, Ga.; Naval Air Station, Albany, Ga.; Naval Air Station, Glynco, Ga.; Robins Air Force Base, Warner Robins, Ga.; Chanute Air Force Base, Rantoul, Ill.; Ft. Sheridan, Highland Park, Illinois; Joliet Army Depot, Joliet, Illinois; Savanna Army Depot, Savanna, Ill.; Naval Air Station, Glenview, Ill.; Naval Training Center, Great Lakes, Ill.; Scott Air Force Base, Belleville, Ill.; Grissom Air Force Base, Peru, Ind.; Ft. Benjamin Harrison, Indianapolis, Ind.; Naval Ammunition, Depot, Crane, Ind.; Ft. Campbell, Hopkinsville, Ky.; Ft. Knox, Ky.; Aberdeen Proving Ground, Aberdeen, Md.; Edgewood Arsenal, Edgewood, Md.; Ft. Detrick, Frederick, Md.; Ft. Holabird, Baltimore, Md.; Ft. George Meade, Laurel, Md.; Ft. Ritchie, Cascade, Md.; Naval Air Station, Patuxent River, Md.; Naval Air, Annapolis, Md.; Naval Training Center, Bainbridge, Md.; Ft. Devens, Ayer, Mass.; L. G. Hanscom Field, Bedford, Mass.; Otis Air Force Base, Falmouth, Mass.; Westover Air Force Base, Springfield, Mass.; Kincheloe Air Force Base, Sault Ste. Marie, Michigan; K. I. Sawyer Air Force Base, Gwinn, Michigan; Selfridge Air Force Base, Mt. Clemens, Michigan; Wurtsmith Air Force Base, Oscode, Michigan; Columbus Air Force Base, Columbus, Miss.; Naval Air Station, Meridian, Miss.; Ft. Leonard Wood, Waynesville, Mo.; Pease Air Force Base, Portsmouth, N.H.; Ft. Dix, Wrightstown, N.J.; Ft. Monmouth, Oceanport, N.J.; McGuire Air Force Base, Wrightstown, N.J.; Naval Air Station, Lakehurst, N.J.; Camp Drum, Watertown, N.Y.; Ft. Hamilton, Brooklyn, N.Y.; Naval Supply Center, Governor's Isle, N.Y.; Griffiss Air Force Base, Rome, N.Y.; Hancock Field, Syracuse, N.Y.; Plattsburg Air Force Base, Plattsburg, N.Y.; Naval Hospital, St. Albans, N.Y.; Seneca Army Depot, Romulus, N.Y.

Stewart Field, Newburgh, N.Y.; U.S. Military Academy, West Point, N.Y.; Lockbourne Air Force Base, Columbus, Ohio; Wright Patterson Air Force Base, Dayton, Ohio; Carlisle Barracks, Army War College, Carlisle, Pa.; Letterkenny Army Depot, Chambersburg, Pa.; Naval Base, Philadelphia, Pa.; New Cumberland Army Depot, New Cumberland, Pa.; Tobyhanna Army Depot, Tobyhanna, Pa.; Defense Activities, Mechanicsburg, Pa.; Valley Forge General Hospital, Phoenixville, Pa.; Charleston Air Force Base, Charleston, S.C.; Ft. Jackson, Columbia, S.C.; Marine Corp. Air Station, Beaufort, S.C.; Marine Corp. Recruit Depot, Parris Island, S.C.; Myrtle Beach Air Force Base, Myrtle Beach, S.C.; Naval Base, Charleston, S.C.; Polaris Missile Facility, Charleston, S.C.; Shaw Air Force Base, Sumter, S.C.; Arnold Air Force Base, Tullahoma, Tenn.; Naval Air Station, Memphis, Tenn.; Ft. Belvoir, Alexandria, Va.; Ft. Eustis, Newport News, Va.; Ft. Lee, Petersburg, Va.; Ft. Monroe, Hampton, Va.; Ft. Story, Virginia Beach, Va.; Langley Air Force Base, Hampton, Va.; Marine Corp. School, Quantico, Va.; Naval Air Station, Va.; Naval Amphibians Base, Norfolk, Va.; Naval Shipyard, Portsmouth, Va.; Naval Station, Norfolk, Va.; Naval Weapons Lab., Dahlgren, Va.; Naval Weapons Station, Yorktown, Va.; Defense Supply Center, Richmond, Va.; Vint Hill Farms Station, Warrenton, Va.; and Camp McCoy, Sparta, Wis. The purpose of this filing is to eliminate the gateway of St. Louis, Mo.

No. MC 111823 (Sub-No. E85), filed June 4, 1974. Applicant: SHERWOOD VAN LINES, INC., 4322 Milling Road, San Antonio, Tex. 78219. Applicant's representative: Robert J. Gallagher, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *household goods*, as defined by the Commission, between McConnell Air Force Base, Wichita, Kans., on the one hand, and, on the other, Craig Air Force Base, Selma, Alabama; Fort McClellan, Anniston, Alabama; Fort Rucker, Ozark, Alabama; Gunter Air Force Base, Montgomery, Alabama; Maxwell Air Force Base, Montgomery, Alabama; Redstone Arsenal, Huntsville, Alabama; Naval Submarine Base, New London, Groton, Connecticut; Pentagon, Arlington Hall Station, Henderson Hall, and Naval Security Station, District of Columbia; Andrews Air Force Base, Camp Springs, Maryland; Bolling Air Force Base, District of Columbia; Fort Myer, Arlington, Virginia; Fort McNair, District of Columbia; Cameron Station, Alexandria, Virginia; Walter Reed Army Medical Center, District of Columbia; National Naval Medical Center, Bethesda, Maryland; Naval Station, District of Columbia; Eglin Air Force Base, Valparaiso, Florida; Homestead Air Force Base, Homestead, Florida; McDill Air Force Base, Orlando, Florida; McCoy Air Force Base, Orlando, Florida; Naval Air Station Cecil Field, Jacksonville, Florida; Naval Air Station, Jacksonville, Florida; Naval Air Station, Pensacola, Florida; Naval Station, Mayport, Florida; Naval Air Station, Whiting Field, Milton, Florida; Naval Station, Key West, Florida; Naval Training Center, Orlando, Florida.

Patrick Air Force Base, Cocoa Beach, Florida; Tyndall Air Force Base, Panama City, Florida; Atlanta Army Depot, Forest Park, Georgia; Fort Benning, Columbis, Georgia; Fort Gordon, Augusta, Georgia; Fort McPherson, Atlanta, Georgia; Fort Stewart, Hinesville, Georgia; Hunter Army Airfield, Savannah, Georgia; Marine Corps Supply Center, Albany, Georgia; Dobbins Air Force Base, Marietta, Georgia; Moody Air Force Base, Valdosta, Georgia; Naval Air Station, Albany, Georgia; Naval Air Station, Glynco, Georgia; Robins Air Force Base, Warner Robins, Georgia; Chanute Air Force Base, Rantoul, Illinois; Fort Sheridan, Highland Park, Illinois; Joliet Army Ammunition Depot, Joliet, Illinois; Savanna Army Depot, Savanna, Illinois; Naval Air Station, Glenview, Illinois; Naval Training Center, Great Lakes, Illinois; Scott Air Force Base, Belleville, Illinois; Grissom Air Force Base, Peru, Indiana; Fort Benjamin Harrison, Indianapolis, Indiana; Naval Ammunition Depot, Crane, Indiana; Fort Campbell, Hopkinsville, Kentucky; Fort Knox, Fort Knox, Kentucky; Aberdeen Proving Ground, Aberdeen, Maryland; Edgewood Arsenal, Edgewood Arsenal, Maryland; Fort Detrick, Frederick, Maryland; Fort Holabird, Baltimore, Maryland; Fort George Meade, Laurel, Maryland; Fort Ritchie, Cascade, Maryland; Naval Air Station Patuxent, Patuxent River, Maryland; Naval Academy, Annapolis, Maryland; Naval Training Center, Bainbridge, Maryland; Fort Devens, Ayer, Massachusetts.

Naval Air Station, South Weymouth, Massachusetts; L. G. Hanscom Field, Bedford, Massachusetts; Otis Air Force Base, Falmouth (Cape Cod), Massachusetts; Westover Air Force Base, Springfield, Massachusetts; Kincheloe Air Force Base, Sault Ste Marie, Michigan; K. I. Sawyer Air Force Base, Gwinn, Michigan; Selfridge Air National Guard Base, Mount Clemens, Michigan; Wurtsmith Air Force Base, Oscoda, Michigan; Columbus Air Force Base, Columbus, Mississippi; Keesler Air Force Base, Biloxi, Mississippi; Naval Air Station, Meridian, Mississippi; Naval Construction Battalion, Gulfport, Mississippi; Pease Air Force Base, Portsmouth, New Hampshire; Fort Dix, Wrightstown, New Jersey; Fort Monmouth, Oceanport, New Jersey; McGuire Air Force Base, Wrightstown, New Jersey; Naval Air Station, Lakehurst, New Jersey; Camp Drum, Watertown, New York; Fort Hamilton, Brooklyn, New York; Fort Wadsworth, Staten Island, New York; U.S. Coast Guard Base, Governor's Island (New York City), New York; Griffiss Air Force Base, Rome, New York; Hancock Field, Syracuse, New York; Plattsburg Air Force Base, Plattsburg,

New York; Naval Hospital, Saint Albans, New York; Seneca Army Depot, Romulus, New York; Stewart Field, Newburgh, New York; U.S. Military Academy, West Point, New York; Lockbourne Air Force Base, Columbus, Ohio; Wright-Patterson Air Force Base, Dayton, Ohio; Army War College, Carlisle Barracks, Pennsylvania; Letterkenny Army Depot, Chambersburg, Pennsylvania; Naval Base, Philadelphia, Pennsylvania; New Cumberland Army Depot, New Cumberland, Pennsylvania; Tobyhanna Army Depot, Tobyhanna, Pennsylvania; Defense Activities, Mechanicsburg, Pennsylvania.

Valley Forge General Hospital, Phoenixville, Pennsylvania; Charleston Air Force Base, Charleston, South Carolina; Fort Jackson, Columbia, South Carolina; Marine Corps Air Station, Beaufort, South Carolina; Marine Corps Recruit Depot, Parris Island, South Carolina; Myrtle Beach Air Force Base, Myrtle Beach, South Carolina; Po-Base, Charleston, South Carolina; Polaris Missile Facility, Charleston, South Carolina; Shaw Air Force Base, Sumter, South Carolina; Arnold Air Force Base, Tullahoma, Tennessee; Naval Air Station Memphis, Millington, Tennessee; Fort Eustis, Newport News, Virginia; Fort Lee, Petersburg, Virginia; Fort Monroe, Hampton, Virginia; Fort Story, Virginia Beach, Virginia; Langley Air Force Base, Hampton, Virginia; Marine Corps School, Quantico, Virginia; Naval Air Station Oceana, Oceana (Virginia Beach), Virginia; Naval Amphibious Base, Little Creek (Norfolk), Virginia; Naval Shipyard Norfolk, Portsmouth, Virginia; Naval Station, Norfolk, Virginia; Naval Weapons Lavoratory, Dahlgren, Virginia; Naval Weapons Station, Yorktown, Virginia; Defense General Supply Center, Richmond, Virginia; Vint Hill Farms Station, Warrenton, Virginia; and Fort Belvoir, Alexandria, Virginia. The purpose of this filing is to eliminate the gateway of St. Louis, Mo., or Louisville, Ky. or that part of Ohio, Indiana, and Illinois on and north of a line beginning at the Pennsylvania-Ohio State line, and extending along U.S. Highway 422 to junction U.S. Highway 62, thence along U.S. Highway 62 to junction U.S. Highway 40, thence along U.S. Highway 40 to Springfield, Ohio, thence along Ohio Highway 440 to junction U.S. Highway 40, thence along U.S. Highway 40, to junction U.S. Highway 36, thence along U.S. Highway 36 to the Illinois-Missouri State line.

No. MC 111823 (Sub-No. E93), filed June 4, 1974. Applicant: SHERWOOD VAN LINES, INC., 4322 Milling Road, San Antonio, Tex. 78219. Applicant's representative: Robert J. Gallagher, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *household goods*, as defined by the Commission, between Hunter Army Air Field, Savannah, Ga.; Fort Stewart, Hinesville, Ga.; and Naval Air Station, Glynco, Ga.; on the one hand, and, on the other, Ent Air Force Base & Peterson Field, Colorado Springs, Colorado; Fitzsimons General Hospital, Denver, Colorado; Fort Carson, Colorado Springs, Colorado; Lowry Air Force Base, Denver, Colorado; U.S. Air Force Academy, Colorado Springs, Colorado; Chanute Air Force Base, Rantoul, Illinois; Fort Shreidan, Highland Park, Illinois; Joliet Army Ammunition Depot, Joliet, Illinois; Savanna Army Depot, Savanna, Illinois; Naval Air Station, Glenview, Illinois; Naval Training Center, Great Lakes, Illinois; Scott Air Force Base, Belleville, Illinois; Grissom Air Force Base, Peru, Indiana; Fort Benjamin Harrison, Indianapolis, Indiana; Naval Ammunition Depot, Crane, Indiana; Forbes Air Force Base, Topeka, Kansas; Fort Leavenworth, Leavenworth, Kansas; Fort Riley, Junction City, Kansas; McConnell Air Force Base, Wichita, Kansas; Fort Knox, Fort Knox, Kentucky; Kincheloe Air Force Base, Saulte Ste Marie, Michigan.

K. I. Sawyer Air Force Base, Gwinn, Michigan; Selfridge Air National Guard Base, Mount Clement, Michigan; Wurtsmith Air Force Base, Oscoda, Michigan; Duluth International Airport, Duluth, Minnesota; Fort Leonard Wood, Waynesville, Missouri; Richards-Gebaur Air Force Base, Kansas City, Missouri; Whiteman Air Force Base, Knob Noster, Missouri; Offutt Air Force Base, Omaha, Nebraska; Camp Drum, Watertown, New York; Grand Forks Air Force Base, Emerado, North Dakota; Minot Air Force Base, Minot, North Dakota; Lockbourne Air Force Base, Columbus, Ohio; Wright-Patterson Air Force Base, Dayton, Ohio; Altus Air Force Base, Altus, Oklahoma; Fort Sill, Lawton, Oklahoma; Tinker Air Force Base, Oklahoma City, Oklahoma; Vance Air Force Base, Enid, Oklahoma; Ellsworth Air Force Base, Rapid City, South Dakota; and Camp McCoy, Sparta, Wisconsin. The purpose of this filing is to eliminate the gateway of St. Louis, Mo., or Louisville, Ky. or that part of Ohio, Indiana, and Illinois on and north of a line beginning at the Pennsylvania-Ohio State line, and extending along U.S. Highway 422 to junction U.S. Highway 62, thence along U.S. Highway 62 to junction U.S. Highway 40, thence along U.S. Highway 40 to Springfield, Ohio, thence along Ohio Highway 440 to junction U.S. Highway 40, thence along U.S. Highway 40 to junction U.S. Highway 36, thence along U.S. Highway 36 to the Illinois-Missouri State line.

No. MC 111823 (Sub-No. E94), filed June 4, 1974. Applicant: SHERWOOD VAN LINES, INC., 4322 Milling Road, San Antonio, Tex. 78219. Applicant's representative: Robert J. Gallagher, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *household goods*, as defined by the Commission, between Naval Air Station and Marine Corps Supply Center, Albany, Ga., on the one hand, and, on the other, Ent Air Force Base & Peterson Field, Colorado Springs, Colorado; Fitzsimons General Hospital, Denver, Colorado; Fort Carson, Colorado Springs, Colorado; Lowry Air Force Base, Denver, Colorado; U.S. Air Force Academy, Colorado Springs, Colorado; Chanute Air Force Base, Rantoul, Illinois; Fort Sheridan, Highland Park, Illinois; Joliet Army Ammunition Depot, Joliet, Illinois; Savanna Army Depot, Savanna, Illinois; Naval Air Station, Glenview, Illinois; Naval Training Center, Great Lakes, Illinois; Scott Air Force Base, Belleville, Illinois; Grissom Air Force Base, Peru, Indiana; Fort Benjamin Harrison, Indianapolis, Indiana; Naval Ammunition Depot, Crane, Indiana; Forbes Air Force Base, Topeka, Kansas; Fort Leavenworth, Leavenworth, Kansas; Fort Riley, Junction City, Kansas.

McConnell Air Force Base, Wichita, Kansas; Fort Knox, Fort Knox, Kentucky; Kincheloe Air Force Base, Sault Ste. Marie, Michigan; K. I. Sawyer Air Force Base, Gwinn, Michigan; Selfridge Air National Guard Base, Mount Clemens, Michigan; Wurtsmith Air Force Base, Oscoda, Michigan; Duluth International Airport, Duluth, Minnesota; Fort Leonard Wood, Waynesville, Missouri; Richards-Gebaur Air Force Base, Kansas City, Missouri; Whiteman Air Force Base, Knob Noster, Missouri; Offutt Air Force Base, Omaha, Nebraska; Camp Drum, Watertown, New York; Griffiss Air Force Base, Rome, New York; Hancock Field, Syracuse, New York; Plattsburg Air Force Base, Plattsburg, New York; Seneca Army Depot, Romulus, New York; Grand Forks Air Force Base, Emerado, North Dakota; Minot Air Force Base, Minot, North Dakota; Lockbourne Air Force Base, Columbus, Ohio; Wright-Patterson Air Force Base, Dayton, Ohio; Vance Air Force Base, Enid, Oklahoma; Ellsworth Air Force Base, Rapid City, South Dakota; and Camp McCoy, Sparta, Wisconsin. The purpose of this filing is to eliminate the gateway of St. Louis, Mo., or Louisville, Ky. or that part of Ohio, Indiana, and Illinois on and north of a line beginning at the Pennsylvania-Ohio State line, and extending along U.S. Highway 422 to junction U.S. Highway 62, thence along U.S. Highway 62 to junction U.S. Highway 40, thence along U.S. Highway 40 to Springfield, Ohio, thence along Ohio Highway 440 to junction U.S. Highway 40, thence along U.S. Highway 40, to junction U.S. Highway 36, thence along U.S. Highway 36 to the Illinois-Missouri State line.

No. MC 117344 (Sub-No. E120), filed May 17, 1974. Applicant: THE MAXWELL CO., 10380 Evendale Drive, Cincinnati, Ohio 45215. Applicant's representative: Thomas L. Maxwell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oils*, in bulk, in tank vehicles, from Ohio County, Ind., to points in Illinois. The purpose of this filing is to eliminate the gateway of Cincinnati, Ohio.

No. MC 117344 (Sub-No. E121), filed May 17, 1974. Applicant: THE MAXWELL CO., 10380 Evendale Drive, Cincinnati, Ohio 45215. Applicant's representative: Thomas L. Maxwell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over

irregular routes, transporting: *Vegetable oils* and *vegetable oil products*, in bulk, in tank vehicles, from St. Bernard, Ohio, to points in West Virginia on and east of a line beginning at the West Virginia-Ohio State line and extending along U.S. Highway 33 to junction Interstate Highway 77, thence along Interstate Highway 77 to Camp Creek, thence along U.S. Highway 21 to the West Virginia-Virginia State line. The purpose of this filing is to eliminate the gateway of Cincinnati, Ohio.

No. MC 117344 (Sub-No. E122), filed May 17, 1974. Applicant: THE MAXWELL CO., 10380 Evendale Drive, Cincinnati, Ohio 45215. Applicant's representative: Thomas Maxwell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soya bean oil*, in bulk, in tank vehicles, from Louisville, Ky., to points in Michigan, on, east, and north of a line beginning at the Michigan-Indiana State line and extending along U.S. Highway 141 to junction Michigan Highway 89, thence along Michigan Highway 89 to Lake Michigan. The purpose of this filing is to eliminate the gateway of Cincinnati, Ohio.

No. MC 117344 (Sub-No. E123), filed May 17, 1974. Applicant: THE MAXWELL CO., 10380 Evandale Drive, Cincinnati, Ohio 45215. Applicant's representative: Thomas L. Maxwell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal tar* and *coal tar products*, in bulk, in tank vehicles: (1) from Hamilton and Middletown, Ohio, to points in Indiana (except those in Delaware, Fayette, Franklin, Henry, Randolph, Rush, Union, and Wayne Counties); (2) from Hamilton, Ohio, and Excello, Ohio, to points in Delaware and Rush Counties, Ind.; and (3) from Middletown, Ohio, to those points in Franklin County, Ind., on and west of Indiana Highway 1. The purpose of this filing is to eliminate the gateway of Cincinnati, Ohio.

No. MC 120021 (Sub-No. E5), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St., NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission; (1) between points in Tennessee, on the one hand, and, on the other, points in Indiana in and east of Elkhart, Kosciusko, Huntington, Wells, Blackford, Delaware, Henry, Fayette, and Franklin Counties; (2) between points in Tennessee in and west of Claiborne, Union, Knox, Loudon, McMinn, and Bradley Counties, on the one hand, and, on the other, points in Rhode Island; (3) between points in Tennessee in and west of Claiborne, Union, Knox, Blount, Monroe, and Polk Counties, on the one hand, and, on the other, those in Pennsylvania in, west, and north of Fulton, Huntington, Centre, Clinton, Lycoming, Sullivan, Wyoming, Lackawanna, and Wayne Counties, and those in Marshall, Ohio, Brooke, and Hancock Counties, W. Va.; (4) between points in Tennessee in and west of Pickett, Fentress, Cumberland, Rhea, Meigs, and Bradley Counties, on the one hand, and, on the other, points in New York, and those in New Jersey in and north of Hunterdon, Somerset, and Middlesex Counties; and (5) between points in Tennessee in and west of Franklin, Coffee, Warren, White, Putnam, Overton, and Pickett Counties, on the one hand, and, on the other, points in West Virginia on and North of U.S. Highway 50 and points in Pennsylvania in and east of Franklin, Perry, Juniata, Mifflin, Union, Northumberland, Columbia, Luzerne, Monroe, and Pike Counties. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 120021 (Sub-No. E21), filed June 4, 1974. Applicant: THE COTTER MOVING & STORAGE CO., 265 W. Bowery St., Akron, Ohio 44308. Applicant's representative: Thomas R. Kingsley, 1819 H St., N.W., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission; (1) between points in Georgia, on the one hand, and, on the other, points in Nebraska, Minnesota, Wisconsin, and those in Indiana on and north of Interstate Highway 74; (2) between points in Georgia, in and west of Union, Lumpkin, Dawson, Forsyth, Gwinnett, Rockdale, Newton, Butts, Monroe, Bibb, Houston, Dooly, Crisp, Turner, Tift, Colquitt, and Brooks Counties, on the one hand and, on the other, those points in Pennsylvania, in and west of McKean, Cameron, Clearfield, Cambria, Blair, and Bedford Counties, and those points in New York, in and west of Steuben, Yates, Seneca, and Wayne Counties; (3) between points in Georgia, in and west of Union, Lumpkin, Dawson, Forsyth, Gwinnett, Rockdale, Newton, Butts, Monroe, Bibb, Houston, Pulaski, Wilcox, Ben Hill, Irwin, Berrien, and Lowndes Counties, on the one hand, and, on the other, those points in Wood, Pleasants, Ritchie, Doddridge, Tyler, Wetzel, Marshall, Ohio, Brooke, and Hancock Counties, W. Va. The purpose of this filing is to eliminate the gateway of Dayton, Ohio, and points within 25 miles thereof.

No. MC 123502 (Sub-No. E45), filed May 12, 1974. Applicant: FREE STATE TRUCK SERVICE, INC., P.O. Box 760, Glen Burnie, Md. 21061. Applicant's representative: W. Wilson Corroum (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal alloys*, in dump vehicles, from points in Bucks, Chester, Delaware, Lancaster, Montgomery, and Philadelphia Counties, Pa., to points in Illinois, Indiana, Michigan, Ohio, Virginia, and West Virginia. The purpose of this filing is to eliminate the gateway of Baltimore, Md.

No. MC 121060 (Sub-E76), filed May 28, 1975. Applicant: ARROW TRUCK LINES, INC., 1220 West 3rd Street, Birmingham, Ala. 35201. Applicant's representative: William P. Jackson, Jr., 919 Eighteenth Street, N.W., Washington, D.C. 20006. *Ceiling systems, paint, plastic light diffusers, adhesives, furring, fasteners, lighting systems, moldings, steel shapes, steel rods, steel channels, steel ceiling beams, applicators and roofing caps, and materials and supplies used in the installation of any commodity named above* (except in bulk), from points in Alabama, on and north of a line commencing at the Alabama-Georgia State line, thence along U.S. Highway 278 to its intersection with U.S. Highway 231, thence along U.S. Highway 231 to the Alabama-Tennessee State line, to points in Louisiana, on and west of a line commencing at the Louisiana-Arkansas State line, thence along U.S. Highway 167 to its intersection with U.S. Highway 84, thence along U.S. Highway 84 to its intersection with Louisiana Highway 6, thence along Louisiana Highway 6 to its intersection with Louisiana Highway 1, thence along Louisiana Highway 1 to its intersection with Louisiana Highway 8, thence along Louisiana Highway 8 to its intersection with Louisiana Highway 465, thence along Louisiana Highway 465 to its intersection with Louisiana Highway 112, thence along Louisiana Highway 112 to its intersection with Louisiana Highway 10, thence along Louisiana Highway 10 to its intersection with U.S. Highway 165, thence along U.S. Highway 165 to its intersection with U.S. Highway 190, thence along U.S. Highway 190 to its intersection with Louisiana Highway 26, thence along Louisiana Highway 26 to its intersection with Louisiana Highway 14, thence along Louisiana Highway 14 to its intersection with Cameron Parish, La., thence along the eastern boundary of Cameron Parish, La., to the Gulf of Mexico. Facilities of Litecraft-Luminous Ceilings, Division of the Celotex Corp., at or near Scottsboro, Ala.

No. MC 127187 (Sub-No. E4), filed May 13, 1974. Applicant: FLOYD DUENOW, INC., 1728 Industrial Park Blvd., Fergus Falls, Minn. Applicant's representative: Gene P. Johnson, 425 Gate City Bldg., Fargo, N. Dak. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Dry animal and poultry feed and feed ingredients (except in bulk, in tank vehicles), from Weeping Water, Nebr., to points in Wisconsin (except points in that part of Grant, Iowa, and Lafayette Counties, south of U.S. Highway 18), and points in that part of Iowa in and north of Woodbury, Cherokee, Buena Vista, Pochahontas, Humboldt, Wright, Franklin, Butler, Bremer, and Fayette Counties, Iowa, and points in and north of that part of Allamakee and Clayton Counties Iowa, that are on and north of U.S. Highway 18. The purpose of this filing is to eliminate the gateway of South Dakota.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-19676 Filed 7-28-75;8:45 am]

[Notice No. 42]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

JULY 24, 1975.

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 evironment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before August 18, 1975. 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-75833. By order entered July 22, 1975, the Motor Carrier Board approved the transfer to Dugan Truck Line, Inc., Wichita, Kans., of the operating rights set forth in Certificate No. MC 106686, issued October 14, 1964, to Bern's Truck Line, Inc., Wichita, Kans., authorizing the transportation of general commodities, with the usual exceptions, over specified routes, between Moundridge, Kans., and Hutchinson, Kans., serving all intermediate points. Paul V. Dugan, 2707 W. Douglas, Wichita, Kans. 67213, attorney for applicants.

No. MC-FC-75920. By order of July 23, 1975, the Motor Carrier Board approved the transfer to Holbrook Teen Tours, Inc., Rt. 2, Box 303, High Point, N.C. 27260 of License No. MC 130181 issued by the Commission August 1, 1973, to John Holbrook, III, doing business as Western Pioneer Tours, High Point, N.C., authorizing the holder to engage in operations as a broker in connection with the transportation of passengers and their baggage, in special operations, in all-expense, round-trip, camping tours, beginning and ending at points in Randolpt, Forsyth, Davidson, and Guilford Counties, N.C., and extending to points in the United States (including Alaska but excluding Hawaii).

No. MC-FC-75994. By order entered July 23, 1975, the Motor Carrier Board approved the transfer to Chauffeur Service, Inc., Long Branch, New Jersey, of the operating rights set forth in Certificate No. MC 119237, issued April 14, 1970, to Middlesex Transportation Co., Long Island City, N.Y., authorizing the transportation of liquors, from Philadelphia, Pa., to Jersey City and Perth Amboy, N.J.; and from Peekskill, N.Y., to Perth Amboy, N.J.; and alcoholic beverages, between New York, N.Y., on the one hand, and, on the other, Trenton, N.J., and points in Hudson, Essex, Middlesex, Union, and Monmouth Counties, N.J. Robert B. Pepper, 168 Woodbridge Ave., Highland Park, N.J. 08904, practitioner for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-19679 Filed 7-28-75;8:45 am]

[Notice No. 83]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 24, 1975.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR § 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

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.

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 the I.C.C. Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 107460 (Sub-No. 53TA), filed July 16, 1975. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Road, Lancaster, Pa. 17601. Applicant's representative: Donald D. Shipley (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum and aluminum articles and fabricated metal products*, from the distribution center of Howmet Corporation, at Harrisburg, Pa., to the distribution center of Howmet Corporation at Columbus, Ohio, under continuing contract with Howmet Corporation, for 180 days. Supporting shipper: Howmet Corporation, P.O. Box 163, 227 Town East Blvd., Mesquite, Tex. 75149. Send protests to: Robert P. Amerine, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 278 Federal Bldg., P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 110517 (Sub-No. 3TA) (Correction), filed June 16, 1975, published in the FEDERAL REGISTER issue of July 18, 1975, and republished as corrected this issue. Applicant: REDDING TRANS., INC., 133 Elm Street, North Uxbridge, Maine 01538. Applicant's representative: Arthur A. Wentzell, P.O. Box 764, Worcester, Maine 01613. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cotton piece goods; yarn, mohair, orlon, rayon and wool; bobbins; thread, cotton, rayon and wool; printed matter; knitting needles*, between Uxbridge, Mass., on the one hand, and, on the other, Boston, Mass., including Logan International Airport, East Boxton, and Worcester, Mass., restricted to traffic moving in interstate commerce, from the plant of Emile Bernat & Sons Co., for 180 days. Supporting shipper: Emile Bernat & Sons, Inc., Mendon St., Uxbridge, Mass. 05138. Send protests to: Gerald H. Curry, District Supervisor, 187 Westminster St., Providence, R.I. 02903. The purpose of this republication is to correct the docket number which was previously published in error.

No. MC 111170 (Sub-No. 221TA), filed July 10, 1975. Applicant: WHEELING PIPE LINE, INC., P.O. Box 1718, El Dorado, Ark. 71730. Applicant's representative: Tom E. Moore (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bulk liquid pipe coating material*, from Lone Star, Tex., to Shreveport, La., and Arkansas City, Kans., for 180 days. Supporting shipper: Irish Pipe Coating Co., Inc., 2504 Flournoy-Lucas Road, Shreveport, La. 71108. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201.

No. MC 111729 (Sub-No. 561TA), filed July 11, 1975. Applicant: PUROLATOR COURIER CORP., 2 Nevada Drive, Lake Success, N.Y. 11040. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Business papers, records, and audit and accounting media of all kinds*, (a) between Cleveland, Ohio, and Clinton, Ky.; (b) between Cincinnati, Ohio, and KeKalb, Ill.; (2) *Proofs, cuts, copy, and related advertising material*, between Cincinnati, Ohio, and DeKalb, Ill.; (3) *Ophthalmic goods*, from Cleveland, Ohio, to Charleston and Huntington, W. Va., for 180 days. Supporting shippers: Finney Company, 34 W. Interstate St., Bedford, Ohio. Cincinnati Enquirer, 617 Vine St., Cincinnati, Ohio. Cole National Corp., 5777 Grant Ave., Cleveland, Ohio. Send protests to: Anthony D. Giaimo, District Supervisor, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 114569 (Sub-No. 122TA), filed July 15, 1975. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, Pa. 17072. Applicant's representative: Stanley C. Geist (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and furnishings* moving with new furniture, crated and uncrated, from points in North Carolina, Virginia, Mississippi, Morristown, and Knoxville, Tenn.; Eldorado and Ft. Smith, Ark.; Decautur, Ga., and Lexington, Ky.; to points in California, for 180 days. Supporting shipper: The Wickes Corporation, 515 N. Washington Ave., Saginaw, Mich. 48607. Send protests to: Robert P. Amerine, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 278 Federal Bldg., P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 125293 (Sub-No. 9TA), filed July 10, 1975. Applicant: INDUSTRIAL CONTRACT CARRIERS, INC., 14750 S.W. 72nd Ave., Tigard, Oreg. 97223. Applicant's representative: Richard B. Curtis (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal building Materials and supplies*, from Portland, Oreg., to Tulsa and Oklahoma City, Okla.; Wichita, Kans.; Grand Junction, Denver, Colorado Springs, Pueblo, and Aurora, Colo.; under continuing contract with General Metalcraft Corporation, for 180 days. Supporting shipper: General Metalcraft Corporation, 4701 S.E. 24th Ave., Portland, Oreg. 97202. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 125358 (Sub-No. 17TA), filed July 15, 1975. Applicant: MID-WEST TRUCK LINES, LTD., 1216 Fife St., Winnipeg, Manitoba, Canada. Applicant's representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, Minn. 55102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commodities* used in the manufacture of tractors and agricultural implements and equipment (except commodities in bulk), from Hesston, Kansas, to Winnipeg, Manitoba, Canada, via United States-Canadian ports of entry at or near Pembina, N. Dak., and Noyes, Minn., under continuing contract with Versatile Manufacturing, Ltd., for 180 days. Supporting shipper: Versatile Manufacturing, Ltd., 1260 Clarence Ave., Winnipeg, Manitoba, Canada. Send protests to: J. H. Ambs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 125785 (Sub-No. 29TA), filed July 14, 1975. Applicant: SATURN EXPRESS, INC., 7860 F St., Omaha, Nebr. 68127. Applicant's representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Ground, crushed or powdered glass and glass beads;* and (2) *materials, equipment and supplies* used in the application of highway marking strips, from Jackson, Miss., to points in Idaho, Colorado, North Dakota, South Dakota, Nebraska, Oklahoma, and Utah. Restrictions: Restricted against the transportation of commodities in bulk and further restricted to a transportation service to be performed under a continuing contract or contracts with Ferro Corporation, for 180 days. Supporting shipper: B. J. Young, Plant Controller, Cataphote Division, Ferro Corporation, P.O. Box 2369, Jackson, Miss. 39205. Send protests to: Carroll Russell, District Supervisor, Suite 620 Union Pacific Plaza, 110 North 14th St., Omaha, Nebr. 68102.

No. MC 133119 (Sub-No. 71TA), filed July 14, 1975. Applicant: HEYL TRUCK LINES, INC., 235 Mill Street, Akron, Iowa 51001. Applicant's representative: Donald Heyl (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass beads and glass spheres*, from the commercial zone of Jackson, Miss., to points in Nebraska and South Dakota, for 180 days. Supporting shipper: B. J. Young, Traffic Manager, Cataphote, Division of Ferro Corporation, P.O. Box 2369, Jackson, Miss. 39205. Send protests to: Carroll Russell, District Supervisor, Suite 620 Union Pacific Plaza, 110 North 14th St., Omaha, Nebr. 68102.

No. MC 134400 (Sub-No. 17TA), filed July 7, 1975. Applicant: MILLER'S TRUCKING AND RENTAL, INC., 200 Southern Ave., Dubuque, Iowa 52001. Applicant's representative: Carl E. Munson, 469 Fischer Bldg., Dubuque, Iowa 52001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and advertising material* accompanying said beverages, from Dubuque, Iowa, to points in Illinois and Indiana, located on and north of U.S. Highway 36, under continuing contract with Pickett Brewing Company, for 90 days. Supporting shipper: Pickett Brewing Company, E. 4th St., Extension, Dubuque, Iowa 52001. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 875 Federal Bldg., Des Moines, Iowa 50309.

No. MC 134983 (Sub-No. 3TA), filed July 15, 1975. Applicant: MID CONTINENT TRUCKING COMPANY, 204 Morningside Drive, Denison, Iowa 51442. Applicant's representative: Patrick E. Quinn, 605 South 14th St., P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, meat by-products and articles* distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities of or utilized by Farmland Foods, Inc., located at or near Crete, Nebr., to points in the United States (except Alaska and Hawaii); and (2) *returned shipments, materials and supplies and equipment* utilized in the manufacture, sale, and distribution of the commodities specified in (1) above, in the reverse direction. Restrictions: Restricted to traffic originating at or terminating at the plantsite and storage facilities of Farmland Foods, Inc., further restricted to a transportation service to be performed under a continuing contract or contracts with Farmland Foods, Inc., for 180 days. Supporting shipper: Farmland Foods, Inc., P.O. Box 7527, Kansas City, Mo. 64116. Send protests to: Carroll Russell, District Supervisor, Suite 620 Union Pacific Plaza, 110 North 14th St., Omaha, Nebr. 68102.

No. MC 138274 (Sub-No. 18 TA) (Correction), filed June 18, 1975, published in the FEDERAL REGISTER issue of July 10, 1975, and republished as corrected this issue. Applicant: SHIPPERS BEST EXPRESS, INC., 2151 North Redwood Road, Salt Lake City, Utah 84116. Applicant's representative: Chester A. Zyblut, 1522 K St. NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides, meat meal, inedible meat*, frozen and tallow, from the plantsite of C.U.I. International, near Boise, Idaho, to points in California; Oregon; and Washington; Sparks, Nev.; Crete, Nebr.; Jefferson City, Mo.; Laredo, Tex.; Denver, Colo.; and Milwaukee, Wis., for 180 days. Supporting shipper: Colorado/Utah/Idaho/International, P.O. Box 5485, Boise, Idaho 83705. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 South State St., Salt Lake City, Utah 84138. The purpose of this republication is to correct the commodity description.

No. MC 139759 (Sub-No. 6TA), filed July 15, 1975. Applicant: DIRECT COURIER, INC., 2780 Jefferson Davis Highway, Arlington, Va. 22202. Applicant's representative: Gerald K. Gimmel, 303 North Frederick Ave., Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sera, cell and tissue cultures, biological research products and equipment chemicals, laboratory equipment and apparatus, medical reagents, plasma, and live laboratory animals*, between Walkersville, Md., on the one hand, and, on the other, points in Maryland, Virginia, West Virginia, Pennsylvania (Johnstown), New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Delaware, and the District of Columbia. Restriction: The service authorized herein is subject to the following conditions: Said operations are restricted against the transportation of commodities in bulk. Said operations are restricted against the transportation of radio pharmaceuticals, radio-active drugs, and medical isotopes, for 180 days. Supporting shipper: Microbiological Associates, Walkersville, Md. Send protests to: Interstate

Commerce Commission, 12th and Constitution Ave., N.W., Room 317, W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 140443 (Sub-No. 1TA), filed July 15, 1975. Applicant: CENTRAL DELIVERY SERVICE, INC., 1101 Ripley St., Silver Spring, Md. 20910. Applicant's representative: Keremy Kahn, Suite 733, Investment Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Checks and related bank papers*, (1) from the Baltimore Branch, Federal Reserve Bank of Richmond, Baltimore, Md., to points in the District of Columbia, Arlington, Fairfax, Loudoun, and Prince William Counties, Va., and the cities of Alexandria, Fairfax, and Falls Church, Va., and points in Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, and Morgan Counties, W. Va.; (2) from the Baltimore Branch, Federal Reserve Bank of Richmond, Baltimore, Md., to the Friendship International Airport, near Baltimore, Md., restricted to the transportation of shipments having a subsequent movement by air, and (3) from Cumberland, Md., to points in Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, and Morgan Counties, W. Va., restricted to the transportation of shipments having a prior movement by air, and (4) from points in Arlington, Fairfax, Loudoun, and Prince William Counties, Va., and the cities of Alexandria, Fairfax, and Falls Church, Va., and the District of Columbia to the Baltimore Branch, Federal Reserve Branch of Richmond, Baltimore, Md., under a continuing contract with Federal Reserve Bank of Richmond, for 180 days. Supporting shipper: Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, Va. 23216. Send protests to: Interstate Commerce Commission, 12th and Constitution Ave., N.W., Room 317, W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 141102 (Sub-No. 1TA), (Correction), filed July 7, 1975, published in the FEDERAL REGISTER issue of July 18, 1975, and republished as corrected this issue. Applicant: RAY WILLIAMS, ding business as, EMRAY TRUCKING COMPANY, 97 Wegman Parkway, Jersey City, N.J. 07305. Applicant's representative: John Gero, 610 Belgrove Drive, Kearny, N.J. 07032. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Used transformers*, in shipper-owned equipment, from Long Island City, West Nyack, Spring Valley, Monroe, Middletown, Yonkers, Eastview, N.Y.; Greenwich, Norwalk, Stamford, New Milford, Bethel, Waterbury, Meriden, New Britain, Bristol, Torrington, Madison, Willimantic, Mystic, Danielson, Conn., to Kearny, N.J., under continuing contract or contracts with G & S Motor Equipment Corp., Inc., for 180 days. Supporting shipper: G & S Motor Equipment Corp., Inc., 1800 Harrison Ave., Kearny, N.J. 07023. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102. The purpose of this republication is to correctly spell the applicant's name.

No. MC 141130 (Sub-No. 1TA), filed July 15, 1975. Applicant: RALPH F. SPRAGUE, doing business as SPRAGUE TRUCKING, Route 2, Thurmont, Md. 21788. Applicant's representative: Gayle L. Crawford, Jr., 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dolomite and limestone*, in dump vehicles, from points in Jefferson County, W. Va., to Washington, D.C., including its commercial zone, under continuing contract with Shenandoah Quarry, Inc., for 180 days. Supporting shipper: Shenandoah Quarry, Inc., P.O. Box C. Millville, W. Va. 25432. Send protests to: Interstate Commerce Commission, 12th and Constitution Ave., N.W., Room 317, W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 141134TA, filed July 10, 1975. Applicant: JACOBSON'S MOVING & STORAGE, INC., 610 South Second St., La Crosse, Wis. 54601. Applicant's representative: Roger W. Hafner, 324 Exchange Bldg., P.O. Box 1067, La Crosse, Wis. 54601. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail department store and mail order houses, from La Crosse, Wis., to points in Houston, Fillmore, Olmstead, Winona, and Wabash Counties, Minn., Allamakee and Winnesheik Counties, Iowa and Buffalo, Eau Claire, Clark, Trempealeau, Jackson, Wood, La Crosse, Monroe, Juneau, Vernon, Richland, and Crawford Counties, Wis., with no transportation for compensation on return except as otherwise authorized under continuing contract with Montgomery-Ward & Company, for 180 days. Supporting shipper: Montgomery-Ward & Company, 315 State St., La Crosse, Wis. 54601. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 139 W. Wilson St., Room 202, Madison, Wis. 53703.

No. MC 141145TA, filed July 15, 1975. Applicant: REYNOLDS & COMPANY, INC., No. 1 Railroad Ave., P.O. Box 227, Waynesboro, Ga. 30830. Applicant's representative: Archie B. Culbrith, Suite 246, 1252 West Peachtree St. NW., Atlanta, Ga. 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fuel material* for power plants, consisting of sawmill waste (bark, wood chips, wood shavings, wood particles and sawdust mixed), from points in Georgia, to points in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia, for 180 days. Supporting shipper: Kimberlly Clark Corp., P.O. Box 672, Waynesboro, Ga. 30830. Send protests to: William L. Scroggs, District Supervisor, 1252 West Peachtree St. NW., Room 546, Atlanta, Ga. 30309.

No. MC 141146TA, filed July 15, 1975. Applicant: RAYMOND J. LYNCH, FR., doing business as, CENTRAL MAINE STORAGE CO., 31 March Circle, Bangor, Maine 04401. Applicant's representative: Raymond J. Lynch, Jr., P.O. Box 753, Bangor, Maine 04401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* (as defined by the Commission), between points in Maine, for 180 days. Supporting shipper: Department of Defense, Regulatory Law Office, Department of the Army, Pentagon, Washington, D.C. 20310. Send protests to: Donald G. Weiler, District Supervisor, Room 307, 76 Pearl St., Portland, Maine 04111.

No. MC 141147TA, filed July 15, 1975. Applicant: JAMES S. NESLER, Dover, Minn. 55929. Applicant's representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Natural and synthetic rubber used* in re-treading tires, from Borger and Houston, Tex., to Rochester, Minn., for 180 days. Supporting shipper: Nelson Tire Town, 4410 19th St., N.W., Rochester, Minn. 55901. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 141148TA, filed July 17, 1975. Applicant: WILLIAM E. PHILLIPS, doing business as PHILLIPS TRUCKING COMPANY, Box 511, Hebron, Md. 21830. Applicant's representative: Chester A. Zyblut, 1522 K St. NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips*, from Sharptown, Md., and points within 2 miles thereof to Spring Grove and Philadelphia, Pa., for 180 days. Supporting shipper: J. V. Wells Co., P.O. Box 526, Sharptown, Md. 21861. Send protests to: Interstate Commerce Commission, 12th & Constitution Ave., N.W., Room 317, W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 141159TA, filed June 6, 1975. Applicant: TRANSCON LINES, 101 Continental Blvd., El Segundo, Calif. 90245. Applicant's representative: Jerome Biniasz, P.O. Box 92220, Los Angeles, Calif. 90009. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between Grand Rapids, Mich., and Muskegon, Mich., including points within its Commercial Zone, and serving the intermediate point of Grand Haven, Mich.; from Grand Rapids, over Interstate Highway 96 to Muskegon, and return over the same route; from Grand Rapids over Michigan Highway 45 to junction Michigan Highway 11, thence over Michigan Highway 11 to junction Interstate Highway 96, thence over Interstate Highway 96 to Muskegon, also over Interstate Highway 96 to junction U.S. Highway 31, thence over U.S. Highway 31 to Muskegon, and return over the same route;

from Grand Rapids over Michigan Highway 45 to junction U.S. Highway 31, thence over U.S. Highway 31 to Muskegon, and return over the same route. Restriction: The operations sought herein are restricted to shipments transported by carrier to and from points on its authorized routes west of the states of Minnesota, Iowa, Missouri, Arkansas and Louisiana, for 180 days. Supporting shippers: There are approximately 27 statements of supporting shippers attached to the application, names of which may be secured by contacting Transportation Assistant Mildred I. Price in the Los Angeles Field office at 213–688–4008. Send protests to: Philip Yallowitz, District Supervisor, Interstate Commerce Commission, Room 1321, Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

NOTE.—Applicant intends to join with its existing authority MC 110325 at Grand Rapids, Mich.

No. MC 141086 (Sub-No. 1TA), filed July 10, 1975. Applicant: BLUE LINE TRANSPORTATION COMPANY, INC., 10240 Ralph Road, Cherry Valley, Calif. 92223. Applicant's representative: Thomas E. Rubbert, 606 South Olive St., Suite 2104, Los Angeles, Calif. 90014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum grease*, in bulk, in tank vehicles, from Compton, Calif., to Twon Buttes, Ariz., under continuing contract with Union Oil Company of California, for 180 days. Supporting shipper: Union Oil Company of California, 461 S. Boylston St., Los Angeles, Calif. 90017. Send protests to: Transportation Asssitant Mildred I. Price, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

APPLICATION OF PASSENGERS

No. MC 141149 TA, filed July 16, 1975. Applicant: SOUTH RIVER BUS COMPANY, doing business as, AFRO-AMERICAN CHARTER BUS SERVICE, 148 Whitehead Ave., South River, N.J. 08882. Applicant's representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, N.J. 08904. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in special round trip charter operations, beginning and ending at points in Essex, Middlesex, Somerset, and Union Counties, N.J., and extending to points in Connecticut, Delaware, Maryland, New York, Pennsylvania, and Washington, D.C., for 180 days. Supporting shippers: There are approximately 11 statements of support attached to the application, which may be examined at the Interstate Commerce Commission, in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Robert S. H. Vance, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-19680 Filed 7-28-75;8:45 am]

[Notice No. 817]

ASSIGNMENT OF HEARINGS

JULY 24, 1975.

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.

MC-F-12455, Nashua Motor Expres, Inc.—Purchase—Gerrard, Transport, Inc., and MC 33807 Sub 6, Mashua Motor Express, Inc., now being assigned September 17, 1975 (3 days), at Boston, Mass.; in a hearing room to be later designated.

MC 129510-10, Englund Equipment Company, now being assigned October 1, 1975 at the office of the Interstate Commerce Commission, Washington, D.C.

MC 140652, S. C. Hutchison, Co., Inc., now being assigned September 23, 1975, at the office of the Interstate Commerce Commission, Washington, D.C.

MC 41404 Sub 118, Argo-Collier Truck Lines, now assigned July 24, 1975, Hearing not called, Application dismissed.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-19678 Filed 7-28-75;8:45 am]

federal register

TUESDAY, JULY 29, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 146

PART II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

■

MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

Rental Assistance Payments

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT, FEDERAL HOUSING COMMISSIONER (FEDERAL HOUSING ADMINISTRATION)

[Docket No. R-75-342]

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

Subpart D—Rental Assistance Payments

On August 22, 1974 the Housing and Community Development Act of 1974 was enacted into law. Section 212(2) of that Act added a new Section 236(f)(2) to the National Housing Act designed to assist tenants in new section 236 projects who cannot afford to pay "basic rent" (which is based on the operating expenses of a project which is paying principal and interest on a mortgage bearing interest at a hypothetical 1%) with 25 percent of their income, by having the Department of Housing and Urban Development make rental assistance payments to the project owner on behalf of such tenants.

The Department of Housing and Urban Development is adopting this Interim Rule, which adds a new Subpart D, "Rental Assistance Payments," to Part 236, "Mortgage Insurance and Interest Reduction Payments for Rental Projects," to implement the new section 236(f)(2) of the National Housing Act. This regulation is being adopted as an Interim Rule effective July 29, 1975, because the Department has a substantial number of applications which have already been pending for several months and which must be processed pursuant to the provisions of the new Act. However, the Department invites interested persons to submit data, views, and suggestions with respect to this rule and is providing 60 days in lieu of the usual 30 days in which to file comments. All relevant material received on or before Sept. 29, 1975, will be considered by the Department before a final rule is adopted. Filings should refer to the above Docket number and should be filed with the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10245, 451 Seventh Street, SW., Washington, D.C. 20410. Copies of comments submitted will be available during business hours at the above address for examination by interested persons.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. The Finding of Inapplicability is available for inspection at the above address.

Chapter II of Title 24 is amended as follows:

1. The table of contents of Part 236 is amended to read:

Subpart D—Rental Assistance Payments

Sec.
236.701 Scope of rental assistance.
236.705 Projects eligible for benefits.
236.710 Qualified tenant.
236.715 Certificate of eligibility.
236.720 Provisions applicable to cooperative members.
236.725 Term of contract.
236.730 Maximum annual project payments under contract.
236.735 Maximum payments under contract for each tenant.
236.740 Time of payment under contract.
236.745 Tenant occupancy limitations.
236.750 Form of lease.
236.755 Housing owner's obligation under contract to report tenant income increase.
236.760 Change in tenant income status.

2. Part 236 is amended by adding the following new Subpart D:

Subpart D—Rental Assistance Payments

§ 236.701 Scope of rental assistance.

The Secretary shall enter into Rental Assistance Contracts with the owners of section 236 projects which:

(a) Had received a commitment for mortgage insurance under this Part on or before August 22, 1974, but are reprocessed before final endorsement with rental assistance pursuant to an agreement between the sponsor and the Secretary;

(b) Had not received a commitment for mortgage insurance under this Part on or before August 22, 1974, but did so subsequently;

(c) Had received a reservation of section 236 contract authority (in the case of projects processed without HUD mortgage insurance and to be financed under a State or local government aided program pursuant to section 236(b) of the National Housing Act) on or before August 22, 1974, but are reprocessed with rental assistance pursuant to an agreement between the sponsor, the State or local agency providing additional aid to the project, and the Secretary before interest reduction payments have begun under a contract entered into pursuant to such reservation; or

(d) Had not received a reservation of section 236 contract authority (in the case of projects processed without HUD mortgage insurance) on or before August 22, 1974, but did so subsequently.

Projects may not receive the benefit of rent supplement payments under Part 215 of this Title and rental assistance payments at the same time. (Notwithstanding the provisions of this Subpart, it shall be a matter of the Secretary's discretion whether he enters into contracts for such benefits in connection with the sale of HUD-owned projects.) The conditions of eligibility for a Rental Assistance Contract and its terms are specified in this Subpart D.

§ 236.705 Projects eligible for benefits.

(a) Rental assistance payments may be made with respect to section 236 projects with Rental Assistance Contracts pursuant to this Subpart.

(b) Rental assistance payments to owners of projects pursuant to paragraph (a) of this section will normally be made available to 20 percent of the dwelling units, except that the Secretary may:

(1) Reduce that percentage in the case of any project if he determines that such action is necessary to assure the economic viability of the project; or

(2) Increase that percentage in the case of any project if he determines (i) that such action is necessary and feasible, after taking into account the objective of assuring, insofar as is practicable, that there is in the project a reasonable range in the income levels of tenants, or (ii) that such action is to be taken to meet the housing needs of elderly or handicapped families.

§ 236.710 Qualified tenant.

The benefits of the rental assistance payments are available only to an individual or a family renting a dwelling unit in a project which is subject to a contract under this Subpart or occupying such a dwelling unit as a cooperative member. To qualify for such benefits, the individual or family shall meet the following requirements:

(a) Have an adjusted monthly income as defined in Subpart A, of less than an amount equal to four times the basic rental charge for the occupied unit when the basic rental charge is determined on the basis of operating the project with the payment of the cost of utility services used by the dwelling units therein; or

(b) Have an adjusted monthly income of less than an amount equal to four times the sum of (1) the basic rental charge for the occupied unit and (2) the monthly cost of reasonable utility services paid by the tenant, when the basic rental charge is determined on the basis of operating the project without the payment of the cost of utility services used by the dwelling units therein.

§ 236.715 Certificate of eligibility.

The housing owner will review for eligibility the application by a prospective tenant for rental assistance payments. If the applicant meets the requirements of § 236.710 and if rental assistance payments on behalf of the applicant would not cause the percentage of eligible units to be exceeded, the owner shall issue a certificate of eligibility, in the form prescribed by the Secretary. The certificate shall state the amount of rental assistance to be paid monthly by the Secretary to the housing owner on behalf of the eligible applicant when admitted.

§ 236.720 Provisions applicable to cooperative members.

(a) A member of a cooperative who obtains a certificate of eligibility shall be required, as a condition of receiving the certificate, to agree that upon a sale of his membership, any equity increment accumulated through rental assistance payments will not be made available to the member, but will be turned over to the cooperative housing owner. Funds received by a cooperative representing an equity increment accumulated through rental assistance payments shall be deposited by the cooperative in a special account to be disbursed as directed by the Secretary.

(b) The term "tenant" as used in this Subpart shall include a member of a cooperative, and the term "rental payment"

shall include the carrying charges under the occupancy agreement between the members of the cooperative and the cooperative housing owner.

§ 236.725 Term of contract.

The rental assistance contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

§ 236.730 Maximum annual rental assistance contract amount.

The rental assistance contract shall specify the maximum amount of the rental assistance payments for the project for the rent-up period, or for any such other period of time as the Secretary may prescribe, based upon the Secretary's estimate of probable demand and tenant income, including a 10 percent contingency allowance. At the end of such period of time, and annually thereafter, appropriate adjustments, as the Secretary may prescribe, shall be made in the maximum annual rental assistance contract amount, to reflect the actual requirements of the eligible tenants and a 10 percent contingency allowance.

§ 236.735 Maximum rental assistance payments on behalf of each tenant.

(a) The rental assistance contract shall provide that the payment on behalf of an eligible tenant shall not exceed: (1) That amount by which the basic rental charge approved by the Secretary for the unit exceeds one-fourth of the tenant's adjusted monthly income, as defined in Subpart A, when the basic rental charge is determined on the basis of operating the project with the payment of the cost of utility services used by the dwelling units therein; or (2) that amount by which the basic rental charge plus the monthly cost of reasonable utility services paid by the tenant exceeds one-fourth of the tenant's adjusted monthly income, when the basic rental charge is determined on the basis of operating the project without payment of the cost of utility services used by the dwelling units therein.

(b) Notwithstanding the provisions in paragraph (a) of this section, in no case shall the rental payment actually made by an eligible tenant be reduced below: (1) An amount equal to the utility costs attributable to the unit occupied by the tenant, when the basic rental charge includes utilities, unless the Secretary determines that the application of that requirement in any area would result in undue hardship because of unusually high utility costs, prevailing seasonally or otherwise, in such area; or (2) 20 percent of the tenant's adjusted monthly income, when the basic rental charge does not include utilities.

§ 236.740 Time of payment under contract.

The rental assistance contract shall provide for payments to be made monthly to the housing owner on behalf of qualified tenants in the amounts set forth in the certificates of eligibility.

§ 236.745 Tenant occupancy limitations.

Eligible tenants shall not be permitted to occupy units larger than the Secretary determines necessary for their family needs, except on a temporary basis with the approval of the Secretary.

§ 236.750 Form of lease.

(a) *Lease form.* Eligible tenants shall be required to execute a lease in a form approved by the Secretary.

(b) *Special lease provisions.* The lease shall contain the following special provisions:

(1) A provision obligating the tenant to report immediately to the housing owner any increase in income which results in adjusted monthly income in excess of the amount specified in § 236.710; and

(2) A provision obligating the tenant to reimburse the housing owner who, upon being reimbursed by the tenant, in turn is obligated to reimburse the Secretary for any rental assistance payments made by the Secretary during a period when the tenant's income had increased to a point where rental assistance payments should have been terminated but were not terminated because of the tenant's failure to report the increase to the housing owner.

§ 236.755 Housing owner's obligation under contract to report tenant income increase.

The rental assistance contract shall contain a provision obligating the housing owner to immediately notify the Secretary upon receiving a report from a tenant of an increase in the tenant's income resulting in an adjusted monthly income in excess of the amount specified in § 236.710. The contract shall also obligate the housing owner, upon failing to notify the Secretary when a report of such increase in income is received from a tenant, to reimburse the Secretary for any rental assistance payments made during the period the tenant is receiving the increased income.

§ 236.760 Change in tenant income status.

Appropriate adjustments will be made in rental assistance payments to reflect income changes shown by the annual tenant income recertification, as required by § 425.25 of this Title. Rental assistance payments will be discontinued when it is determined by the Secretary that the tenant's adjusted monthly income is in excess of the amount specified in § 236.710. Where a tenant is no longer entitled to rental assistance payments, he may continue to occupy the unit. The rents charged for the unit shall not exceed those specified in Subpart A.

(Sec. 211, 52 Stat. 23 (12 U.S.C. 1715b); Sec. 236, 88 Stat. 672 (12 U.S.C. 1715z-1))

Effective date. These amendments are effective July 29, 1975.

(It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.)

DAVID M. deWILDE,
Acting Assistant Secretary for Housing Production and Mortgage Credit, Federal Housing Commissioner.

[FR Doc.75-19457 Filed 7-28-75;8:45 am]

CHAPTER IV—OFFICE OF ASSISTANT SECRETARY FOR HOUSING MANAGEMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-75-343]

SUBCHAPTER E—INTEREST REDUCTION HOUSING—MANAGEMENT AND CONTRACT ADMINISTRATION—SECTION 236

PART 426—RENTAL ASSISTANCE PAYMENTS

Interim Rule

On August 22, 1974, the Housing and Community Development Act of 1974 was enacted into law. Section 212(2) of that Act added a new section 236(f)(2) to the National Housing Act designed to assist tenants in new section 236 projects who cannot afford to pay "basic rent" (which is based on the operating expenses of a project which is paying principal and interest on a mortgage bearing interest at a hypothetical 1%) with 25 percent of their income, by having the Department of Housing and Urban Development make rental assistance payments to the project owner on behalf of such tenants.

The Department of Housing and Urban Development is adopting this Interim Rule, which adds a new Part 426, "Rental Assistance Payments" to Subchapter E, "Interest Reduction Housing—Management and Contract Administration—Section 236," to implement the new section 236(f)(2) of the National Housing Act. This regulation is being adopted as an Interim Rule effective upon publication, because the Department has a substantial number of applications which have already been pending for several months and which must be processed pursuant to the provisions of the new Act. However, the Department invites interested persons to submit data, views, and suggestions with respect to this rule and is providing 60 days in lieu of the usual 30 days in which to file comments. All relevant material received on or before September 29, 1975, will be considered by the Department before a final rule is adopted. Filings should refer to the above Docket number and should be filed with the Rule Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10245, 451 Seventh Street, SW., Washington, D.C. 20410. Copies of comments submitted will be available during business hours at the above address for examination by interested persons.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. The Finding of Inapplicability is available for inspection at the above address.

Chapter IV of Title 24 is amended as follows:

1. Part 426 is added to the table of contents of Chapter IV to read:

426 Rental Assistance Payments.

2. Subchapter E is amended by adding the following new Part:

Sec.
426.1 Scope of rental assistance.
426.5 Projects eligible for benefits.
426.10 Qualified tenant.
426.15 Certificate of eligibility.
426.20 Provisions applicable to cooperative members.
426.25 Term of contract.
426.30 Maximum annual project payments under contract.
426.35 Maximum payments under contract for each tenant.
426.40 Time of payment under contract.
426.45 Tenant occupancy limitations.
426.50 Form of lease.
426.55 Housing owner's obligation under contract to report tenant income increase.
426.60 Change in tenant income status.

AUTHORITY: Sec. 211, 52 Stat. 23 (12 U.S.C. 1715b); sec. 236, 88 Stat. 672 (12 U.S.C. 1715z-1).

§ 426.1 Scope of rental assistance.

The Secretary shall enter into Rental Assistance Contracts with the owners of section 236 projects which:

(a) Had received a commitment for mortgage insurance under Part 236 of this Title on or before August 22, 1974, but are reprocessed before final endorsement with rental assistance pursuant to an agreement between the sponsor and the Secretary;

(b) Had not received a commitment for mortgage insurance under Part 236 on or before August 22, 1974, but did so subsequently;

(c) Had received a reservation of section 236 contract authority (in the case of projects processed without HUD mortgage insurance and to be financed under a State or local government aided program pursuant to section 236(b) of the National Housing Act) on or before August 22, 1974, but are reprocessed with rental assistance pursuant to an agreement between the sponsor, the State or local agency providing additional aid to the project, and the Secretary before interest reduction payments have begun under a contract entered into pursuant to such reservation; or

(d) Had not received a reservation of section 236 authority (in the case of projects processed without HUD mortgage insurance) on or before August 22, 1974, but did so subsequently.

Projects may not receive the benefit of rent supplement payments under Part 215 of this Title and rental assistance payments at the same time. (Notwithstanding the provisions of this Part, it shall be a matter of the Secretary's discretion whether he enters into contracts for such benefits in connection with the sale of HUD-owned projects.) The conditions of eligibility for a Rental Assistance Contract and its terms are specified in this Part.

§ 426.5 Projects eligible for benefits.

(a) Rental assistance payments may be made with respect to section 236 projects with Rental Assistance Contracts pursuant to this Part.

(b) Rental assistance payments to owners of projects pursuant to paragraph (a) of this section will normally be made available to 20 percent of the dwelling units, except that the Secretary may:

(1) Reduce that percentage in the case of any project if he determines that such action is necessary to assure the economic viability of the project; or

(2) Increase that percentage in the case of any project if he determines (i) that such action is necessary and feasible, after taking into account the objective of assuring, insofar as is practicable, that there is in the project a reasonable range in the income levels of tenants, or (ii) that such action is to be taken to meet the housing needs of elderly or handicapped families.

§ 426.10 Qualified tenant.

The benefits of the rental assistance payments are available only to an individual or a family renting a dwelling unit in a project which is subject to a contract under this Part or occupying such a dwelling unit as a cooperative member. To qualify for such benefits, the individual or family shall meet the following requirements:

(a) Have an adjusted monthly income as defined in Part 236 of this Title, of less than an amount equal to four times the basic rental charge for the occupied unit when the basic rental charge is determined on the basis of operating the project with the payment of the cost of utility services used by the dwelling units therein; or

(b) Have an adjusted monthly income of less than an amount equal to four times the sum of (1) the basic rental charge for the occupied unit and (2) the monthly cost of reasonable utility services paid by the tenant, when the basic rental charge is determined on the basis of operating the project without the payment of the cost of utility services used by the dwelling units therein.

§ 426.15 Certificate of eligibility.

The housing owner will review for eligibility the application by a prospective tenant for rental assistance payments. If the applicant meets the requirements of § 426.10 and if rental assistance payments on behalf of the applicant would not cause the percentage of eligible units to be exceeded, the owner shall issue a certificate of eligibility, in the form prescribed by the Secretary. The certificate shall state the amount of rental assistance to be paid monthly by the Secretary to the housing owner on behalf of the eligible applicant when admitted.

§ 426.20 Provisions applicable to cooperative members.

(a) A member of a cooperative who obtains a certificate of eligibility shall be required, as a condition of receiving the certificate, to agree that upon a sale of his membership, any equity increment accumulated through rental assistance payments will not be made available to the member, but will be turned over to the cooperative housing owner. Funds received by a cooperative representing an equity increment accumulated through rental assistance payments shall be deposited by the cooperative in a special account to be disbursed as directed by the Secretary.

(b) The term "tenant" as used in this Part shall include a member of a cooperative, and the term "rental payment" shall include the carrying charges under the occupancy agreement between the members of the cooperative and the cooperative housing owner.

§ 426.25 Term of contract.

The rental assistance contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

§ 426.30 Maximum annual rental assistance contract amount.

The rental assistance contract shall specify the maximum amount of the rental assistance payments for the project for the rent-up period, or for any such other period of time as the Secretary may prescribe, based upon the Secretary's estimate of probable demand and tenant income, including a 10 percent contingency allowance. At the end of such period of time, and annually thereafter, appropriate adjustments, as the Secretary may prescribe, shall be made in the maximum annual rental assistance contract amount, to reflect the actual requirements of the eligible tenants and a 10 percent contingency allowance.

§ 426.35 Maximum rental assistance payments on behalf of each tenant.

(a) The rental assistance contract shall provide that the payment on behalf of an eligible tenant shall not exceed: (1) That amount by which the basic rental charge approved by the Secretary for the unit exceeds one-fourth of the tenant's adjusted monthly income, as defined in Part 236 of this Title, when the basic rental charge is determined on the basis of operating the project with the payment of the cost of utility services used by the dwelling units therein; or (2) that amount by which the basic rental charge plus the monthly cost of reasonable utility services paid by the tenant exceeds one-fourth of the tenant's adjusted monthly income, when the basic rental charge is determined on the basis of operating the project without payment of the cost of utility services used by the dwelling units therein.

(b) Notwithstanding the provisions in paragraph (a) of this section, in no case shall the rental payment actually made by an eligible tenant be reduced below: (1) an amount equal to the utility costs attributable to the unit occupied by the tenant, when the basic rental charge includes utilities, unless the Secretary determines that the application of that requirement in any area would result in

undue hardship because of unusually high utility costs, prevailing seasonally or otherwise, in such area; or (2) 20 percent of the tenant's adjusted monthly income, when the basic rental charge does not include utilities.

§ 426.40 Time of payment under contract.

The rental assistance contract shall provide for payments to be made monthly to the housing owner on behalf of qualified tenants in the amounts set forth in the certificates of eligibility.

§ 426.45 Tenant occupancy limitations.

Eligible tenants shall not be permitted to occupy units larger than the Secretary determines necessary for their family needs, except on a temporary basis with the approval of the Secretary.

§ 426.50 Form of lease.

(a) *Lease form.* Eligible tenants shall be required to execute a lease in a form approved by the Secretary.

(b) *Special lease provisions.* The lease shall contain the following special provisions:

(1) A provision obligating the tenant to report immediately to the housing owner any increase in income which results in adjusted monthly income in excess of the amount specified in § 426.10; and

(2) A provision obligating the tenant to reimburse the housing owner who, upon being reimbursed by the tenant, in turn is obligated to reimburse the Secretary for any rental assistance payments made by the Secretary during a period when the tenant's income had increased to a point where rental assistance payments should have been terminated but were not terminated because of the tenant's failure to report the increase to the housing owner.

§ 426.55 Housing owner's obligation under contract to report tenant income increase.

The rental assistance contract shall contain a provision obligating the housing owner to immediately notify the Secretary upon receiving a report from a tenant of an increase in the tenant's income resulting in an adjusted monthly income in excess of the amount specified in § 426.10. The contract shall also obligate the housing owner, upon failing to notify the Secretary when a report of such increase in income is received from a tenant, to reimburse the Secretary for any rental assistance payments made during the period the tenant is receiving the increased income.

§ 426.60 Change in tenant income status.

Appropriate adjustments will be made in rental assistance payments to reflect income changes shown by the annual tenant income recertification, as required by § 425.25 of this Title. Rental assistance payments will be discontinued when it is determined by the Secretary that the tenant's adjusted monthly income is in excess of the amount specified in § 426.10. Where a tenant is no longer entitled to rental assistance payments, he may continue to occupy the unit. The rents charged for the unit shall not exceed those specified in § 425.15.

(Sec. 211, 52 Stat. 23 (12 U.S.C. 1715b); Sec. 236, 88 Stat. 672 (12 U.S.C. 1715z-1))

Effective date. These amendments are effective July 29, 1975.

(It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.)

H. R. CRAWFORD,
Assistant Secretary for Housing Management.

[FR Doc.75-19458 Filed 7-28-75;8:45 am]

federal register

TUESDAY, JULY 29, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 146

PART III

FEDERAL ELECTION COMMISSION

■

ADVISORY OPINION REQUESTS

FEDERAL ELECTION COMMISSION

[Notice 1975–16, AOR 1975–18—AOR 1975–23]

ADVISORY OPINION REQUESTS

In accordance with the procedures set forth in the Commission's Notice 1975–4, published on June 24, 1975 (40 FR 26660), Advisory Opinion Requests 1975–18 through 1975–23 are published today. Some of the Requests consist of similar inquiries from several sources which have been consolidated in cases where appropriate.

Interested persons wishing to comment on the subject matter of any Advisory Opinion Request may submit written views with respect to such requests within 10 calendar days of the date of the publication of the request in the Federal Register. Such submission should be sent to the Federal Election Commission, Office of General Counsel, Advisory Opinion Section, 1325 K Street, NW., Washington, D.C. 20463. Persons requiring additional time in which to respond to any Advisory Opinion Request will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered by the Commission before it issues an advisory opinion. The Commission recommends that comments on pending Advisory Opinion Requests refer to specific AOR number of the Request commented upon, and that statutory references be to the United States Code citations, rather than to the Public Law Citations.

AOR 1975—18: Continuous Reporting of Campaign Debts From 1972.

A. Request by Muskie Illinois Campaign (Continuous Reporting by Inactive Committee with Outstanding Debs) (Request Edited by the Commission)

" * * * Since 1973, there has been no activity in the Muskie Illinois Campaign. The political committee has (i) disbanded; and (ii) not received any contributions nor made any expenditures since 1973, in an aggregate amount totaling more than $1,000, and does not expect to make any such expenditures or receive any such contributions. In other words, all activities have ceased.

The Committee still owes, however, the sum of $166,432.75, as reported in Section D, Part 12, of the 1972 and 1973 Comprehensive Revised Report. This "debt" will continue to be owed, since the Committee has no funds to extinguish the debt, and does not contemplate the receipt of any funds or contributions from any source at any time in the future.

Please advise if the "Committee," which no longer exists, is under an obligation to continue to file the report, setting forth that it owes a debt of $166,432.75, and if so, for how many years this report is to be filed. * * * "

JAMES R. SNEIDER,
Sneider and Troy.

Source: Muskie Illinois Campaign by James R. Sneider, Esq., Sneider and Troy, One North LaSalle St., Suite 2025, Chicago, Illinois 60602 (June 16, 1975).

B. Senator Ellender Campaign Committee (Continuous Reporting of Disputed Debt under Litigation) (Request Edited and Paraphrased by the Commission).

The subject committee has been inactive during the last reporting period except for receiving contributions and refunds of $577.50 and paying a late-arriving bill for $428.50.

* * * There is an outstanding claim by Innovative Data Systems of Louisiana, Inc., for $43,194.68, which is disputed by the Committee. The claimant has filed suit for this amount in the Thirty-Second Judicial District Court, Parish of Terrebonne, State of Louisiana, against Dr. Allen J. Ellender, Jr., as the sole heir of the late Senator Ellender, against the Committee, and against its individual members, Elward Wright, George Arceneaux, Jr., and myself. It probably will be a long-drawn out lawsuit, and I can see no need for the committee to continue to file reports showing no activity. In fact, the Committee is non-existent, except for the lawsuit. Would you please advise if it will be permissible to discontinue reporting until the pending lawsuit is terminated? At that time, we would file a final report." * * *

FRANK W. WURZLOW, Jr.,
Treasurer, Senator Ellender Campaign Committee.

Source: Senator Ellender Campaign Committee by Frank W. Wurzlow, Jr., Treasurer, Ellender, Wright & Wurzlow, 254 Barrow Street, Houma, Louisiana 70360 (May 19, 1975).

AOR 1975–19: Candidate's Relationship to Unauthorized Committees Acting in Candidate's Interest. (Request by Senator Packwood) (Request Edited by the Commission).

* * * * *

"A committee has been formed in Oregon under the name 'Packwood 1980'. I have not authorized this committee, either to receive contributions or make expenditures. It is the committee's understanding that the only effect of a lack of authorization is that a disclaimer must appear on any literature from the committee. Please advise me whether the committee's understanding is complete and accurate."

BOB PACKWOOD,
U.S. Senator.

Source: Senator Bob Packwood, 6327 Dirksen Senate Office Building, Washington, D.C. 20510 (May 8, 1975).

AOR 1975–20: Status of Political Education Committee—Committee for Thorough Agricultural Political Education (Request Edited by the Commission).

"Gentlemen: In addition to financially supporting candidates in their campaign efforts our Committee is considering undertaking some or all of the activities listed below.

1. Pay for the cost of educating and training dairy farmers how to be efficient and effective in organizing and participating in (1) political campaigns, (2) voter registration drives and (3) get-out-to vote campaigns.

"2. Pay for the expenses incurred in voter registration drives and get-out-to vote activities.

"3. Reimburse the travel expenses of dairy farmers, their spouse and employees of dairy cooperatives in connection with the following:

"a. travel to visit the public officials who represent them in either state or federal offices;

"b. travel to attend fund raising dinners, political rallies, etc.;

"c. travel to testify at hearings held by elected officials or public agencies.

"4. Pay per diem to dairy farmers in addition to the reimbursed expenses under 3(a), (b) and (c).

"5. Pay for the cost of informing public office holders, consumers, and the general public about farmer cooperatives, dairy industry, beef and dairy imports, agriculture, etc.

"Possible expenses involved would be:

"a. films;

"b. speakers;

"c. media advertisements;

"d. information mailings;

"e. meeting facilities, meals, travel expenses;

"f. professional consultation in this activity;

"g. membership and participation in consumer and/or agriculture organizations.

"6. Share in the expenses of non-campaign meeting or functions held by public office holders. A few examples would be:

"a. Governor conference;

"b. Annual meeting of various associations of local and state public officials;

"c. Inaugural balls.

"7. Purchase small Christmas or birthday gifts for public officials. i.e., cheese ($5–$25).

"8. Pay honorariums to public office holders to speak to dairy farmer groups.

"The original purpose and powers clause of C–TAPE is broad enough and is intended to cover many activities * * *

"'1. *Purpose and Powers.* The Committee is organized for the purpose of carrying on lawful activities to foster governmental recognition and adoption of policies and practices, which are consistent with the sound and effective functioning of the agricultural, and in particular the dairy industry. The Committee may conduct such educational and voter registration activities, support the enactment of such legislation, and the nomination and election or appointment of such elective and other public officials, solicit and accept contributions of such services, money and other property, make contributions and expenditures of such services, money and other property and take such other action, all as it may deem will properly further such purpose.'

"Before undertaking any of the above activities the Committee feels that official guidance is needed. We respectfully request * * * an 'advisory opinion' in these matters."

J. S. STONE,
Secretary, Committee for T.A.P.E.

Source: J. S. Stone, Secretary, Committee for Thorough Agricultural Political Education, P.O. Box 32287, San Antonio, Texas 78284 (May 1, 1975).

AOR 1975–21: Corporate Contributions To Political Committees Supporting State and Federal Candidates (Request of Republican Central Committee of San Diego County) (Request Edited by the Commission).

"Dear Sir:

* * * * *

"We have in the past accepted contributions from corporations, placing them into a separate account. Funds from that account are used only for State candidates, not federal, and in compliance with state and federal law.

"The question is, can corporate donations be used by the Central Committee for day-to-day operational uses, i.e., office rent, utilities, secretarial salaries, office supplies? No direct or measurable benefit to federal candidates is involved, we feel, and certainly none distinguishable from benefit to the party as a whole.

"If this question is answered affirmatively, the next would be, can such contributions be used to finance a Republican registration drive. Again, benefit to federal candidates as opposed to state candidates is indistinguishable. * * *"

MRS. D. C. WILLMON,
General Counsel.

Source: Mrs. D. C. Willmon, General Counsel, Republican Central Committee of San Diego County, 432 E Street, Room 200, San Diego, California 92101 (June 10, 1975).

AOR 1975–22: Contributions or Transfers from Principal Campaign Committees.

A. Endorsing Contribution to Political Party Committee (Request Edited by the Commission).

"Dear Mr. Curtis:

* * * * *

"The principal campaign committee of a candidate is the payee of a check. Upon receiving the check, the only action taken is an endorsement by the treasurer and immediate forwarding to a state committee of a political party. Does this constitute a receipt and expenditure by the principal campaign committee? * * *"

STROM THURMOND,
U.S. Senator.

Source: Senator Strom Thurmond, 4241 Dirksen Senate Office Building, Washington, D.C. 20510 (April 17, 1975).

B. Expenditures of Committees Not Authorized by Candidate (Request Edited by the Commission).

"Dear Mr. Curtis:

* * * * *

"If a person or political committee is specifically authorized to solicit and receive contributions, and specifically unauthorized to make expenditures, will the incidental expenditures of that person or committee be treated as expenditures by the candidate's principal campaign committee or as independent expenditures? * * *"

STROM THURMOND,
U.S. Senator.

Source: Senator Strom Thurmond, 4241 Dirksen Senate Office Building, Washington, D.C. 20510 (April 17, 1975).

AOR 1975–23: Establishment of Political Action Committee and Employee Political Giving Program by Corporation (Request by Sun Oil Company).

"Dear Commissioners: Pursuant to Section 437f of Title Two, United States Code, it is respectfully requested hereby that the Commission issue advisory opinion with regard to the following Sun Oil Company Responsible Citizenship Program.

"Sun proposes by appropriate corporate action to create a political action committee (Sun PAC) which will be maintained as a separate segregated fund and will be a reporting political committee under the applicable Federal laws and regulations.

"In addition Sun proposes, also by appropriate corporate action, to establish a political giving program for its employees (Sun EPA) which will be separate and apart from the activities of Sun PAC.

"Sun PAC will be established as a voluntary nonprofit unincorporated political association by certain employees of Sun appointed by Sun's management for the purpose of creating such a committee. Sun PAC will be a membership association and every full-time hourly or full-time salaried employee of Sun or any of its subsidiaries shall be eligible for membership. (The Commission notes that Sun PAC has recently registered.) Sun PAC will be independent of any political party, candidate or organization except that Sun will defray the costs and expense incurred in the establishment and administration of, and the solicitation of contributions to, Sun PAC.

"The purposes of Sun PAC as stated in its Articles of Organization will be the 'protection, preservation and furtherance of the private enterprise system and, in particular, the protection and advancement of the industries and other types of businesses, in which petroleum-oriented industries may be engaged from time to time.'

"To achieve its purposes, Sun PAC will solicit and accept contributions from individuals and from other political committees. Any funds so received will be expended to influence the nomination for election and the election, of candidates for Federal and State elective public office. It is further contemplated that Sun PAC could make contributions to National, State and local committees of National political parties.

"Sun PAC will have a Chairman, Vice-Chairman, Treasurer, Assistant Treasurer, and Secretary. These officers will be appointed by Sun. The Articles of Organization of Sun POC (Article VIII) specify that each officer shall continue in office until his successor is appointed and qualified. Section Three of Article VIII responses in the Treasurer the responsibility for all funds collected by Sun PAC and for maintaining all financial records. Further, the Treasurer is specifically authorized by the Articles to prepare, sign and file all reports required of Sun PAC by law.

"Sun PAC will also have a Contribution Committee which shall be responsible for the overall financial operations of Sun PAC and which shall have the responsibility of selecting the recipients of contributions by Sun PAC. Section Two of Article IX, however, provides that the Contribution Committee may delegate to the Chairman, subject to the overall direction of the Contribution Committee, the responsibility for managing the financial affairs of Sun PAC including the power to determine the candidates and/or political committees that Sun PAC shall support.

"The contributions to Sun PAC will be voluntary. No contribution to Sun PAC will be solicited or secured by job discrimination or financial reprisal, or by threat of job discrimination or financial reprisal, or as a condition of employment by Sun or any of its subsidiaries.

"The Articles of Organization provide that no funds of Sun PAC will inure to the private benefit of any member of Sun PAC, or any contributor thereto. The Articles also contain the usual provision regarding their amendment, except that certain sections are not susceptible to such amendment. In addition, the Articles make appropriate provisions for the distribution of funds upon dissolution of Sun PAC.

"Sun also proposes to establish a mechanism, whereby its employees may engage in political giving without contributing to Sun PAC. This political contribution plan, known as Sun EPA, will permit employees to contribute directly to political candidates, committees, and parties of their choice. As its involvement in Sun EPA, Sun will establish a payroll deduction program whereby an employee may direct that a certain amount of his compensation be deducted and sent to one bank chosen by Sun where the funds will be maintained on deposit in a separate account for such employee. When and if such employee wishes to make a political contribution out of his Sun EPA account, he will notify the bank directly, stating the name and address of the recipient of such contribution, and direct the bank to draw a check to the designated payee. The bank will then draw the check to that named payee, deducting the amount from the employee's account. The bank will transmit the draft directly to the candidate, committee, or political party designated by the employee.

"The Sun EPA program is also entirely voluntary. An employee's participation will not be encouraged or secured by job discrimination or financial reprisal, or as a condition of employment by Sun or any of its subsidiaries.

"Further, Sun EPA will be entirely confidential. Except for the employee and

the bank, no one will have any knowledge as to the recipients of contributions made by Sun EPA participants. It should be pointed out here that the bank, on a quarterly basis, will inform Sun of the total amounts of contributions under Sun EPA for the quarter to specific candidates, committees, or political parties receiving them, so it may be published for those participating in the plan. However, there will be no report as to the individuals whose contributions are included in those totals.

"In establishing Sun EPA, Sun proposes to assume costs incident to implementing the payroll deduction plan, plus any charges by the bank. These charges, if any, will cover the costs incurred by the bank in establishing and administering the separate accounts for participants, and for postage costs in mailing checks to candidates, committees, or political parties. In short, no participant in Sun EPA will incur any cost as a result of his participation in Sun EPA."

KENNETH R. BURTON, Jr.,
Senior Attorney.

Source: Sun Oil Company by Kenneth R. Burton, Senior Attorney, 240 Radnor-Chester Road, St. Davids, Pennsylvania 19087 (July 9, 1975).

Dated: July 23, 1795.

NEIL STAEBLER,
Vice-Chairman for the Federal Election Commission.

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PART IV

DEPARTMENT OF JUSTICE

Antitrust Division

■

UNITED STATES V. CHICAGO TRIBUNE-NEW YORK NEWS SYNDICATE, INC., ET AL

Written Comment Upon Consent Judgment and Department of Justice Response Thereto

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES V. CHICAGO TRIBUNE-NEW YORK NEWS SYNDICATE, INC., ET AL.

Written Comments Upon Consent Judgment and Department of Justice Response Thereto

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, the following written comments on the proposed judgment filed with the United States District Court in the Southern District of New York in Civil Action Nos. 67 Civ. 4596 (ELP), 67 Civ. 4597 (ELP), and 67 Civ. 4598 (ELP), United States of America v. Chicago Tribune-New York News Syndicate, Inc., et al., were received by the Department of Justice and are published herewith, together with Justice's response to the comments.

Dated: June 27, 1975.

THOMAS E. KAUPER,
Assistant Attorney General, Antitrust Division.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America, Plaintiff, v. Chicago Tribune-New York News Syndicate, Incorporated and Globe Newspaper Company, Defendants, 67 Civ. 4596 (ELP); United States of America, Plaintiff, v. Field Enterprises, Inc. and Globe Newspaper Company, Defendants, 67 Civ. 4597 (ELP); United States of America, Plaintiff, v. The Hearst Corporation and Globe Newspaper Company, Defendants, 67 Civ. 4598 (ELP).

PLAINTIFF'S RESPONSE TO COMMENTS RECEIVED CONCERNING THE PROPOSED FINAL JUDGMENT AGAINST GLOBE NEWSPAPER COMPANY

I. *Introduction.*

This response to comments on the proposed Final Judgment is made and filed in acordance with the provisions of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b) and (d)).

II. *Plaintiff's Response to the General Points Raised in Comments Regarding the Proposed Final Judgment Against the Boston Globe.*

The following constitutes the Plaintiff's response to the substance of the general comments received regarding the proposed Judgment against the Globe. The subsequent section will respond to the comments concerning specific numbered sections of the proposed Judgment.

A. Future Effects of the Proposed Final Judgment: Many of the comments received discussed the applicability of the formula of this proposed Judgment to fact situations other than those of the Boston Globe. Questions were raised concerning the future effects on the newspaper industry, on private litigants, and on the enforcement policy of the Antitrust Division as it applies to syndicated feature exclusivity.

As noted in Section 1 of the Competitive Impact Statement, entry of this proposed Judgment will settle only the Government's claims involving the Globe and will not directly affect the feature exclusivity of any other newspaper. Should a proposed judgment of general applicability be agreed to with the defendant syndicates in the future, there would of course be an opportunity for public comment under the provisions of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)–(g)) at that time. Accordingly, we are responding only to those comments which directly or indirectly raise questions about the propriety of the provisions of this Judgment.

Because the proposed Judgment will not apply to the Plaintiff's remaining claims against the feature licenses of the three defendant syndicates with newspapers other than the Globe Plaintiff does not believe that its entry will prejudice the role of the Justice Department in future litigation. If it becomes necessary to proceed to trial in these cases against one or more syndicates or newspapers, Plaintiff would not be foreclosed from continuing to seek a prohibition on feature exclusivity beyond the city of publication of the licensee's newspaper.

As noted in Section 4 of the Competitive Impact Statement, the entry of this proposed Final Judgment will not have any effect on the right of any potential private plaintiffs who claim they have been damaged by the alleged violation to sue for monetary damages or any other legal or equitable remedies. However, this Judgment may not be used as prima facie evidence in private litigation pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

B. The Proposed Final Judgment Ends the Globe's Exclusivity Over Those Newspapers With Which It Is Not in Competition. The most frequently stated objection to the proposed Judgment was that it allows the Globe to continue its exclusivity in those geographic areas where the Globe faces competition from other newspapers.

Comments. The comment of the Pontiac (Michigan) Oakland Press was typical of this point of view:

> It appears that the purpose of the consent judgment is to make syndicated features available to newspapers far outside Boston, but to leave untouched the exclusive rights of the large Boston newspapers anywhere in their immediate competitive areas.
>
> This is fine for a newspaper in Connecticut, which is not truly in competition with the Globe. It is ineffectual in the case of newspapers which really compete with the Globe.
>
> What is referred to in the impact statement as a "substantial reduction in Globe exclusivity" is largely imaginary. The Globe is forced to give up exclusivity only in areas where it makes little difference.
>
> In fact, the government's position appears to be taken on the basis that it has to PROTECT the Globe from competition, not that it should widen the competition in that market.
>
> * * * * *
>
> The exclusivity of syndicated features in the Boston case, and many like cases in the country, is demonstrably unfair.
>
> And it is not unfair so much to newspapers in Maine, New Hampshire and Connecticut, which operate insulated from Boston's direct competition, but to those newspapers in Greater Boston which seek to compete directly. (p. 3).

The comment of the Lorain (Ohio) Journal stated:

> The government's admission that the relief specified in the proposed consent judgment will not have a significant effect on improving competitive conditions should alone be enough to justify the courts (sic) rejection of the decree. (p. 2).

The comment of the Malden (Mass.) Publications, Inc., observed that the Government did not discuss whether competition might be enhanced if other newspapers were to obtain the features which may still be licensed exclusively to the Globe under this proposed judgment. (p. 3).

The comment of the Salem (Mass.) Evening News mentioned another aspect of the competition question, the "second-line effects" of the proposed Final Judgment:

> At the present time, all newspapers are treated equally in being excluded from features licensed to the Globe.
>
> If the Consent Judgment proposed by the United States is accepted, then some newspapers will be treated differently than others and the issue is raised as to the competition between those newspapers.
>
> For example, Salem Evening News is in direct competition with the Beverly Times, a newspaper with a circulation of slightly under 10,000 while the circulation of the Salem Evening News is over 30,000.
>
> Under the proposed Consent Judgment, the Globe's exclusive control on features is limited to newspapers that have a circulation over 11,750; newspapers with circulation under that number would be free to license all features licensed by the Globe.
>
> If this Consent Judgment were carried out, then the Beverly Times would be given an unfair competitive advantage over the Salem Evening News in that it would be able to run features unavailable to the Salem Evening News. (p. 5).

Response. In his Opinion denying defendants' motions to dismiss the Complaints in these cases (309 F. Supp. 1301 (S.D.N.Y. 1970)), Judge Wyatt considered the fact that the Government did not aver in its Complaint that competition betwen newspapers was unreasonably restrained by the exclusive contracts. Judge Wyatt ruled that this was no defect in the Government's claim. He stated that the Sherman Act is directed against unreasonable restraints of "trade or commerce." Judge Wyatt said the public interest is prejudiced if a part of the reading public is denied access to syndicated features because of a contract which has no real justification. "If the government can establish this at trial, an unreasonable restraint of trade and violation of the Sherman Act may be found," he held.

Had this case gone to trial, the Government would not have offered proof of competitive impact on newspapers excluded from features by the Globe. Plaintiff's case rested on the opposite proposition, i.e., that exclusivity was not needed by the Globe to permit it to benefit from its licensing of syndicated features by attracting readers from other newspapers, and that for this reason

trade and commerce in features was unreasonably restrained by the Globe's contracts. The only effects of these restraints alleged in the Complaints in these cases were that:

(a) Many newspapers throughout the United States, including those newspapers within the exclusive territory of the Boston Globe, have been deprived arbitrarily of the opportunity to obtain certain features.

(b) Substantial numbers of the public, including many located within the exclusive territory of The Boston Globe, have been denied reasonable access to certain features.

Because these cases are grounded on a theory that would permit feature exclusivity where it does have a significant effect on competition between newspapers for readership, it follows that those comments criticizing the proposed Judgment for failure to bar Globe exclusivity in circumstances where the exclusivity is thought to have that effect are beside the point.

The proposed Judgment specifically protects smaller newspapers from being excluded by the Globe. This can be expected to result in some small newspapers being able to obtain syndicated features which will be unavailable to their larger neighbors. Plaintiff believes that if there will be disadvantages to newspapers like the Salem Evening News resulting from a smaller paper's access to syndicated features that are denied to Salem, those disadvantages could not be serious enough to warrant a continuation of Globe feature exclusivity over those smaller newspapers.

C. The Proposed Final Judgment Will Not Affect the Profitability of Those Newspapers that May Continue to be Excluded from Syndicated Features by the Globe: Several comments were received concerning the effect of the proposed Final Judgment on the profitability of the newspapers that may continue to be excluded by the Globe. Section 3 of the Competitive Impact Statement discussed this point.

> It does not appear that the exclusivity permitted to the Globe by the proposed consent judgment will affect the ability of those newspapers that may continue to be prevented from licensing features licensed to the Globe to operate profitably. There are large numbers of syndicated features available to them other than the approximately 120 features that the Globe licenses.

Comments. The Bucks County (Pa.) Courier Times commented on this point, saying:

> While it is very difficult to show precisely the effect of exclusivity on profits, it is obviously sufficient to cause the metropolitan newspapers to pay "premiums" for said exclusivity.
>
> There is no question that the effect materially assists the Globe in selling newspapers in competition with newspapers which would continue to be denied features—features few in number but dominant in readership. The government's theory is unclear and unacceptable. (pp. 5 and 6).

The comment of the Malden (Mass.) Publications, Inc., observed that the Government did not discuss whether other newspapers might operate more profitably by obtaining such features. (p. 3).

Response. No newspaper has offered facts which would establish a causal relationship between syndicated feature exclusivity and newspaper profits, nor do we think it fair to infer that exclusivity adds to the profits of the Globe from the fact that the Globe pays a "premium" for exclusivity. The Globe may receive nothing more than an intangible satisfaction for the "premium" it pays for exclusivity. Had this case gone to trial, Plaintiff's evidence would not have shown that any newspaper would operate more profitably if the Globe's exclusivity were ended. Indeed, as we have previously explained, the theory of the case was grounded on a premise of a lack of competitive impact resulting from Globe exclusivity, and any proof of feature exclusivity's effect on profitably would have tended to rebut that premise and, consequently, to justify exclusivity.

D. The Proposed Final Judgment Reflects a Compromise:

Comment. A number of comments were received which compared the Government's original position in these cases with the proposed Judgment, and which expressed concern that the Government had settled for less than its original objective.

The comment of the Lawrence (Mass.) Eagle-Tribune Publishing Company said:

> The Government concedes that its primary claim was that the territory described in the Impact Statement was arbitrary and unreasonably broad; and, further, to the extent that the Globe's exclusivity did not assist it in building and maintaining its circulation in the designated area, it constituted an unreasonable restraint of trade. It is interesting to note that in its trial brief the Government took the position that any feature exclusivity extending beyond the city of Boston was unreasonable and should be enjoined.
>
> In view of these positions, it is difficult to understand the rationale behind the proposal for a consent judgment as set forth in item 3, page 4, of the Impact Statement. While, as the Government contends, the proposed consent judgment would eliminate the Globe's exclusivity in certain areas, it would not eliminate such exclusivity in major communities in Massachusetts such as Boston, Quincy, Brockton, Lowell, Lawrence, Framingham, Lynn, Salem, Haverhill, Hyannis, Waltham, and Malden. (pp. 8 and 9).

Response. If the case had proceeded to trial, the Government intended to continue to maintain that the Court, on finding that the Globe's exclusive contracts with feature syndicates violated the Sherman Act, should enjoin all feature exclusivity by the Globe, with the single exception of exclusivity over the other daily newspaper published in Boston. Whether or not the record, in fact, would have supported such an injunction is, of course, an open question. As we have previously explained, the Government's theory was that exclusivity was not justified unless it could be shown to have some effect on the circulation of the Globe and of the newspapers it prevented from licensing features. This proposition was not susceptible of proof in any precise way. Much of the Government testimony of editors and publishers of newspapers located within the Globe's exclusive territory, who wanted that exclusivity terminated. There necessarily remained some uncertainty about the probative effect of this kind of testimony, as well as about the content of that testimony—that is, whether all of these witnesses would have unequivocally maintained that loss of exclusivity by the Globe would have no effect on its or their circulation.

There were other difficulties with the evidence which the Plaintiff intended to introduce, which included documents, tabulations, charts, and graphs regarding the licenses of the Globe with syndicates other than the defendant syndicates. This evidence would have shown that the Globe had different and, in a number of instances, smaller territories with syndicates other than the defendant syndicates. The Government intended to use this evidence to show the unreasonableness of the Globe's exclusive territories with the defendant syndicates.

On November 20, 1974 the Court ruled on the defendant syndicates' Motion to Preclude Plaintiff's Proof and Restrict Plaintiff's Relief. The Court's ruling foreclosed Plaintiff from using the previously mentioned evidence regarding licenses with non-party syndicates at trial. The Court also stated that even if the Government were successful at trial, no relief would be granted against the Globe's contracts with non-party syndicates.

While this ruling was not fatal to the Government's case or determinative of the Government's decision to enter into negotiations with the Globe regarding a possible settlement, it was a factor which had to be balanced once those negotiations were underway. The unavailability of that evidence would have made Plaintiff's task more difficult at trial. On the other side, the Court's ruling on relief made a settlement that provided for relief against the Globe's contracts with all syndicates very attractive, since Plaintiff could not obtain this relief from the District Court even after trial of these cases.

Our inability to predict what the record would show after trial, coupled with the Court's pre-trial determination limiting the scope of the relief the Court would permit, were factors in the decision to settle the case for a substantial but not total ban on exclusivity.

E. Does the Proposed Final Judgment Offer Substantial Relief?

Comments. The comment of the Salem (Mass.) Evening News questioned the adequacy of the relief offered by the proposed Final Judgment:

> The Government claims in its Competitive Impact Statement that the Consent Judgment represents "a substantial reduction in Globe exclusivity" (Competitive Impact Statement, p. 9). On the basis of actual circulation, however, the Globe retains 92% of its exclusivity. It is difficult to characterize such a minimal reduction as "substantial." (pp. 4 and 5).

Several comments joined in the opinion expressed by the Quincy (Mass.) George W. Prescott Publishing Company (hereinafter "Patriot Ledger") on this point:

In summary, the Proposed Consent Decree provides for the Globe to give up nothing of substance. (p. 4).

Response. The Government believes that the proposed Judgment offers substantial relief against the Globe. If the Judgment is entered, the Globe's exclusivity will be strictly limited in the future by its circulation and its penetration of households.

The Globe's "usual" exclusive territory included the states of Maine, New Hampshire, Vermont, and Massachusetts east of and including Worcester. In the state of New Hampshire the Globe sold 13,960 copies daily in 1973, but blocked 9 daily newspapers with total circulation of 176,280 copies. In the state of Maine the Globe sold 3,667 copies daily in 1973, but blocked 9 daily newspapers with total circulation of 271,352. In the state of Vermont the Globe sold only 2,349 copies daily in 1973, but blocked 9 daily newspapers with total circulation of 122,042. In the state of Massachusetts outside of Boston the Globe's usual territory covered all or portions of 10 counties, within which 30 daily newspapers with total combined circulation of 802,303 were published in 1973.

Thus, in 1973, 57 daily newspapers with total circulation of 1,371,977 copies were published outside of the city of Boston in the Globe's "usual" territory. However, most of the Globe's circulation in 1973 was located in six counties in Massachusetts: Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Barnstable. The Globe sold approximately 420,808 copies daily in those six counties in 1973, out of its total circulation of 462,486.

Under the proposed Judgment, the Globe would lose its exclusivity over 46 daily newspapers with total circulation of 968,058 copies in 1973, or 70.6 percent of the total circulation of all daily and weekly papers published ouside the city of Boston and now excluded by the Globe from features. In addition the Globe would lose its exclusivity over all weeklies and other media without restriction, no matter where they are located and no matter what their circulation. The statement of the Salem (Mass.) Evening News that the Globe will retain 92 percent of its former exclusivity is based upon an incorrect premise, for it confuses the Globe's own circulation with its exclusivity.

Whether the reduction in the Globe's exclusivity is measured in terms of the number of newspapers and other media which will no longer be excluded, the number of readers benefited, or any other valid test, it is clear that the Globe will face a substantial reduction in its exclusivity under this proposed Judgment.

F. Is the Proposed Final Judgment Arbitrary?

Comment. Several comments claimed that the proposed Judgment was arbitrary in whole or in part.

The comment of the Hyannis (Mass.) Cape Cod Standard-Times said:

The position previously taken by the United States Government was that "any feature exclusively extending beyond the city of publication (Boston) was unreasonable and should be enjoined". It is respectfully submitted that this principle continues to be a sound principle, when weighed against a formula which is simply arbitrary, unfairly discriminatory against certain newspapers, and has no factual justification. (p. 3).

Response. The formulas incorporated in the proposed Judgment are not arbitrary. They are based upon the Government's evaluation of the evidence developed in preparing this case for trial.

The Government contacted almost all of the newspapers in the Globe's "usual" territory in the course of this case. Intensive discovery was undertaken of the documents in the files of all of the defendants which related to each newspaper in the "usual" territory. The Government took oral depositions of the Globe management. The defendants took oral depositions of 15 editors and publishers who had been designated by the Government as prospective witnesses. The defendants focused on the nature and extent of competition between the Globe and the newspapers of these editors and publishers.

The Government was unwilling to consider any settlement which would continue the Globe's exclusivity over newspapers located in counties where the Globe did not have substantial daily circulation, or over daily newspapers with small circulation, or over media other than daily newspapers. The Globe was unwilling to consider any settlement that did not permit it to continue to have exclusivity over certain daily newspapers that it believed were substantial competitors for circulation.

We have previously explained in Section II (D) the reasons why we concluded that a negotiated settlement of this case was appropriate and why we acknowledge the difficulty of articulating precise standards that would separate those newspapers that may continue to be excluded by the Globe from those that may not. It is our conclusion that what is embodied in the proposed Judgment represents as much relief as we could have obtained by a negotiated settlement; to obtain more relief it would have been necessary for the case to go to trial. We have previously explained how we assessed the risks of trial. We do not believe that what the proposed Judgment permits the Globe by way of exclusivity is arbitrary. It limits Globe exclusivity to counties in which it has substantial circulation (5,000 copies) and substantial household penetration (20 percent or more) and bars Globe exclusivity even in those counties over newspapers with a circulation of less than 11,750. This formula results, we think, in a restriction on Globe exclusivity which will insure that it does not continue to exclude any newspapers with which it competes only minimally.

G. The Limits of the Proposed Final Judgment:

Comments. A number of comments were received which criticized the proposed Judgment for not including additional prohibitions, such as the following. Several comments discussed the quality of the features licensed to the Globe. For example, the comment of the Morristown (N.J.) Daily Record said:

The very reason for such exclusivity is the recognized quality of the features sought to be excluded. (p. 3).

The comment of the Lowell (Massachusetts) Sun Publishing Company said:

Even if there were 12,000 rather than 120 (as alleged by the government) other features available, no mention has been made relative to the quality of such features from an individual publisher's rather than the government's point of view. (p. 6).

Several comments discussed the question of "first refusals". The comment of the Bucks County (Pa.) Courier Times said:

It is the established procedure for the syndicates to offer features to the metropolitan newspapers first and only to the suburban newspapers upon refusal. This first refusal practice insures the maintenance of exclusivity agreements ad infinitum. This problem is ignored by the proposed settlement and should be enjoined. (p. 3).

Comments were also received concerning the question of "second rights". The comment of Pontiac (Michigan) Oakland Press said:

Any newspaper should be able to claim "second rights" on syndicated material. This would provide the original buyer with exclusivity over first publication, namely publication within a reasonable time of receipt. Another newspaper would be able to publish the same material after first publication, or no later than 24 hours from the time the first buyer had the opportunity to publish it. (p. 6).

Response. No attempt was made to include a "quality" evaluation of features in the proposed Judgment. There is no universally accepted test of the popularity, quality, or importance of syndicated features. A feature which is well-read in one community may be poorly received in another. Editors subjectively evaluate features. Virtually every feature which an editor wants to license is a "quality" feature in his opinion. Since there are large numbers of syndicated features available, the Government did not consider an evaluation of individual features to be a necessary part of the proposed Judgment. Moreover, any attempt to evaluate the "quality" of features in a Judgment would involve the Government and the Court in a constant monitoring of what the Government considers to be highly subjective factors, totally incapable of determination by reference to objective standards.

"First refusal" clauses were not commonly found in the Globe's feature licenses. Although some editors in the Globe's "usual" territory stated that they believe that "first refusals" existed, others said that the syndicates no longer went first to the Globe with new features. We concluded that there was inadequate evidence of any agreements between the syndicates and the Globe respecting first refusal rights to support an injunctive provision in the decree. First refusals were not charged in the Complaints and were never part of the Government's case against the Globe.

As for the argument on "post publication" rights, we believe that there is a basic premise that must be examined. Underlying the proposal for post pub-

lication access to features by newspapers that otherwise may be excluded from features by the Globe is the notion that whatever justification may exist for Globe exclusively on a same day basis disappears once the Globe has published the feature. We doubt that this is correct. If the proposed Judgment is found by the Court properly to permit the Globe to have some measure of exclusivity over other daily newspapers, it would be inconsistent with that conclusion to require that exclusivity to terminate "no later than 24 hours from the time the first buyer had the opportunity to publish * * *" Many features, most notably comic strips, do not lose whatever appeal they have for readers with the passage of time. They are not timely, in that they need not be published on a certain date[1] and if there is validity to the assertion that exclusivity over features helps the Globe to sell newspapers, that effect cannot be said to diminish with the lapse of a few days or weeks. If there are readers who would otherwise buy another Boston area newspaper, and who bought the Globe only for its comic strips, they would not continue to do so if they could read those same comics the following week in the other newspaper.

For features that are timely (e.g. political columns and cartoons) approximately the same considerations apply. Any meaningful post publication rights would have to be very short term. But here again, if there are readers who buy the Globe in preference to their local newspaper only because the Globe published certain columns they liked, they could not be expected to continue that practice if they could read these columns the next day in the local paper. Requiring post-publication access by all newspapers would be equivalent to a total ban on exclusivity.

H. The Proposed Final Judgment Reflects the Interaction of the Antitrust Laws and the First Amendment:

Comments. Many comments were received which discussed the proposed Judgment in terms of the First Amendment.

The comment of the (Conn.) Journal Publishing Co., Inc., stated that the disposition of the proposed consent decree must be made in the context of the antitrust issues as applied to First Amendment matters. This comment, like many others, quoted the following language from "Associated Press v. United States," 326 U.S. 1, 20 (1945) (hereinafter "Associated Press"):

> The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford nongovernmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all, and not for some. *Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not.* Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests. (Emphasis added by the Journal Publishing Co., p. 7.)

The comment of the Morristown (N.J.) Daily Record stated that "the soundest rule is that of a totally free market." It continued:

> The United States Supreme Court and many other courts of our land have time and again recognized the importance of freedom of the press and the free exchange of ideas and communication which freedom of the press guarantees. Legislative attempts and those of libel litigants to encroach upon and restrict freedom of the press have been uniformly turned aside. The Boston Globe consent decree would sanction what you once pledged to eliminate, namely, "illegal territorial exclusivity of features." We therefore object to this serious diminution of a free press (p. 4).

The comment of the Southbridge (Mass.) Evening News said:

> I believe that the best policy would guarantee a completely free marketplace. We are dealing here with ideas and information, not shoe polish or soda pop. A democracy requires the best informed public it can get. That is why wire services needed to be available to all papers and that is why syndicated material needs to be available to all papers. Territorial exclusivity should be barred.
>
> * * * An important principle is involved. The press and the public would be better served by the Justice Department going to trial for what is right than being party to a consent decree that legitimizes unfair competition and discourages the free flow of information and ideas. When it comes to information and ideas, any restraint of trade is unreasonable. (p. 3).

Response. Many comments have expressed the belief that all exclusivity over syndicated features is prohibited by the First Amendment. The syndicated features cases do not and could not assert that the defendants are violating the First Amendment. The First Amendment applies only to governmentally imposed restraints on freedom of the press and not to those resulting from the activities of private persons.

Nonetheless, we believe that the First Amendment, and the Supreme Court's interpretation of it in antitrust cases, have some relevance to the restraints present in this litigation. The proposition that the public interest is being unnecessarily harmed by the contractually imposed restraints on the licensing of features finds support in the constitutional principle that favors the broadest dissemination of ideas. (See the Associated Press case, 326 U.S. 1, 20). But that constitutional principle, while it is relevant to the issue of the public interest as it is affected by these ancillary restraints, cannot be read to mandate a total ban on exclusivity.

III. *Plaintiff's Response to Comments Regarding Specific Numbered Sections of the Proposed Final Judgment.*

The following constitutes the Government's response to comments concerning specific numbered sections of the proposed Judgment.

A. Judgment Section II(B): "Newspaper" means a daily and a daily and Sunday newspaper of general circulation.

Comment. The comment of the Pontiac (Michigan) Oakland Press said:

> The judgment defines a newspaper as a "daily." It omits weekly or semi-weekly newspapers, some of which constitute major competition in large metropolitan areas. Whatever the intent of the judgment, it is a mistake to ignore these newspapers. (p. 4).

Response. The comment seems to be based on a misapprehension that the Judgment will permit Globe exclusivity over non-daily newspapers. In fact the purpose of this provision was to define the only media over which the Globe could have any exclusivity. Under the proposed Judgment the Globe will lose all exclusivity over weekly and semi-weekly newspapers. It will retain exclusivity only over daily newspapers, and over daily and Sunday newspapers, where the Globe meets all of the tests of Section IV of the proposed Judgment.

B. *Judgment Section II(E)*: "Circulation" means the average daily paid circulation of a newspaper, such circulation to be determined from the applicable Audit Bureau of Circulations' annual audit report or, for non-ABC newspapers, from the "Statement of Ownership, Management and Circulation" filed with the U.S. Postal Service.

Comment. The comment of the Pontiac (Michigan) Oakland Press criticized this definition:

> "Circulation" is defined according to an Audit Bureau of Circulation report. A number of newspapers, particularly weeklies, do not belong to ABC and their circulations are not verifiable according to these standards. Likewise, a statement of ownership (according to my understanding) is not required of every publication—certainly not those which don't use the mails. Therefore another alternative should be shown for verifying circulation. (p. 4).

Response. Every daily newspaper which may continue to be excluded from features by the Globe is either a member of the Audit Bureau of Circulations or submits a "Statement of Ownership" to the U.S. Postal Service. Since the Globe will have no exclusivity over weeklies, it is not necessary to define their circulation.

C. Judgment Section II (F): "Combined daily Circulation" means the sum of the defendant Globe Newspaper Company's morning and evening Circulation.

Comment. The comment of the Quincy (Mass.) Patriot Ledger criticized the use of "Combined daily Circulation", noting with regard to the newspapers which may continue to be excluded by the Globe:

> None has both a morning and an evening edition. The other Boston daily (The Boston Herald American) publishes in the morning only. The remaining eleven papers mentioned, including The Patriot Ledger (Quin-

[1] Re-releases of the comic strip "Orphan Annie" that first appeared in the 1930's currently are being published in a number of newspapers.

cy), do not publish in the morning and are strictly evening papers.

Accordingly, the use of "Combined Daily Circulation" is unrealistic in the present Eastern Massachusetts newspaper market. It also seems unduly favorable to the Globe. (p. 5).

Response. Both the morning and evening Globe circulate in all six of the Massachusetts counties in which the Globe may retain exclusivity under the proposed Judgment. Unlike some other newspapers which have both morning and evening editions, the Globe publishes most of the features it licenses in both editions on the same day. Under these circumstances, the Government concluded that the use of "Combined daily Circulation" was appropriate in any test which related the Globe's exclusivity to its circulation.

D. Judgment Section II (H): "Households" shall be determined from the applicable Audit Bureau of Circulations' Annual Audit Report for Globe Newspaper Company.

Comment. The comment of the Pontiac (Michigan) Oakland Press criticized this Section of the proposed Judgment for using an ABC report to determine "Households", since a number of newspapers are not members of the Audit Bureau of Circulations. (p. 4).

Response. The Government decided to use the ABC estimate of "Households" because it is available more frequently than the county statistics prepared by the United States Census Bureau. The fact that some newspapers are not members of ABC makes no difference in this context. The information in question is readily available to any interested person from ABC.

E. Judgment Section IV: Globe is enjoined from licensing any feature from any syndicate with a condition, agreement or understanding limiting the territory within which or the persons to whom such feature may be licensed; provided, however, that Globe and a syndicate may agree that the syndicate will not license the feature to any other newspaper not then licensing it, having a Circulation in excess of 11,750 copies, and published in a county where the defendant Globe (1) has a Combined daily Circulation equal to at least 20% of the Households in the county, and (2) has a Combined daily Circulation equal to at least 5,000 copies.

Section IV contains the principal limiting provisions of the proposed Judgment. Comments were received concerning each operative part of the Section.

Comments Regarding the Use of 20 percent. The Lawrence (Mass.) Eagle-Tribune commented on the 20 percent test:

> The use of 20% penetration of households is not valid. The use of the 20% figure is arbitrary and has been agreed to by Globe probably because it permits exclusivity in the very counties in which Globe desires exclusivity in Massachusetts, namely, Essex, Middlesex, Norfolk, Plymouth, Suffolk, Barnstable. (p. 7).

The comment of the Quincy (Mass.) Patriot Ledger said:

> (The) 20% figure is extremely favorable to the Globe. Were that level to be raised a mere 2%, exclusivity would be lost in three of the six counties for which it is to be retained, namely, Essex, Plymouth and Barnstable. (p. 4).

Response. The derivation of the 20 percent test was explained above in Section II F above. The use of a formula linking exclusivity to circulation is intended to require (or permit) changes in the Globe's territorial arrangements as conditions change over time. While it is true that in the future the Globe may, if it increases its circulation and penetration in additional counties, obtain exclusivity over additional newspapers, the Globe may also lose the exclusivity initially permitted under this proposed Judgment over those newspapers published in any county where the Globe's circulation or penetration declines below the established minimums. Indeed, the comment of the Quincy (Mass.) Patriot Ledger forecast a possible circulation loss for the Globe in Plymouth County in 1975:

> Such a drop is not unlikely. The chart attached to the Competitive Impact Statement shows the Globe as having in 1974 a penetration of 20.7% of Plymouth County. Almost immediately after the filing of the consent decree, the Globe announced a price increase from 15 (cents) to 20 (cents). Historically, such increases have always decreased circulation of a given paper. Accordingly, the Globe could well dip below 20% in Plymouth County in 1975. (p. 7).

Comments Regarding the Use of County Lines. The comment of the Salem (Mass.) Evening News said:

> The question must also be raised as to the use of County lines for determining exclusivity. The Commonwealth of Massachusetts has counties that are completely unlike the compact and powerful political entities that exist in other states. In Massachusetts, the counties were established prior to the foundation of this Country and exhibit all the idiosyncracies of ancient time. (p. 7).

The comment of the Bucks County (Pa.) Courier Times said:

> Reporting options under the Audit Bureau of Circulations rules (Article V, Section 1) are either (1) a primary market area, (2) a retail trading zone and city trading zone, or (3) both. Under the proposed final judgment, the definition selected is county, making the 5,000/20% test on exclusivity a countywide test which is utilized almost exclusively by metropolitan newspapers. The countywide test is consistent with the metropolitan newspapers' practice of showing their coverage on a countywide basis throughout their markets even though it is not the primary reporting practice under ABC rules. Such a test is inappropriate and selected for the convenience and advantage of the metropolitan newspapers and should be discarded in favor of tests consistent with the primary ABC reporting options. The ABC's reporting options would permit legitimate comparisons among newspapers in competing markets if and when tests were utilized. (pp. 3 and 4).

The comment of the Lawrence (Mass.) Eagle-Tribune suggested that the ABC Audit Report's principal thrust relates to "Standard Metropolitan Statistical Area" (hereinafter "SMSA"), and urged that a demographic area different from the "artificial" county unit be used, if any area is to be used. (pp. 6 and 7).

Response. During the years that these cases have been in litigation the Government has considered each of the geographic zones utilized in the newspaper industry as a possible limitation for exclusivity. Three of the areas in question were established by the Audit Bureau of Circulations: the city zone, the retail trading zone, and the primary market area. The fourth, the SMSA, was established by the U.S. Bureau of the Budget (now the Office of Management and Budget).

The city zone is the geographic area encompassing the corporate limits of the city in which a newspaper is published plus, in some instances, the contiguous areas that have been built up adjacent to or surrounding the city of publication. The Boston city zone includes the following cities and towns in which daily newspapers are published: Boston, Chelsea, Dedham, Lynn, Malden, Medford, Melrose, Quincy, Waltham, Woburn, and Wakefield. It was not possible to reach a settlement with the Globe on the basis of its city zone.

The retail trading zone is defined as the area beyond the city zone whose residents regularly trade to an important degree with the retail merchants in the city zone. The retail trading zone appears to be a fairly nebulous concept. The determination of the size of a newspaper's retail trading zone is initiated by the newspaper itself, by submitting a proposed zone to ABC, which either accepts or rejects the proposal after making a study of the matter. The criteria on which the retail trading zone may be drawn vary from city to city. The retail trading zone of the Boston Globe includes, in addition to the city zone, the following cities and towns in which daily newspapers are published: Attleboro, Beverly, Brockton, Framingham, Gloucester, Haverhill, Lawrence, Lowell, Marlborough-Hudson (one newspaper), Milford, Salem and Taunton. The retail trading zone was not used by the Government because it is initiated by the newspaper itself, is subject to unpredictable changes, and is too nebulous a concept.

The primary market area was initially defined in a rule of ABC as any combination of adjacent counties or smaller census units, provided the publisher was able to show at least 20 percent coverage of each census unit in the area. ABC had initially hoped that this concept would be self-policing, but this has apparently not worked out in practice. The Globe's primary market area consists of the Massachusetts counties of Essex, Middlesex, Norfolk, Plymouth, and Suffolk. The only difference between this area and the result reached under the proposed Judgment's 5,000/20 percent test is the noncontiguous county of Barnstable. The fact that a county is not contiguous seems of little relevance in determining the area in which a newspaper is competing for sales.

The SMSA was established to enable all federal statistical agencies to utilize

the same boundaries in publishing statistical data useful for analyzing metropolitan problems. Factors that are considered in establishing an area as a SMSA are population, metropolitan character, and criteria of social and economic integration. The Boston SMSA includes the following cities and towns in which daily newspapers are published: Beverly, Boston, Chelsea, Dedham, Framingham, Lynn, Malden, Medford, Melrose, Quincy, Salem, Waltham, Woburn and Wakefield. The Government had considered the use of the SMSA as a basis for negotiations, with a limitation for small newspapers. The Globe was unwilling to proceed along these lines, because it believed it faced significant competition from newspapers which were located outside of the SMSA.

Comments Regarding the Use of 11,750. The comment of the Lawrence (Mass.) Eagle-Tribune said:

> Nowhere in the proposed consent decree or in the Competitive Impact Statement filed with the Court is there any mention or justification for setting the figure at 11,750 copies. The Government should be required to disclose the rationale behind setting this figure and all factors which entered into such a determination. (pp. 5 and 6).

The comment of the Quincy (Mass.) Patriot Ledger stated that the proposed Judgment is not entirely clear on whether the 11,750 circulation test is applied annually. (p. 8).

Response. The proposed Judgment resulted from bargaining between the Government and the Globe. The Government sought an exception for small newspapers from any exclusive area which the Globe might retain. In the course of these negotiations the Government found that the Globe would not agree to an exception for the Malden newspaper or any larger newspaper. The Government determined that it was unwilling to permit the Globe to retain exclusivity over the Gloucester newspaper. Since the circulation of the Malden newspaper at that time was approximately 12,000 and the circulation of the Gloucester newspaper was approximately 11,500, the negotiations settled on the number 11,750 as the break-off point.

The 11,750 test is to be applied annually, with the result that as newspapers exceed or fall below that number their status in respect of the proposed Judgment may change. However, a newspaper which licenses a feature when its circulation is 11,750 or less can not later be excluded by the Globe from that feature if its circulation increases to more than 11,750.

Comments Regarding Sunday Newspapers. The comment of the Wilmington (Delaware) News-Journal stated that a newspaper which qualifies for syndicated material based on its Monday to Saturday circulation should not be denied the right to the same syndicated material for a Sunday newspaper. (p. 4).

The comment of the Bucks County (Pa.) Courier Times said:

> The definition of a newspaper as a daily and/or daily and Sunday without differentiating between daily and Sunday circulation in the application of the "test" is confusing. If a newspaper qualifies under the Sunday test, does it also qualify for exclusion daily? (p. 2).

Response. There is no separate Sunday circulation test in this proposed Judgment. Only the Globe's Combined daily Circulation is used in the 5,000/20 percent formula of the Judgment (Section IV). Newspapers which meet the 11,750 or less exception have their "Circulation" for this purpose defined in Judgment Section II(E) as the average daily paid circulation of a newspaper. If a newspaper may not be excluded from features on the basis of its or the Globe's daily circulation, it may not be excluded by reason of its or the Globe's Sunday circulation.

Comment Regarding Wire News Services. The comment of the Waukesha (Wisconsin) Freeman said that the proposed Judgment "should be modified to include wire news services".

Response. There is no Globe exclusivity over major wire services (AP and UPI). Exclusivity over supplemental wire news services (e.g., New York Times News Service; Los Angeles Times-Washington Post News Service) was not involved in this case. Since it was not challenged in the Complaints there is no basis for the suggested prohibition on it in this proposed Judgment.

F. Judgment Section V: Globe is ordered and directed, within thirty (30) days from the date of entry of this Final Judgment and thereafter between December 1 and December 31 of each year, to compile a list of those newspapers that, consistent with the provisions of Section IV of this Final Judgment, may be prevented from licensing a feature licensed to Globe as a result of an agreement between Globe and a syndicate. In compiling such list Globe shall use the most current Circulation and Household data, as defined in Section II of this Final Judgment. A copy of such list shall be furnished to plaintiff and to each syndicate from whom Globe licenses any feature. The initial list shall remain in effect until January 1, 1976. Thereafter each subsequent list shall determine the compliance of Globe's licenses with the provisions of Section IV of this Final Judgment for a period of one calendar year, regardless of any changes in Circulation or Household data in the interim.

Comment. The comment of the Quincy (Mass.) Patriot Ledger said:

> At the very least, this provision should be expanded to require the Globe to give like notice to each newspaper appearing on its list. This would seem simple fairness if only for the reason that household figures are at best only estimates and circulation figures are also subject to at least some argument especially where different newspapers are audited as of different dates. (p. 10).

Response. The Government does not believe that this modification is necessary. The information from which the Globe is to compile this list is readily available to any newspaper or other interested person. There should be no dispute over the dates of the information since the Globe is to use the most current Circulation and Household data, as those terms are defined in Judgment Section II. In any event, the Government will make its copy of this list available upon request to any newspaper which thinks that it may be improperly excluded by the Globe.

G. Judgment Section VI: (A) Globe is enjoined from enforcing, or claiming any right to enforce, those provisions of any license that limit the territory in which or the persons to whom a feature may be licensed if, for a period of two (2) consecutive calendar months, it has failed to publish that feature at least once.

(B) Globe is ordered and directed to maintain records sufficient to show whether each feature licensed by it has been published at least once within each period of two (2) consecutive calendar months. In any instance in which it has failed to publish, at least once in a period of two (2) consecutive calendar months, a feature licensed by it, it is further ordered and directed promptly to inform the syndicate from whom it licenses the feature (1) of the fact of such non-publication, and (2) that the syndicate is released from the provision in the license limiting the territory in which or the persons to whom the feature may be licensed.

(C) The provisions of this Section VI shall have no application where Globe fails, for a period of two (2) consecutive calendar months, to publish at least once a feature licensed by it if the feature was not made available to it by the syndicate for more than two weeks during such period.

Comment. The comment of the Riverside (California) Press Enterprise Co. said of Judgment Section VI(A):

> That requirement is so minimal, I think, as to be virtually no requirement at all. If a newspaper can publish a given feature—perhaps even a seven-times-weekly feature—only once every two months and still retain exclusivity, it is the same, or virtually the same, as buying the feature and suppressing it altogether, which, as I have said before, I believe is absolutely wrong. (p. 1).

The comment of the Quincy (Mass.) Patriot Ledger said of Judgment Section VI(B):

> In like manner, it would seem only fair and reasonable that similar notice be given to any paper known to the Globe to have been previously prevented from carrying this feature. (pp. 10 and 11)

Response. No evidence was discovered of deliberate suppression of features by the Globe; i.e., of licensing features for the purpose of keeping other newspapers from publishing them when the Globe never intended to publish the features itself. There was evidence that the Globe in some instances licensed features which were rarely published because the Globe found other materials to be more worthy of publication or more topical.

Judgment Section VI was intended to eliminate this situation by requiring the Globe to monitor more closely its use of the features it licenses exclusively. The once every two (2) consecutive months provision was considered ade-

quate to ensure against Globe non-use of exclusively licensed features without at the same time imposing an unnecessary burden of review. While a more stringent use requirement might be considered appropriate if there were evidence of deliberate suppression, there was no such evidence in this case.

We do not think it is necessary to require the Globe to give notice of non-use to newspapers. Any person interested in licensing a feature can examine the Globe and determine its use or non-use of that feature.

IV. *Entry of the Proposed Final Judgment is in the Public Interest.*

In determining whether or not the entry of this Judgment is in the public interest the Court should keep in mind the substantial benefits that will be gained if the judgment is entered: 46 daily newspapers and countless other media in New England will no longer be subjected to Globe exclusivity over syndicated features. Of those 46 newspapers only the Guy Gannett Publishing Company, publisher of four Maine dailies, filed a comment. It said:

> Certainly those papers, including our own, formerly classified as Globe hinterlands are pleased with the long overdue freedom of choice the settlement provides.
>
> And especially so because, although the settlement is to our advantage it does not appear to be to the Globe's disadvantage under the circulation formula the equity of which seems so adequately documented by the county by county penetration figures.

Of the 11 daily newspapers that will for now continue to be excluded by the Globe from the features it licenses, six of them that are located in the counties of Barnstable, Essex and Plymouth. Where at the present time the Globe's percentages of household penetration are 21.8 percent, 21.1 percent, and 20.7 percent, respectively. It would not take a substantial decline in Globe penetration in any of those counties to drop the Globe's penetration below the necessary 20 percent.

Several comments requested that a hearing be held to determine whether the entry of the proposed Judgment is in the public interest. At least one of the comments, that of the Lorain (Ohio) Journal, requested that this be a full-scale evidentiary hearing. The Government does not believe that an evidentiary hearing is necessary. The comments received state in great detail the opinions of 19 persons and organizations on virtually every aspect of the exclusivity question, and there appear to be no fact issues that could be resolved by an evidentiary hearing.

Conclusion. For the reasons stated above, the Government submits that the entry of this proposed Final Judgment is in the public interest, and respectfully requests the Court to make such a finding.

Dated: June 20, 1975.

Respectfully submitted,

ALAN L. MARX,
CHARLES S. STARK,
Attorneys,
U.S. Department of Justice.

TABLE OF COMMENTS RECEIVED BY PLAINTIFF PURSUANT TO 15 U.S.C. 16 (b) AND (c) CONCERNING THE PROPOSED FINAL JUDGMENT AGAINST GLOBE NEWSPAPER COMPANY

The following comments were received by Plaintiff during the 60-day period following the publication in the FEDERAL REGISTER of the proposed Final Judgment against the Globe Newspaper Company. The comments are appended to this Table as listed below:

Appendix No.	Comments of—	Submitted by—	Date
1	Portland (Maine) Guy Gannett Publishing Co.	Ernest W. Chard, editor	Mar. 7, 1975
2	Pontiac (Mich.) Oakland Press	Bruce H. McIntyre, vice president and editor.	Apr. 11, 1975
3	The Riverside (Calif.) Press-Enterprise Co.	Norman Cherniss, executive editor	Apr. 12, 1975
4	Jay H. Beckerman, Assistant Professor, Department of Journalism, Marshall University, Huntington, W. Va.	Jay H. Beckerman	Apr. 28, 1975
5	Lawrence (Mass.) Eagle-Tribune Publishing Co.	Clifford E. Elias, Esq.	Do.
6	Coatesville (Pa.) Record	John Pawlowski, general manager	May 1, 1975
7	Bucks County (Pa.) Courier Times	S. W. Calkins, publisher, and Wallace N. Jackson, counsel.	May 5, 1975
8	The Quincy (Mass.) George W. Prescott Publishing Co.	James C. Heigham, Esq.	May 7, 1975
9	Hyannis (Mass.) Cape Cod Standard-Times	William H. Carey, Esq.	Do.
10	The Lorain (Ohio) Journal and 4 other Horvitz newspapers.	H. R. Horvitz, publisher	Do.
11	Morristown (N.J.) Daily Record, Inc.	Norman B. Tomlison, Jr., publisher	May 12, 1975
12	Southbridge (Mass.) Evening News	Loren Ghiglinoe, editor and publisher.	Do.
13	Lowell (Mass.) Sun Publishing Co.	Robert H. Goldman, Esq.	May 15, 1975
14	Malden (Mass.) Publications, Inc.	do	Do.
15	Salem (Mass.) Evening News Publishing Co.	William J. Tinti, Esq.	May 16, 1975
16	Connecticut—Journal Publishing Co.	Ethel S. Sorokin, attorney	May 28, 1975
17	Wilmington (Del.) News-Journal Co.	Rodney M. Layton and Richard G. Elliott, Jr., attorneys.	Do.
18	Bucks County (Pa.) Free Press	William Thatcher, Esq.	Do.
19	Waukesha (Wis.) Freeman	James L. Huston, managing editor	May 29, 1975

APPENDIX 1

COMMENTS OF GUY GARRET PUBLISHING CO., 390 CONGRESS ST., PORTLAND, ME. 04104

MARCH 7, 1975.

The Government and its attorneys who conceived the legal strategy are to be congratulated for the settlement reached with the Globe and syndicates on exclusive territory.

Certainly those papers, including our own, formerly classified as Globe hinterlands are pleased with the long overdue freedom of choice the settlement provides.

And especially so because, although the settlement is to our advantage it does not appear to be to the Globe's disadvantage under the circulation formula the equity of which seems so adequately documented by the county by county penetration figures.

Sincerely yours,

ERNEST W. CHARD.

APPENDIX 2

COMMENT OF THE OAKLAND PRESS, P.O. BOX 9, PONTIAC, MICH. 48056

APRIL 11, 1975.

The following objection is filed to the proposed consent judgment pending in the matter of U.S. of America vs. Chicago Tribune et al., U.S. of America vs. Field Enterprises et al.; and U.S. of America vs. Hearst Corp. et al., namely 67 Civ. 4596, 67 Civ. 4597 and 67 Civ. 4598.

BACKGROUND

The Oakland Press is a daily (six days, except Sunday) newspaper published in Pontiac, Mich., with a circulation in excess of 70,000 daily.

It is the third largest newspaper in Southeast Michigan (the Detroit SMSA), following the Detroit News and the Detroit Free Press.

It therefore is in a position similar to that of "suburban" daily newspapers in the Boston area vs. the Boston Globe and Boston Herald-American.

The Oakland Press is located 25 miles from downtown Detroit in a separate county (of which Pontiac is the county seat). Oakland County is the second largest county in the state of Michigan, with a population of about one million, and is in nearly all respects independent of Wayne County (Detroit) with its own political, social and industrial structures.

The two Detroit newspapers circulate heavily in Oakland County but the bulk of that circulation is in the southernmost 20 percent of the county's territory.

As a result, The Oakland Press has an independent market. While the Detroit newspapers have a reasonably high penetration of Oakland County as a total unit, they have low penetration of The Oakland Press' primary market area (as defined by the Audit Bureau of Circulation).

The Oakland Press reaches approximately 65 percent of the households in its market area, while the Detroit Free Press reaches only 26 percent and the Detroit News reaches only 18 percent of this same area. (Weekday figures.)

EFFECT ON SYNDICATED FEATURES

Despite the nature of this separate market, both Detroit newspapers seek readers generally in Oakland County. Until fairly recent years, it was not thought that sharp competition for circulation existed between The Oakland Press and the Detroit newspapers, but gradually the situation has become more competitive.

Therefore, the Detroit newspapers have fought to keep syndicated features away from each other and away from any suburban daily newspaper including The Oakland Press.

They have been largely successful in their efforts to "black out" suburban papers, except in those cases where the suburban papers had purchased certain syndicated features a number of years ago (at a time when competition seemed less vital).

The Detroit papers' success is due to these factors:

1. Syndicate salesmen ordinarily do not publicize or promote a new feature to one of the suburban papers until they have made an effort to sell it to one or both of the Detroit papers. As a result, The Oakland Press may be unaware that a new feature exists until it has already been sold in Detroit and "blacked out."

2. When the feature is bought in Detroit, conditions are applied which make it unavailable elsewhere. Often the other newspapers do not know the nature of these conditions; they are simply turned down when they ask for the feature.

3. If a paper such as The Oakland Press buys a feature, it is not able to insist on exclusivity vs. the Detroit newspapers. The effect is a "one-way street" on exclusivity.

Except on wire services which have been made broadly available through earlier anti-trust action (the Associated Press, for example), The Oakland Press is at the sufferance of the Detroit dailies on the purchase of any feature or supplemental news service.

If a Detroit paper chooses to purchase it, we cannot.

If we purchase it, we cannot foreclose it in Detroit.

And often we have no opportunity to get "first crack" at a new feature because we are not told of it.

COMMENT ON THE CONSENT JUDGMENT

It appears that the purpose of the consent judgment is to make syndicated features available to newspapers far outside Boston, but to leave untouched the exclusive rights of the large Boston newspapers anywhere in their immediate competitive areas.

This is fine for a newspaper in Connecticut, which is not truly in competition with the Globe. It is ineffectual in the case of newspapers which really compete with the Globe.

What is referred to in the impact statement as a "substantial reduction in Globe exclusivity" is largely imaginary. The Globe is forced to give up exclusivity only in areas where it makes little difference.

In fact, the government's position appears to be taken on the basis that it has to PROTECT the Globe from competition, not that it should widen the competition in that market.

The government, in fact, concedes (p. 6) that it "cannot be assumed that the relief . . . will have a significant effect on competition between the Globe and those newspapers it may continue to exclude . . ."

The government adds that the judgment will not prevent those newspapers which still are excluded from operating "profitably." It cites the fact that there are "large numbers" of other features available to these papers, which receive no relief from the judgment.

All this is based on the government's theory that there was an unreasonable restraint of trade ONLY if the Globe demanded exclusivity beyond that needed "in order to benefit from its use of the features."

This theory betrays the underlying fault of the consent judgment.

While I do not pretend to be expert in antitrust doctrine, my understanding is that the law is intended to prevent unfair competition.

The exclusivity of syndicated features in the Boston case, and many like cases in the country, is demonstrably unfair.

And it is not unfair so much to newspapers in Maine, New Hampshire and Connecticut, which operate insulated from Boson's direct competition, but to those newspapers in Greater Boston which seek to compete directly.

In short, the government seeks to foster competition only where competition is unimportant, and to allow its continued restraint in the very area where it is most vital.

SPECIFIC EFFECT OF THE CONSENT JUDGMENT AND UNANSWERED QUESTIONS

1. The judgment defines a newspaper as "daily." It omits weekly or semi-weekly newspapers, some of which constitute major competition in large metropolitan areas. Whatever the intent of the judgment, it is a mistake to ignore these newspapers.

2. "Circulation" is defined according to an Audit Bureau of Circulation report. A number of newspapers, particularly weeklies, do not belong to ABC and their circulations are not verifiable according to these standards. Likewise, a statement of ownership (according to my understanding) is not required of every publication—certainly not those which don't use the mails. Therefore another alternative should be shown for verifying circulation.

3. To the extent that the Boston case is to be used as a precedent elsewhere, the definition of "households" according to an ABC report is inadequate for the same reasons cited in No. 2 above.

4. There is no rationale shown for the 11,750-copy cutoff point. This poses one of the major problems in the judgment:

The Globe apparently may deny a syndicated feature to any newspaper which has MORE than 11,750 circulation. But one less than that size—or arguably a weekly newspaper with a circulation of 100,000—would be free to buy.

As a result, a daily "suburban" newspaper of 50,000 would be sandwiched between two competitors, one larger and one smaller. A newspaper of 300,000 circulation in that area could deny features to the 50,000 paper, but a 10,000 paper which competed directly with the 50,000 paper would have access to the features. This discriminates clearly against the mid-size suburban paper.

5. The use of a county definition fails to recognize the nature of newspaper markets throughout the nation, many of which have little relevance to county lines.

The rule cited in the judgment is that the large newspaper (Globe) may deny features to over-11,750 papers in any county where the large newspaper has at least 20 percent household penetration and at least 5,000 copies.

As in the case of Oakland County, Michigan, a large newspaper may have 20 percent penetration of the county but substantially less than that in the market area of another newspaper located in that county.

Specifically: The Detroit News claims all of Oakland County as part of its primary market area. The Oakland Press primary market area is within this, and constitutes most of the county's geograhical area. (PMAs are an ABC definition only.)

According to the latest (3/31/74) ABC report, there are 279,700 households in Oakland County. The Detroit News claims 97,894 daily sales in the county, a penetration of 35 percent.

But this penetration is far from uniform.

In the ABC report for the same date, The Oakland Press shows 112,400 households in its primary market area. These are all part of the 279,700 households shown above.

The Oakland Press penetration of its PMA is 73,266, or 65.2 per cent of households. It is clearly the dominant paper in its PMA, the northern ¾ths of the county.

Despite a 35 per cent penetration of the COUNTY, the Detroit News penetration of The Oakland Press PMA is only 18.2 per cent.

If the Boston judgment were applied in Southeast Michigan, The Oakland Press would forever be barred from purchasing a feature already in the hands of the Detroit News. The county definition used in the judgment creates this illogical effect.

If the rules, however, required that the larger newspaper have at least 20 per cent penetration of another newspaper's MARKET AREA, The Oakland Press would have access to such features. I do not believe 20 per cent is the proper figure (see below) but this is a more reasonable and defensible approach.

CONCLUSIONS AND STATEMENT OF POSITION

The Oakland Press believes that the soundest rule is that of a totally free market.

Any newspaper willing to pay the price should be able to buy any feature which is available, and restrictive licensing should be barred.

If any restriction is acceptable, it would be only that involving the immediate city of publication; in other words, where two newspapers publish in the same city one might claim exclusivity over the other.

Should this consent judgment (or other action by the Justice Department) create any rules which limit the free market, however, The Oakland Press urges that they cover these points:

1. Each competing publication should be afforded equal opportunity to buy a new feature. The practice of syndicates making new features available first to the large papers is the most insidious restraint, since once those features are bought they are foreclosed automatically to the smaller papers.

2. If any newspaper is able to claim exclusivity for a newly-bought feature, the rule should work both ways. A 50,000 paper which buys the feature should be just as able to exclude its 300,000 competitor.

3. Any newspaper should be able to claim "second rights" on syndicated material. This would provide the original buyer with exclusivity over first publication, namely publication within a reasonable time of receipt. Another newspaper would be able to publish the same material after first publication, or no later than 24 hours from the time the first buyer had the opportunity to publish it.

4. Syndicates should make available upon request the conditions which have been applied (other than dollar amounts) in their sales agreements.

5. All newspapers which can be considered competitive, including weeklies, should be contemplated by the judgment.

6. The 11,750-copy cutoff rule should be scrapped. Any such rule is simply a new form of arbitrariness. It makes medium-sized newspapers the victims of two restraints of trade, not one.

7. Competitive market areas should be defined according to the most realistic local conditions, not by county lines.

8. The penetration requirement of a competitor's market area necessary to claim exclusivity of a feature should be no less than 40 per cent.

We repeat our basic concern that the Boston judgment fails to deal with the major issues of unfair competition in syndicated features, and urge the Department of Justice to look again at the theory in its original complaint—namely that exclusivity beyond the city of publication is unreasonable.

Cordially,

BRUCE H. MCINTYRE,
Vice President and Editor for The Oakland Press.

APPENDIX 3

COMMENTS OF THE PRESS-ENTERPRISE CO., BOX 792, RIVERSIDE, CALIF. 92502

APRIL 12, 1975.

Thank you for sending the copy of the Competitive Impact Statement and the Proposed Final Judgment filed in the syndicated features cases.

Naturally, we are wondering whether, if accepted, they will have any application beyond the case at hand, and the Boston Globe. Short, that is, of individual newspapers going into court on an individual basis and citing this judgment in their own cases. Any light you can shed on this would be much appreciated. (The Los Angeles Times does not have circulation in Riverside County equal to 20 percent of the households in the county.)

Also, I should like to take exception to the order set out in Article 6 of the Final Judgment, and referred to again in the Competitive Impact Statement, to the effect that it is necessary for the Globe to publish a given

feature only "at least once in a period of two consecutive months," in order to retain its exclusive rights.

That requirement is so minimal, I think, as to be virtually no requirement at all. If a newspaper can publish a given feature—perhaps even a seven-times-weekly feature—only once every two months and still retain exclusivity, it is the same, or virtually the same, as buying the feature and suppressing it altogether, which, as I have said before, I believe is absolutely wrong.

I expect to be in Washington next week, stopping at the Shoreham. If I can be of any assistance, please do not hesitate to call.

Sincerely,

NORMAN A. CHERNISS.

APPENDIX 4

COMMENTS OF JAY H. BECKERMAN, ASST. PROFESSOR, DEPT. OF JOURNALISM, MARSHALL UNIVERSITY, HUNTINGTON, W. VA. 25701

APRIL 28, 1975.

I wish to comment on the proposed consent decree with the Boston Globe regarding territorial exclusivity for syndicated features.

The great majority of newspaper combinations protected by the Failing Newspapers Act exist now in situations of inadequate journalistic competition. Any proposed consent which would further encrust that non-competitive situation is ipso facto bad for the public, and should not be indulged.

To begin a daily newspaper one must be willing to risk $5 million, (354 F. Supp. 823 (S.D.N.Y. 1973)) in a community in which there is already at least one daily newspaper. One of the most effective techniques for keeping out competition is to maintain a second paper which is halfheartedly funded and run, but which can be revved up if competition rears its ugly head. Examples in areas I have lived and worked in include the Tampa Tribune and its stepchild the Tampa Times, the St. Petersburg Times and its stepchild the Evening Independent, the Tweedle-Dee and Tweedle-Dum pair of the San Francisco Chronicle and the San Francisco Examiner. What is customarily done is to have the stepchild obtain the features deemed excessive to the main paper, but which still have significant drawing power, and thereby freeze out potential competition. Readership is heavily influenced by the syndicated features, else there would be less fierce competition for them, and less pressure by the Globe and its friends to keep the fences as far out and as high as possible. The result is the poor level of journalism, caused by lack of competition, which one finds today in San Francisco, Tampa and St. Petersburg.

It is no excuse to say that the electronic media provide adequate competition for the print journalists. The most effective competition for a sloppy newspaper is another newspaper. The space allowance for news simply never will allow broadcasters to effectively compete or apply effective pressure for cleaning up a rotten act by a newspaper which can fence out competition. Exclusive territorial franchising of features is simply one more nail in the coffin of a viable press.

Newspapers such as the Miami Herald exemplify another facet of the problem. The News is far more independent in Miami than are the pairs of papers I have mentioned above. But what about the outlying areas, the suburbs and the towns distinctly beyond the environs of the main circulation base of a large paper such as the Miami Herald? The tool used in south Florida to stifle competition is a pervasive network of satellite papers which nip in the bud opportunities for growth of alternative editorial organizations. Those papers also grab syndicated features, which may have more reader drawing power than is the case in large-paper head-on competition, since the syndicated material may be a larger proportion of a small paper's content. It's a variation on the theme of having for instance a weak P.M. paper opposite the strong A.M. In the Herald's case, all the sniping at poor coverage of a claimed large circulation area is prevented by undercutting the economic viability of the opposition. It is impossible to hire really sharp reporters if the small paper doesn't have the circulation to get the advertisers to create the salary base to hire the reporters to catch the big papers not doing their jobs. It is insidious.

If the paper can afford to buy a comic strip or columnist or feature, then be it huge daily in a market of competing dailies, or be it a weekly trying to make it in the suburbs in the shadow of giants, the syndicated features should be available on the basis of everybody can buy it—no exclusive territorial rights at all. The only product a paper should have exclusive right to is what it produces out of its own staff. There should be no governmental bludgeon handed to the larger, or first-on-the-scence paper which can be used to keep out competition. That is not the way to protect the First Amendment, nor to protect the public which needs the protection of the First Amendment.

The San Francisco Bay Guardian is virtually alone in its grant-subsidized ability to function in the smothering atmosphere of ongoing dailies which has bred a degree of market saturation under the umbrella that effectively keeps out a real newspaper which the San Francisco Bay Area ought to have. That alternative is lacking in Tampa and in Miami.

What you ought to look into is the possibility that there exists some sort of long-standing explicit or implicit agreement in communities such as the Tampa Bay area and San Francisco Bay area, that papers on one side of the "street" will not seek to cover the dirt in the other guys' back yard. Why is it that the Tampa papers rarely do stories investigating the dirt of Pinellas County, and the St. Pete Times stays out of Hillsborough? San Francisco papers seem effectively to stay off the backs of Oakland people, and Oakland papers never meddle in San Francisco. Undoubtedly you'd get flack about government trying to stifle the press. But, my friend, you are in the kitchen, as it were, and neither of us believes that state politicians, needing newspaper support, will ever make that kind of inquiry. So cozy local arrangements or sympathies go unchallenged, up to now, to the detriment of the public.

I repeat and exit: There should be no territorial protection on syndicated features. That effectively prevents development of competition.

Sincerely,

JAY H. BECKERMAN,
Assistant Professor.

APPENDIX 5

COMMENTS OF THE EAGLE-TRIBUNE PUBLISHING CO., LAWRENCE, MASS.

1. *Introduction.* Eagle-Tribune Company is a duly organized Massachusetts corporation which published a daily newspaper in Lawrence, Essex County, Massachusetts, namely, "Lawrence Eagle-Tribune," with a total average paid circulation of approximately 47,500. Eagle-Tribune Publishing Company (herinafter called "Eagle-Tribune") hereby files these comments pursuant to the provisions of the Antitrust Penalties and Procedures Act (15 U.S.C. 16) and in accordance with item 5, page 7 of the Competitors Impact Statement filed by the Government with the Court on March 5, 1975.

The purpose of these comments is to urge that the proposed consent judgment and decree not be entered in the form proposed.

2. *The Nature and Purpose of the Proceeding.* The original complaints in these actions were filed on November 21, 1967. The original defendants are three of the major newspaper feature syndicates. They are in the business of licensing features for publication in newspapers. Features are defined in the proposed Judgment to include columns on various topics, opinion surveys and polls, cartoons, comic strips, puzzles, needle patterns and serialized books, but not to include a supplemental news service or material received as part of a supplemental news service.

The three complaints separately charged each of the defendant syndicates with being a party to contracts that unreasonably restricted the licensing of syndicated features. The complaints alleged that each of the syndicates had agreed with a number of its newspaper customers located throughout the country that features licensed to them would not be licensed to other newspapers located in what the complaints described as arbitrary and unreasonably broad exclusive territories. The complaints claimed that these agreements were unreasonable restraints of trade in violation of Section 1 of the Sherman Act and sought an adjudication of their illegality and injunctions requiring their modification.

Globe Newspaper Company (hereinafter "Globe") was joined as a defendant in each of these three actions in amended complaints that were filed on February 8, 1973. Globe publishes a morning, evening and Sunday newspaper of general circulation in Boston, Massachusetts. The Government was required to join at least one newspaper as a defendant as a result of a ruling by the Court, on August 31, 1972, that the newspapers that were parties with the syndicates to the contracts the Government claimed to be illegal were indispensable parties to the litigation. Following joinder of the Globe as a Party, the rest of the Government's claims against the syndicates were severed and stayed pending a resolution of the claims involving the Globe's exclusive territories over syndicated features. Entry of the proposed consent judgment would settle only those claims involving the Globe.

3. *The Practices Giving Rise to the Alleged Violation.* The specific practices involved in these actions against Globe are those agreements between the Globe and the three defendant syndicates whereby the syndicates, in licensing features to the Globe, agree not to sell them to any other person located in a defined exclusive territory. The dimensions of this territory varied from time to time, but usually the Globe asked for and received exclusivity, over the features it licensed, in the States of Maine, Vermont, and New Hampshire, and in that part of the State of Massachusetts east of and including Worcester. Located within this territory are more than 60 daily newspapers including Lawrence Eagle Tribune, as well as other media, such as radio and television stations and weekly newspapers, over which the Globe claimed exclusivity.

The Government's primary claim was that this territory was arbitrary and unreasonably broad since this exclusivity was not needed by the Globe to permit it to benefit from the licensing of features. More specifically, the claim was that to the extent this exclusivity over features did not assist the Globe in building and maintaining its circulation in this area, it constituted an unreasonable restraint of trade. The position the Government took in its trial brief was that any feature exclusivity extending beyond the city of publication (Boston) was unreasonable and should be enjoined.

4. *Major Provision of Proposed Consent Decree.* The major provision of the proposed consent judgment and decree is contained in Paragraph IV, commencing on page 3 of "Final Judgment" as filed with the Court.

Globe would be enjoined from licensing any feature with a provision of exclusivity provided that the Globe may obtain exclusivity over newspapers having a circulation in excess of 11,750 copies and when the newspaper is published in a county where Globe has a 20% penetration of households with a minimum circulation in said county 5,000 copies. This is, in essence, the kernel of the proposed consent decree. All other provisions of the decree can be construed as supplementary to, and supportive of, the above provision.

5. *Provision Relating to 11,750 Copies.* In the first instance, the provision which suggests that Globe exclusivity would not apply to newspapers having a circulation of less than 11,750 is arbitrary, capricious and without basis in fact or in law. Nowhere in the proposed consent decree or in the Competitive Impact Statement filed with the Court is there any mention or justification for setting the figure at 11,750 copies. The Government should be required to disclose the rationale behind setting this figure and all factors which entered into such a determination.

6. *Use of County Boundaries at 20 Percent Penetration.* The geographic basis of the proposed consent decree is the use of Massachusetts county lines. The thrust of said decree suggests that if Globe has a combined daily circulation of at least 5,000 in a county and at least a 20 percent penetration of households in said county, it may enjoy exclusivity over newspapers having a circulation of at least 11,750 copies.

The proposed consent decree should be challenged on at least two bases:

(1) The county in Massachusetts is a historic, traditional geographic area. It is not a viable demographic measure or unit and should not be used as a basis for settlement.

An examination of ABC Audit Report (Audit Bureau of Circulation), the standard reference circulation report, is instructive in this regard. While there is reference to "retail trading zone" and "primary market area," the principal thrust of the statistical market in said report relates to "Standard Metropolitan Statistical Area" which encompasses Suffolk County and portions of other counties with specific reference to Essex County: Cities of Beverly, Lynn, Peabody and Salem, plus towns of Boxford, Danvers, Hamilton, Lynnfield, Manchester, Marblehead, Middleton, Nahant, Saugus, Swampscott, Topsfield and Wenham. No reference is made to the cities or towns thought to be part of the Standard Metropolitan Statistical Area for the Eagle-Tribune, namely, Lawrence, Andover, North Andover, Salem (N.H.), Haverhill, Groveland, Georgetown, West Newbury, Merrimac, Plaistow (N.H.), and Newton (N.H.).

It is urged that a demographic area different from the artificial county unit should be used, if any area is to be used at all.

(2) The use of 20 percent penetration of households is not valid. The use of the 20 percent figure is arbitrary and has been agreed to by Globe probably because it permits exclusivity in the very counties in which Globe desires exclusivity in Massachusetts, namely, Essex, Middlesex, Norfolk, Plymouth, Suffolk, Barnstable. Nowhere in the proposed consent decree or in the Competitive Impact Statement is there any discussion of the rationale behind the use of this figure or a listing of any factors used to arrive at its determination.

It is suggested that some other figure, such as 25 percent or 30 percent could have been used. It is interesting to note that by the use of the 20 percent figure, three counties just barely qualify for inclusion in Globe Territories permitting exclusivity (Essex: 21.1 percent; Plymouth: 20.7 percent; Barnstable: 21.8 percent).

7. *Globe Penetration of Households in Lawrence City Zone.* Reference is made to ABC Audit Report-Newspaper for the Globe for the 12-month period ending March 31, 1974. Of the total households in the Lawrence (Essex County, Massachusetts) City Zone (which includes the city of Lawrence, and the towns of Salem (N.H.), Methuen, Andover, and North Andover), namely 54,100, the Globe has a penetration of 7,295 copies or 13.48 percent.

Clearly, an application of 20 percent figure used in the proposed consent decree to this zone would prohibit the Globe from exercising feature exclusivity.

8. *Analysis of Competitors Impact Statement.* The Government concedes that its primary claim was that the territory described in the Impact Statement was arbitrary and unreasonably broad; and, further, to the extent that the Globe's exclusivity did not assist it in building and maintaining its circulation in the designated area, it constituted an unreasonable restraint of trade. It is interesting to note that in its trial brief the Government took the position that any feature exclusivity extending beyond the city of Boston was unreasonable and should be enjoined.

In view of these positions, it is difficult to understand the rationale behind the proposal for a consent judgment as set forth in item 3, page 4, of the Impact Statement. While, as the Government contends, the proposed consent judgment would eliminate the Globe's exclusivity in certain areas, it would not eliminate such exclusivity in major communities in Massachusetts such as Boston, Quincy, Brockton, Lowell, Lawrence, Framingham, Lynn, Salem, Haverhill, Hyannis, Waltham and Malden.

The Government concedes (item 4, page 6, Impact Statement) that the proposed consent judgment cannot be assured to have a significant effect on the competition between the Globe and those newspapers it may continue to exclude.

The Government asserts (item 4, page 6, Impact Statement) that the exclusivity permitted to the Globe may not affect the ability of the excluded newspapers to operate profitably. Eagle-Tribune suggests that this is not the issue. The issue is whether the exclusivity permitted to the Globe is unreasonable and whether excluded newspapers will have the ability to grow, prosper and increase their penetration equitably with the Globe.

9. *Conclusion.* Eagle-Tribune urges strongly that the decree not be entered in the form proposed. Ideally, an argument could be made for elimination of Globe's exclusivity completely. Almost as ideally, an argument could be made for limiting Globe's exclusivity to the city of Boston or to Suffolk County. These are probably unrealistic goals and goals perhaps not even mandated by law.

However, it would be realistic and more sound to suggest alternatives as follows:

1. Increase the required penetration percentage to 25 percent or 30 percent in order to permit Globe's exclusivity.

2. Use a demographic unit different from the artificial, arbitrary county basis. More realistic would be ABC City Zone or Standard Metropolitan Statistical Areas—units which are used in ABC Audit Reports and widely accepted by newspapers and other media throughout the country.

Respectfully submitted,
EAGLE-TRIBUNE PUBLISHING COMPANY
Publisher of "Lawrence Eagle-Tribune"

By
Clifford E. Elias, Its Attorney
Of counsel: Sweeney & Sargent
316 Essex Street
Lawrence, Massachusetts 01840
(617) 686-3918

APPENDIX 6

COMMENTS OF THE RECORD, 204 E. LINCOLN HWY., COATSVILLE, PA. 19320

MAY 1, 1975.

Thank you for sending copies of a proposed Final Judgment against the Boston Globe to the Court in New York and the Competitive Impact Statement.

I read both documents with interest.

We have attempted to license the Erma Bombeck column from Field Newspaper Syndicate but were told the column wasn't available. I know we are being stymied by the Philadelphia Evening Bulletin which is located some 50 miles from Coatesville.

I object to the portion of the statement which seems permit exclusivity if a newspaper has 20 percent or more circulation in a county. The Bulletin has nearly 20 percent circulation in Chester County, Pennsylvania. However, the bulk of that circulation in the very extreme eastern portion of Chester County. We do not circulate our newspaper of 10,000 circulation in that area. The number of newspapers that the Philadelphia Bulletin circulates should no more control what features we can buy anymore than the small weeklies in our area should be hampered by our circulation as to what features they should or could license.

We welcome competition. It's the American way. I believe that if we want the Erma Bombeck column we should have the right to buy and run it.

Sincerely,

JOHN PAWLOWSKI,
General Manager.

APPENDIX 7

COMMENTS OF THE BUCKS COUNTY COURIER TIMES, BUCKS COUNTY, PA.

The following is a comment on the proposed final judgment agreed to by the United States and Globe Newspaper Company and the competitive impact statement which was published in the FEDERAL REGISTER pursuant to the 15 U.S.C. 16 (b) through (h), Monday, March 31, 1975, relating to United States vs. Chicago Tribune-New York News Syndicate, Inc., et al.

It is understood that pursuant to 15 U.S.C. 16(b), this comment will be filed with the United States District Court for the Southern District of New York and published in the FEDERAL REGISTER by the United States within the appropriate time.

We respectfully submit that the proposed final judgment and competitive impact statement will in fact, if not in law, have a profound effect throughout the newspaper industry and will encourage newspapers to continue illegal exclusivity contracts. Further, it may well prejudice the role of the Justice Department in future litigation. The government's consent will afford no relief whatever to newspapers published in the seven counties geographically contiguous to Philadelphia County, Pennsylvania and does

nothing to alleviate the unreasonable restraint of trade that now exists among these publications as to exclusivity over features. The government should therefore, withdraw its consent. In support thereof, we offer, the following comments for consideration:

1. The test of 20 percent of the households in a county and a minimum combined daily circulation of 5,000 is readily achievable in every major metropolitan market in the United States when applied with the stated definitions. In most instances, the test has already been achieved as is the case with the counties geographically contiguous to Philadelphia County. Such a test all but guarantees metropolitan newspaper dominance beyond the city of publication and allows unreasonable restraint of trade ad infinitum as to suburban newspapers. The proposed test will perpetuate the evil it sought to eliminate.

2. The definition of a newspaper as a daily [1] and/or daily and Sunday without differentiating between daily and Sunday circulation in the application of the "test" is confusing. If a newspaper qualifies under the Sunday test, does it also qualify for exclusion daily?

3. The definition of a combined daily circulation fails to differentiate between two competing metropolitan newspapers, so-called all day publications, two newspapers owned by the same corporation or newspapers published under agency agreements, all of which exist in various newspapers in the United States.

4. The exclusion of newspapers with circulation less than 11,750 is arbitrary and should be discarded.

5. The allowance of the minimum publishing requirement of once every two calendar months for each feature is much too liberal and permits the hoarding of features, retention of exclusivity thereover and the preservation of restraint of trade.

6. The number of dominant features is relatively small and they are currently effectively controlled by the metropolitan newspapers throughout the country through arbitrary and unreasonably broad exclusive territorial contractual agreements with syndicates. These contracts help insure the dominance of metropolitan newspapers in every major market in the United States in circulation, advertising revenue and profit.

It is the established procedure for the syndicates to offer features to the metropolitan newspapers first and only to suburban newspapers upon refusal. This first refusal practice insures the maintenance of exclusivity agreement ad infinitum. This problem is ignored by the proposed settlement and should be enjoined.

7. The economic impact of increasing costs and the application of recent and future technological developments will increase the ability of metropolitan newspapers to compete in suburban markets. The proposed settlement represents an additional threat to competition in suburban markets among suburban and metropolitan newspapers. While metropolitan newspapers are a distinct threat to the existence of suburban newspapers via satellite plants, etc., the suburban newspapers do not represent a threat to the existence of metropolitan newspapers.

8. Reporting options under the Audit Bureau of Circulations rules (Article V, Section 1) are either (1) a primary market area, (2) a retail trading zone and city trading zone, or (3) both. Under the proposed final judgment, the definition selected is county, making the 5,000/20 percent test on exclusivity a countywide test which is utilized almost exclusively by metropolitan newspapers. The countywide test is consistent with the metropolitan newspapers' practice of showing their coverage on a countywide basis thorughout their markets even though it is not the primary reporting practice under ABC rules. Such a test is inappropriate and selected for the convenience and advantage of the metropolitan newspapers and should be discarded in favor of tests consistent with the primary ABC reporting options. The ABC's reporting options would permit legitimate comparisons among newspapers in competing markets if and when tests were utilized.

9. The original position of the government was that any feature exclusivity extending beyond the city of publication was unreasonable and should be enjoined. In our view, this is correct. It is logical to permit exclusivity where two or more newspapers are publishing in the same city; however, the real deterent to fair competition in the newspaper industry (competition which exists primarily between suburban and metropolitan newspapers in suburban communities) is the unreasonable feature restraints which give a distinct advantage to the metropolitan newspapers.

The only alternative actually considered was proceeding to trial and seeking an injunction against all exclusivity over features outside the Globe's city of publication. Why the government's original objective was abandoned is uncertain, but the modification offers no real relief.

10. The decision to settle was based on the following expressed factors:

(a) Less relief might have been ordered by the court if the case went to trial. (We seriously doubt that any court would offer less relief than this settlement).

(b) No serious anticompetitive effects would result from the limited exclusivity permitted by the proposed judgment and competitive impact statement. (There will be serious anticompetitive effects resulting from the limited exclusivity permitted by maintaining the status quo in the overwhelming majority, if not all, metropolitan markets.)

(c) The consent judgment would result in a substantial reduction in Globe exclusivity. (By applying the tests outlined, the settlement will not substantially reduce the exclusivity of most metropolitan newspapers, particularly in geographically contiguous county suburban markets.)

To illustrate: the following popular features are unavailable to the largest suburban daily newspapers in each of the seven respective counties geographically contiguous to Philadelphia County, Pennsylvania: (1) Art Buchwald; (2) Jack Anderson; (3) Wm. F. Buckley; (4) Peanuts; (5) Herb Block; (6) James Kilpatrick; (7) Ann Landers; (8) Nicholas VonHoffman.

Attached hereto is a copy of the circulation comparison for those newspapers relative to the two largest dailies in Philadelphia. An analysis clearly indicates that those features would not be affected by the final judgment and competitive impact statement. We believe this same condition would prevail in the overwhelming majority of counties which are contiguous to a county of publication in any major metropolitan center. This fact is certainly not consistent with the conclusions of the final judgment and competitive impact statement.

11. The competitive impact statement further states the following at pages 6–7:

"It does not appear that the exclusivity permitted to the Globe by the proposed consent judgment will affect the ability of those newspapers that may continue to be prevented from licensing features licensed to the Globe to operate profitably . . . Moreover, to the extent that Globe feature exclusivity over these newspapers can be said to have the effect of materially assisting the Globe to sell newspapers in competition with them it would, under the Government's theory of the case, be justifiable. The Government's claim was that the agreement of a syndicate with the Globe not to license features to others was an unreasonable restraint on the trade in those features only to the extent the restriction was not needed by the Globe in order to benefit from its use of the features."

While it is very difficult to show precisely the effect of exclusivity on profits, it is obviously sufficient to cause the metropolitan newspapers to pay "premiums" for said exclusivity.

There is no question that the effect materially assists the Globe in selling newspapers in competition with newspapers which would continue to be denied features—features few in number but dominant in readership. The government's theory is unclear and unacceptable.

CONCLUSION

We believe that the statistics set forth above dramatically illustrate that the proposed final judgment and competitive impact statement promotes rather than deters the existing unreasonable restraint of trade practices that exist because of exclusivity. The effect of the modification in the government's position will be to permit a continuation of an unfair competitive advantage and force relief only where said relief is of little or no real effect; namely, in markets which by geography, political division or size are already exclusive.

While the parties may argue that this final judgment and competitive impact statement will be limited specifically to the Boston Globe and its market, in fact, whether strictly legal or not, the ramifications have already begun and will continue to have a profound effect upon the entire newspaper industry. This is also true with respect to the role of the Justice Department in future litigation since its proposed position has encouraged other metropolitan newspapers.

We would support exclusivity for newspapers publishing in the same city, but we respectfully request that the Justice Department withdraw its consent to the proposed final judgment and competitive impact statement and give this very vital matter further study. If the suburban newspapers are to survive in a tide of metropolitan publications, they must be afforded the protection and relief to which they are justly due under existing law. The Justice Department is urged to correct rather than foster and perpetuate illegal competitive practices.

Respectfully submitted,

BUCKS COUNTY COURIER TIMES
S. W. CALKINS,
Publisher.

JACKSON, BORTNER & BALLOW
WALLACE N. JACKSON,
Counsel for ucks County Courier Times.

[1] There appears to be a discrepancy in the definition section of the final judgment (IIB) and part (3) of the competitive impact statement.

CIRCULATION COMPARISON

	Number	73 ABC estimate, percent
DELAWARE		
Households	180,200	
Philadelphia Bulletin:		
Daily	87,405	48.55
Sunday	84,536	46.91
Philadelphia Inquirer:		
Daily	49,062	27.23
Sunday	78,405	43.51
Philadelphia combined:		
Daily	136,557	75.78
Sunday	162,941	90.42
BUCKS		
Households	124,200	
Philadelphia Bulletin:		
Daily	27,109	21.83
Sunday	36,275	29.21
Philadelphia Inquirer:		
Daily	21,277	17.13
Sunday	44,270	35.64
Philadelphia combined:		
Daily	48,386	38.96
Sunday	80,545	64.85
CHESTER		
Households	81,400	
Philadelphia Bulletin:		
Daily	19,796	24.32
Sunday	28,218	34.67
Philadelphia Inquirer:		
Daily	15,675	19.26
Sunday	28,374	34.86
Philadelphia combined:		
Daily	35,471	43.58
Sunday	56,592	69.52
MONTGOMERY		
Households	198,800	
Philadelphia Bulletin:		
Daily	79,141	39.81
Sunday	73,814	37.14
Philadelphia Inquirer:		
Daily	56,354	28.35
Sunday	90,850	45.70
Philadelphia combined:		
Daily	135,495	68.16
Sunday	164,664	82.84
BURLINGTON		
Households	91,900	
Philadelphia Bulletin:		
Daily	16,550	18.01
Sunday	26,263	28.61
Philadelphia Inquirer:		
Daily	16,330	17.77
Sunday	30,799	33.51
Philadelphia combined:		
Daily	32,880	35.78
Sunday	57,092	62.12
CAMDEN		
Households	146,400	
Philadelphia Bulletin:		
Daily	23,022	15.73
Sunday	45,736	31.24
Philadelphia Inquirer:		
Daily	32,862	22.45
Sunday	61,963	42.32
Philadelphia combined:		
Daily	55,884	38.17
Sunday	107,699	73.56
GLOUCESTER		
Households	52,700	
Philadelphia Bulletin:		
Daily	11,627	22.06
Sunday	17,753	33.69
Philadelphia Inquirer:		
Daily	8,923	16.93
Sunday	18,692	35.47
Philadelphia combined:		
Daily	20,550	38.99
Sunday	36,445	69.16

The names of the actual newspapers represented in each county are as follows:

PENNSYLVANIA

01. Bucks County—Bucks County Courier Times.
02. Chester County—West Chester Local News.
03. Delaware County—Delaware County Times.
04. Montgomery County—Norristown Times Herald.

NEW JERSEY

05. Burlington County—Burlington County Times.
06. Camden County—Camden County Courier Post.
07. Gloucester County—Woodbury Times.

APPENDIX 8

COMMENTS OF THE GEORGE W. PRESCOTT PUBLISHING CO., QUINCY, MASS.

Pursuant to the provisions of 15 U.S.C. 16 (d), (e) and (f) and in accordance with notice published in the FEDERAL REGISTER March 20, 1975, the George W. Prescott Publishing Company files hereunder its comments with respect to the Proposed Consent Judgment between plaintiff and defendant Globe Newspaper Company ("Globe") filed in this action on March 5, 1975.

I. STATEMENT OF INTEREST

The George W. Prescott Publishing Company ("Prescott Publishing") is the publisher of The Patriot Ledger, a newspaper published in Quincy, Norfolk County, Massachusetts.

The Patriot Ledger is an afternoon paper published Monday through Saturday. It serves primarily thirty-three communities in parts of Norfolk and Plymouth Counties, Massachusetts, all located southwest, south and southeast of Boston. Its total circulation as of December 31, 1974, as certified by the Audit Bureau of Circulation, was 75,804.

Three editions are published each day—the City, South and West. All contain international, national and state news and all editions advertising. Each edition also contains several pages of local news and advertising which are totally devoted to the towns served by that edition and differ completely from edition to edition.

The City Edition is distributed primarily in the City of Quincy and six nearby towns, all in Norfolk County. As of December, 1974, its circulation was approximately 46,500.

The South Edition is distributed primarily in fifteen towns to the southeast of Boston, all but one of which are in Plymouth County. As of December, 1974, its circulation was approximately 20,500.

The newer West Edition is distributed primarily in eleven towns to the southwest of Boston and west of Quincy, all in Norfolk County. As of December, 1974, its circulation was approximately 10,500.

Over the past three decades, The Patriot Ledger has tried unsuccessfully to obtain a number of features which were licensed under territorially restrictive agreements to one or other of the major Boston papers. Prominent among these were T.R.B., Dear Abbey, Art Buchwald and Peanuts. For similar reasons, The Patriot Ledger was unable for many years to get the New York Times News Service. (It was finally obtained in 1972 over the objections of both Boston dailies.)

As a matter of policy, The Patriot Ledger does not ask exclusivity on any syndicated feature carried by it.

K. Prescott Low, Publisher of The Patriot Ledger was designated as a Government witness for the trial of this action and his deposition was taken by the Globe and other defendants at some length on June 11, 1974.

II. COMMENTS

A. Under The Proposed Consent Judgment The Globe Gives Up Little Or Nothing. Under the Proposed Judgment, the Globe will still be able to insist on exclusivity in any county in which it "(1) has a combined daily circulation equal to at least 20 percent of the households in the county, and (2) has a combined daily circulation equal to at least 5,000 copies" (Proposed Judgment, Sec. V). This would preserve exclusivity as to six eastern Massachusetts counties—Essex, Middlesex, Norfolk, Suffolk, Plymouth, Barnstable. (See Chart attached to Competitive Impact Statement filed March 5, 1975.)

It would appear at first glance that such a settlement includes substantial concessions by the Globe whose prior exclusivity often also encompassed the three northern New England States and the other Massachusetts counties east of Worcester (Competitive Impact Statement, p. 3).

However, a further look at the Globe's 1974 circulation figures as attached to the Competitive Impact Statement shows otherwise: The 1974 circulation did not exceed 1,000 or 3 percent of the households in any Maine or Vermont county. In New Hampshire, the highest circulation was 4,114 in populous Hillsboro County and the highest penetration 11.0 percent in rural Carroll County. The largest circulation in any Massachusetts county on which exclusivity is being yielded was Worcester where 6,814 amounted to 3.4 percent of the households. It thus appears indisputable that the Globe is giving up exclusivity only in areas where its presence in the market is marginal at best.

On the other hand, the 20 percent figure is extremely favorable to the Globe. Were that level to be raised a mere 2 percent, exclusivity would be lost in three of the six counties for which it is to be retained, namely, Essex, Plymouth and Barnstable.

The Globe does not, of course, license all available features and it is suggested in the Competitive Impact Statement (p. 6) that there "are large numbers of syndicated features available to [those prevented from licensing Globe features] other than the approximately 120 features that the Globe licenses." From the point of view of a suburban paper, such as The Patriot Ledger, this argument overlooks three vital points. First, the other Boston daily licenses between eighty and one hundred other features. Second, the two Boston dailies have between them almost all the most popular comics and columnists. Third, as a practical matter, a syndicate salesman will ordinarily approach the city dailies first with any new feature.

In summary, the Proposed Consent Decree provides for the Globe to give up nothing of substance. Rather what it really does is strengthen the Globe's legal position on feature exclusivity in all areas where the Globe has any significant circulation.

B. The Use of Combined Morning and Evening Circulation Figures Is Unrealistic in the Greater Boston Newspaper Market and Unduly Favors the Globe. The circulation figures upon which the Proposed Consent Judgment and the Competitive Impact Statement are based are "Combined Daily Circulation" which is defined to mean "The sum of the defendant Globe Newspaper Company's morning and evening Circulation" (Proposed Judgment, Sec. II(F)).

Such a test might be valid if any other paper which would be affected adversely by

the Proposed Judgment had both a morning and evening edition. Those papers are identified in the Competitive Impact as the "newspapers published in the Massachusetts cities of Boston, Quincy, Brockton, Lowell, Lawrence, Framingham, Lynn, Salem, Haverhill, Hyannis, Waltham and Malden" (p. 5). None has both a morning and an evening edition. The other Boston daily (The Boston Herald American) publishes in the morning only. The remaining eleven papers mentioned, including The Patriot Ledger (Quincy), do not publish in the morning and are strictly evening papers.

Accordingly, the use of "Combined Daily Circulation" is unrealistic in the present Eastern Massachusetts newspaper market. It also seems unduly favorable to the Globe.

The stronger of the two Globe editions is the morning with a circulation of about 292,000.[1] Its only direct competition is the Boston Herald American as to which it would retain exclusivity even under the Government's position in its trial brief. (See Competitive Impact Statement, p. 4.) Yet under the Proposed Judgment this circulation is allowed to be added to that of the weaker evening edition (194,000 circulation)[2] in computing the levels at which exclusivity will be allowed, all to the substantial detriment of the various suburban evening papers.

Moreover, it is difficult to see how the circulation of the morning Globe would be hurt if some of the features it carried also appeared in suburban papers all of which are published twelve hours later.

C. The Use of County Circulation Figures Is Unrealistic In Eastern Massachusetts. The exclusivity test set forth in the Proposed Judgment turns on whether or not the Globe has "a Combined Daily Circulation equal to at least 20 percent of the Households in the county". (Para. IV.) Moreover, the circulation figures attached to the Competitive Impact Statement are strictly in terms of counties.

While counties may be a realistic circulation unit in other parts of the country, it is submitted that they are not so in eastern Massachusetts.

In the first place, the county lines in question were all laid out more than two centuries ago and contain such curious anomalies as the fact that the towns of Brookline and Cohasset are part of Norfolk County although neither is contiguous to any other part of that county, Brookline being surroundde entirely by portions of Middlesex and Suffolk Counties and Cohasset being an island surrounded entirely by Plymouth County. While such lines may have made sense in terms of eighteenth century politics, they are now little more than historical quirks. Likewise, there is little practical economic difference between the northerly, westerly and southerly Boston suburbs. Yet they are spread through five or six separate counties.

The two counties in which The Patriot Ledger primarily circulates are Norfolk and Plymouth. To treat Norfolk as an entity is unrealistic in terms of the Ledger since it has little or no circulation in the southwestern portion of the county. Similarly, the Ledger circulates in only fifteen of the twenty-seven communities in Plymouth County.[3]

Another aspect of the use of county lines may be even more significant to The Ledger's South Edition with a circulation of approximately 20,000 is distributed almost entirely in Plymouth County and competes vigorously with the Brockton Enterprise which has a circulation of roughly 55,000. Should Globe circulation drop below 20 percent Plymouth,[4] the Proposed Judgment would allow the Enterprise to get Globe features while its most direct but smaller competitor would still be excluded. This is because the Enterprise is published in Plymouth while the Ledger's South Edition is technically published in Norfolk. Such an anomalous result could hardly have been intended by the framers of the anti-trust laws.

D. The Exclusivity Exemption For Papers With A Circulation Of 11,750 Or Less, Appears Illogical And Is Unfair To The Patriot Ledger. The Proposed Judgment provides that within the specified counties the "Globe and a syndicate may agree that the Globe will not license the feature to any other newspaper not then licensing it, having a Circulation in excess of 11,750 copies". (Sec. IV. See also Competitive Impact Statement, p. 5.) In practical effect, this exempts any paper with a circulation of less than 11,751 from any Globe exclusivity as to features.[5]

No logical explanation of the 11,750 figure appears in either the proposed judgment or the Competitive Impact Statement and one can only speculate for whose benefit it was included. (Although available circulation figures would indicate that it may well have been intended to favor two Essex County papers at the expense of their slightly larger competitors.)

As specifically applied to The Patriot Ledger, this 11,750 cut off will also be unfair. In the northwestern part of Norfolk County, there is significant competition between the Ledger and the Daily Transcript which is published in Dedham. The Transcript's circulation is about 8,000 and that of the Ledger's West Edition approximately 10,500. However, because the Ledger's total circulation for all editions is much larger, the net effect of the proposed exemption is that the Transcript will be able to license Globe-exclusive features and the Ledger's West Edition will not.

Such a distinction might make some sense if it in some way turned on past, present or even future practices or conduct of either the Ledger or the Transcript. However, it does not. The crucial factor is whether or not an entirely separate third party, at the Globe, chooses to license a particular feature.

E. The Proposed Provisions For Abandonment Of Exclusivity Over A Particular Feature Are Insufficiently Strict. The Proposed Judgment provides that the Globe shall not enforce exclusivity as to any feature "if, for a period of two (2) consecutive calendar months, it has failed to publish that feature at least once" (Sec. VI(A)). This limitation is subject to a further proviso that it shall have no application "if the feature was not made available to (the Globe) by the syndicate for more than two weeks during such period". (Sec. VI(C).)

Under this proposed language all the Globe need do is publish a feature once every sixty days to maintain exclusivity or even less frequently should the feature be unavailable for a two week period. It should further be noted that this once every sixty days requirement applies even to five, six or seven day a week features such as comic strips which appear between forty and sixty times every sixty days. Thus the Globe can, if it wishes, prevent any other eastern Massachusetts daily from getting a feature while itself only making token publication of that feature. The net result would be to effectively deny the feature to the reading public of the Greater Boston area.

Accordingly, if an abandonment provision is to be meaningful, the required publication should be far more frequently than once every two months.

F. In Any Event, The Notice Provisions Of The Proposed Consent Judgment Are Inadequate. The Proposed Judgment provides that within thirty days of the entry thereof and in December of each year thereafter, the Globe will "compile a list of those newspapers that, consistent with the provisions of Section IV of this Final Judgment, may be prevented from licensing a feature licensed to Globe" (Sec. V) and further that copies of "such list shall be furnished to plaintiff and to each syndicate from whom Globe licenses any feature" (Ibid).

At the very last, this provision should be expanded to require the Globe to give like notice to each newspaper appearing on its list. This would seem simple fairness if only for the reason that household figures are at best only estimates and circulation figures are also subject to at least some argument especially where different newspapers are audited as of different dates.

The Proposed Judgmant further provides for notice by the Globe to the syndicate affected "(i)n any instance in which it has failed to publish, at least once in a period of two (2) consecutive calendar months, a feature licensed by it." (Sec. VI(B).) In like manner, it would seem only fair and reasonable that similar notice be given to any paper known to the Globe to have been previously prevented from carrying this feature.

By its attorneys,

GEORGE W. PRESCOTT
PUBLISHING CO.

JAMES C. HEIGHAM,
Choate, Hall & Stewart, 28 State Street, Boston, Mass. 02109, 227-5020.

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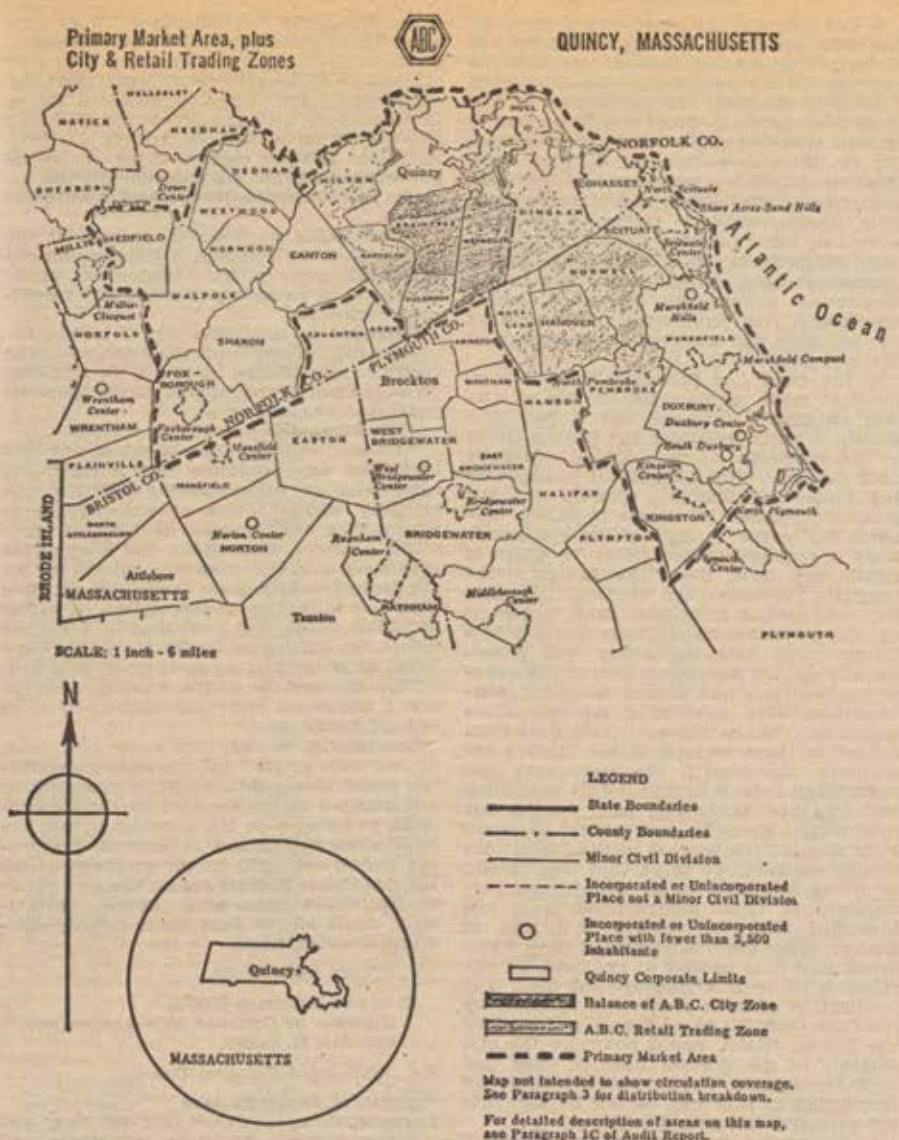
[1] Monday through Friday. See Audit Bureau of Circulation FAS-FAX Circulation Averages for Six Months Ending September 30, 1974.

[2] Monday through Friday. See Audit Bureau of Circulation FAS-FAX Circulation Averages for Six Months Ending September 30, 1974.

[3] Attached hereto is a December, 1974, Audit Bureau of Circulation map showing the Ledger's primary market area, county lines and city and retail trading zones.

[4] Such a drop is not unlikely. The chart attached to the Competitive Impact Statement shows the Globe as having in 1974 a penetration of 20.7 percent of Plymouth County. Almost immediately after the filing of the consent decree, the Globe announced a price increase of 15¢ to 20¢. Historically, such increases have always decreased circulation of a given paper. Accordingly, the Globe could well dip below 20 percent in Plymouth County in 1975.

[5] While the proposed decree is not entirely clear upon the point, this 11,750 circulation test is apparently applied annually. (See Sec. V.) If, on the other hand, it is a one shot test applicable only at or about the time of the entry of judgment, it could produce extraordinary results. For example, a paper in a fast growing area south of Boston with a present circulation of 10,000 could well double that circulation within a decade.



APPENDIX 9

COMMENTS OF THE CAPE COD STANDARD-TIMES, HYANNIS, MASS. SUBMITTED BY WILLIAM H. CAREY, ESQ., DESMARAIS, CAREY & BURKE, 403–408 FIRST NATIONAL BANK BLDG., 327 UNION ST., NEW BEDFORD, MASS. 02740

MAY 7, 1975.

Please be advised that this office represents the Cape Cod Standard-Times, a newspaper published in Hyannis, Barnstable County, in the Commonwealth of Massachusetts, and on its behalf submits herein, its comments on the proposed final judgment submitted for entry in the above captioned cases. These comments are being submitted in accordance with the requirements of the Anti-Trust Procedure and Penalties Act (15 USC Section 106).

The Cape Cod Standard-Times, for the reasons set forth below, objects to the entrance of such judgment relating to the Boston Globe Newspaper, particularly Section IV thereof, which reads as follows:

"Globe is enjoined from licensing any feature from any syndicate with a condition, agreement or understanding limiting the territory within which or the persons to whom such feature may be licensed; provided, however, that Globe and a syndicate may agree that the syndicate will not license the feature to any other newspaper not then licensing it, having a Circulation in excess of 11,750 copies, and published in a county where the defendant Globe (1) has a Combined daily Circulation equal to at least 20 percent of the Households in the County, and (2) has a Combined daily Circulation equal to at least 5,000 copies."

The Cape Cod Standard-Times would be adversely affected by the requirements of said provision, since it does have a circulation in excess of 11,750 copies and it is published in the County where the Globe's exclusivity would be able to continue under the language of the proposed judgment.

1. There would appear to be no rational basis for the formula set out in Section IV of the proposed judgment. It is an arbitrary and unreasonable formula with no factual basis for its justification. Apparently, according to the Competitive Impact Statement, the only document considered determinative in formulating the proposed Consent Judgment was the chart entitled "Boston Globe Week-Day Circulation and Penetration by Counties in Massachusetts, New Hampshire, Maine and Vermont 1972–1974". The chart gives no justification for the arbitrary penetration percentage of 20 percent or the minimum combined daily circulation figure of 5,000 copies, or the freedom from exclusivity of those newspapers having a circulation less than 11,750 copies. This office, on behalf of the Cape Code Standard-Times, requested more information from the Government as to the method used in arriving at the formula set forth in Section IV. This request was made under the "Freedom of Information Act 5 USC 552" and a reply was received dated April 25, 1975, a copy of which is also enclosed, and adds no further basis for justification of the creation of the formula.

2. The Cape Cod Standard-Times submits that the original position taken by the United States Government with respect to the Boston Globe exclusivity is the only sound position to advance in order to protect the smaller and medium-size newspapers against the larger metropolitan newspapers in a certain competitive area. The position taken previously by the United States Government was that "any feature exclusivity extending beyond the city of publication (Boston) was unreasonable and should be enjoined". It is respectfully submitted that this principle continues to be a sound principle, when weighed against a formula which is simply arbitrary, unfairly discriminatory against certain newspapers, and has no factual justification.

3. At the present time, such a formula will permit the Boston Globe to have exclusivity contracts with regard to the features licensed by it over the daily and Sunday newspapers published in the Massachusetts cities of Boston, Quincy, Brockton, Lowell, Lawrence, Framingham, Lynn, Salem, Haverhill, Hyannis, Waltham, and Malden.

It is important to point out that all of these cities are within the general metropolitan area of the City of Boston, except for Hyannis, in the County of Barnstable, where the Cape Code Standard-Times is published. The Cape Cod Standard-Times is not only beyond the metropolitan area of Boston, but it is also beyond the City and Retail Trading Zones of the Boston Globe and not in the same, or even any adjoining, county. Except for Hyannis, the other cities affected by the proposed stipulation are neighboring communities to Boston and the home cities of the vast majority of the workers in the Boston area. They are the so-called "bedroom areas" for those people working in Boston. Hyannis, in Cape Cod, is approximately seventy (70) miles from Boston and has never been considered geographically located with the metropolitan area of Boston. It is not within the range of the Globe's principal circulation intensity so as to make an exclusive syndicated column or feature necessary for the sale of its newspaper. Regardless, however, of whether or not the Globe's exclusivity is needed in the metropolitan area of Boston, it certainly is not needed to maintain its circulation or competitiveness with the Cape Cod Standard-Times, which principally covers Barnstable County, in the southeastern part of Massachusetts. It is respectfully submitted that this newspaer, the Cape Code Standard-Times, should be excluded from the terms of the proposed Decree.

4. It is the small and medium-sized newspapers outside the large metropolitan area which need the freedom from exclusivity contracts. The Cape Cod Standard-Times does not have any exclusive features and is not looking for any exclusivity. Neither should the Boston Globe's territory of exclusivity be extended to Cape Cod. Features should be freely available to the Cape Cod Standard-Times and the Boston Globe, and their availability should not depend upon the considerations arbitrarily set forth in the proposed

decree. The theory which the Justice Department and the Globe are apparently fostering in the proposed settlement, is that the areas where a competitive situation exists, exclusivity should continue to be allowed. Our position is quite the opposite. There should be no restrictions regardless of an arbitrary 20 percent or 40 percent, or any percentage of outlying county penetration.

5. The theory of the Government seems to be that the exclusivity is needed to protect the Globe from competition, but this theory is contrary to the fundamental purpose of the law suit, which was to foster competition in those areas where there were exclusive features. Even considering the Government's new theory, however, it is respectfully submitted that the gain of the Boston Globe in the Cape Cod territory in the past years, as shown in the document relied upon by the Government and attached to the Competitive Impact Statement, cannot be considered relevant to the exclusivity of syndicated features. The Globe circulation in the County of Barnstable has, as shown by the figures, increased over the past years, but with the same exclusivity contracts for the syndicated features, which they have had for many years. The conclusion would be inescapable that their increase in circulation in Barnstable County is attributed to factors other than the exclusivity contract, and it is respectfully submitted that they do not need such contracts for the sale of newspapers in this area. At the time of their biggest gain in the Cape Cod area, in 1973, it was at or about the time of the merger with the Boston Herald and the increase in penetration had nothing to do with exclusivity features.

The figures set forth below show the respective daily increases of the Barnstable County circulation, as audited by the Audit Bureau of Circulation (ABC) for the years 1972 through 1974, for the Cape Cod Standard-Times and the Boston Globe, showing the gains recorded in the three (3) years:

	CCS-T, daily	Globe, daily (both a.m. and p.m.)	CCS-T, gain	Globe, gain
1971	22,696	4,719		
1972	23,882	5,613	+1,186	+894
1973	25,486	7,600	+1,604	+1,987
1974	26,071	8,476	+585	+876

	CCS-T, sunday	Globe, sunday	CCS-T, gain	Globe, gain
1971	19,957	8,508		
1972	21,759	9,301	+1,802	+793
1973	23,531	12,191	+1,772	+2,890
1974	24,650	12,974	+1,119	+783

There can be no conclusion drawn from these figures that the Boston Globe needs the exclusivity contracts in order to continue the increase of its circulation in this area.

Applying the proposed formula to these figures demonstrates that the formula is arbitrary. A daily with less than 20 percent could get exclusive rights based on a one-day Sunday paper over 20%. Are there two different tests? Could two papers, morning and afternoon, or some company, combine total circulation to exceed the 20 percent rule? Even if the proposed formula were acceptable, the tests should be met by both the daily and Sunday separately to justify exclusivity and not a combined circulation formula. Some such newspapers are even published under different names, depending upon the edition (a.m.-p.m.—Sunday), and should be tested by the same formula separately, if in fact any formula is justified. The Cape Cod Standard-Times publishes only once a day. The Boston Globe publishes in the morning and evening. To base the test upon the "combined daily circulation", as defined in the proposed judgment is discriminatory, unrealistic, and much more favorable to the Globe.

6. The fact that the readership of the Cape Cod Standard-Times is being denied the use of certain syndicated material prevents the newspaper from publishing what should be a total newspaper. The subscribers of the Cape Cod Standard-Times should be free to read in that newspaper whatever is appealing to its readers, and not to have their freedom of choice restricted by exclusive contracts, beneficial to some other newspaper from Boston, which is trying to penetrate more and more into the Cape Cod market. This competition, it is submitted, should be done on equal terms without any legally sanctioned preferential treatment, which discourages free competition. This is what the law suit was designed to encourage in the first place.

7. The Cape Cod Standard-Times has in the past made requests for the use of certain syndicated material, but it has been denied to them by either the Boston Globe or the syndicate. As an example, the Cape Code Standard-Times requested to purchase the James J. Kilpatrick column, but the syndicate refused to release it to the Hyannis newspaper. A copy of the syndicate's reply is attached to this letter, in which it clearly sets forth that "The Boston Globe normally pre-empts the territory". Permission was sought from the Globe to permit the Cape Cod Standard-Times to carry this column, but this permission was subsequently denied. Representatives of the newspaper have also had several telephone conversations with syndicated representatives requesting certain features which have been denied to them because of the Globe's exclusivity. Specifically, the newspaper has made several efforts to obtain both the Gallop Poll and the Harris Poll prior to the last Presidential Election, but access to those Polls were denied because of the Globe's exclusive contract. We think that they should be freely available to all newspapers, particularly in those geographical areas not identified with the metropolitan area of Boston, where there is no substantiating evidence that it is needed to maintain its circulation in such a geographical area. The publication of such syndicated columns by the Cape Code Standard-Times, and used by the Boston Globe, would not hurt the circulation of the Boston Globe in Cape Cod by one newspaper. The increase in the Globe's circulation in this area cannot be tied into the exclusive syndicated features.

In conclusion, it is respectfully submitted that the formula set forth in the proposed judgment is arbitrary and discriminatory against the smaller and medium-sized newspaper, which is geographically located some distance from the metropolitan area of Boston, and not at all identified with the City of Boston.

It is respectfully suggested that either all exclusivity contracts of syndicated features be restrained or that they be limied in scope to the metropolitan area of the City of Boston, but that the Boston Globe not be permitted to continue to maintain its exclusivity contracts in the County of Barnstable, where the Cape Cod Standard-Times is being published.

Very truly yours,

CAPE COD STANDARD-TIMES,
DIVISION OF OTTAWAY NEWSPAPERS, INC.
WILLIAM H. CAREY.

EXHIBITS

APRIL 8, 1975.

Re: Syndicated Features Cases TEX: GAC: ALM 60-127-70

THOMAS E. KAUPER,
Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530

DEAR SIR: Please be advised that I represent Ottaway Newspapers, Inc., which publishes the Cape Cod Standard Times, circulating in Barnstable County, Massachusetts.

I will be filing with your Department the comments of the Cape Cod Standard Times, in accordance with the provisions of Public Law 98-528 Anti-Trust Procedures and Penalties Act, as those comments pertain to the government's proposed judgment in the so-called Syndicated Features Cases, referred to above.

Before doing so, however, and under the authority of the Freedom of Information Act 5 USC552, more public information would appear to be necessary to make any intelligent comments.

Pursuant to the above Act, I hereby request a copy of any supporting documents or tables or memoranda, by which the proposed formula under Paragraph IV of the proposed judgment was arrived at.

That Paragraph provides as follows:

"Globe is enjoined from licensing any feature from any syndicate with a condition, agreement or understanding limiting the territory within which or the persons to whom such feature may be licensed; provided, however, that Globe and a syndicate may agree that the syndicate will not license the feature to any other newspaper not then licensing it, having a Circulation in excess of 11,750 copies, and published in a County where the defendant Globe (1) has a combined daily Circulation equal to at least 20% of the Households in the County, and (2) has a Combined daily Circulation equal to at least 5,000 copies."

Specifically, we want to know how these figures were arrived at and we are requesting copies of any documents or materials, or any analysis of figures used by the Government to bring it to the conclusion that the circulation figures and penetration percentage figures set forth in the proposed decree are reasonable restrictions on the exclusivity of the Globe syndicated licenses, particularly, as it affects Barnstable County—Hyannis, Massachusetts.

Very truly yours,

CAPE COD STANDARD-TIMES,
DIVISION OF OTTAWAY NEWSPAPERS, INC.
WILLIAM H. CAREY.

Re: *Syndicated Features Cases.*

WILLIAM H. CAREY, Esquire,
Demaris, Carey & Burke, 403-408 First National Bank Building, 227 Union St., New Bedford, Mass. 02740

APRIL 25, 1975.

DEAR MR. CAREY: I received your April 8, 1975 letter concerning the proposed settlement with the Globe in the syndicated features cases. You requested, pursuant to the Freedom of Information Act (5 U.S.C. 552):

"A copy of any supporting documents or tables or memoranda by which the proposed formula under Paragraph IV of the proposed judgment was arrived at."

The only document or table which the United States considered determinative in formulating the proposed judgment was a chart entitled "Boston Globe Weekday Circulant and Penetration by Counties in Massachusetts, New Hampshire, Maine and Vermont, 1972-1974." A copy of this document is enclosed.

With regard to your request for "memoranda", we have reviewed our files and the only material which fits this description is an internal staff memorandum reflecting the staff's view of the settlement. This document is exempt from production under 5 U.S.C. 552(b)(5), which exempts:

"Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

Accordingly, I must deny your request for this document.

Department regulations, 28 CFR 16.7, provide that a denial may be appealed within 30 days to the Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D.C. 20530. Any such appeal should be clearly identified as a "Freedom of Information Appeal". Judicial review is available thereafter in: the district in which the requester resides or has a principal place of business; the district in which the records are located; or the District of Columbia.

We would appreciate receiving your comments on the proposed final judgment as soon as possible so that we may respond within the 60-day period provided in the Antitrust Procedures and Penalties Act. This period began to run on March 31, 1975.

I am the person responsible for the disposition of your request, as set forth in this letter.

Sincerely yours,

THOMAS E. KAUPER,
Assistant Attorney General,
Antitrust Division.

BOSTON GLOBE WEEKDAY CIRCULATION AND PENETRATION BY COUNTY IN MASSACHUSETTS, NEW HAMPSHIRE, MAINE AND VERMONT, 1972 - 1974

COUNTIES	HOUSEHOLDS 1972 ABC Est.	HOUSEHOLDS 1973 ABC Est.	HOUSEHOLDS 1974 ABC Est.	CIRCULATION 1972	CIRCULATION 1973	CIRCULATION 1974	PENETRATION (% of households) 1972	PENETRATION (% of households) 1973	PENETRATION (% of households) 1974
MASSACHUSETTS									
ESSEX	205,832	207,900	208,900	34,888	41,486	44,138	16.9%	20.0%	21.1%
MIDDLESEX	427,904	411,800	432,400	150,744	161,014	162,624	35.2	39.1	37.6
NORFOLK	182,785	185,600	179,800	63,546	68,733	71,202	34.8	37.0	39.6
PLYMOUTH	102,473	105,200	106,900	17,896	22,989	22,133	17.5	21.9	20.7
SUFFOLK	244,448	242,700	241,200	108,776	118,966	120,362	44.5	49.0	49.9
BARNSTABLE	35,406	35,400	36,800	5,613	7,600	8,476	15.9	21.5	21.8
BERKSHIRE	47,448	48,700	47,900	434	494	503	.9	1.0	1.1
BRISTOL	144,154	149,000	149,800	5,083	6,415	6,081	3.5	4.3	4.1
DUKES	2,319	2,500	2,700	175	240	266	7.5	9.6	9.9
FRANKLIN	19,844	20,400	20,100	341	373	416	1.7	1.8	2.1
HAMPDEN	146,844	148,200	146,500	594	742	774	.4	.5	.5
HAMPSHIRE	35,179	35,900	36,200	1,440	1,893	2,376	4.1	5.3	6.6
NANTUCKET	1,349	1,400	1,500	146	179	213	10.8	12.8	14.2
WORCESTER	197,178	198,800	198,000	4,979	6,289	6,814	2.5	3.2	3.4
NEW HAMPSHIRE									
BELKNAP	11,096	11,500	11,200	589	646	649	5.3%	5.6%	5.8%
CARROLL	6,427	6,500	6,900	633	713	790	9.8	11.0	11.4
CHESHIRE	16,952	15,200	17,900	567	656	713	3.3	4.3	4.0
COOS	10,708	10,700	10,500	446	516	440	4.2	4.8	4.2
GRAFTON	17,226	16,600	18,100	1,007	1,062	1,049	5.8	6.5	5.8
HILLSBORO	71,743	72,900	76,500	3,361	3,895	4,114	4.7	5.3	5.4
MERRIMACK	26,962	26,200	26,800	931	1,115	1,126	3.5	4.0	4.2
ROCKINGHAM	45,036	46,700	46,000	2,756	3,461	3,690	6.1	7.4	8.0
STRAFFORD	21,452	21,200	21,500	1,210	1,506	1,696	5.6	7.1	7.9
SULLIVAN	10,223	10,000	10,600	354	373	366	3.5	3.7	3.5
MAINE									
ANDROSCOGGIN	29,184	29,200	29,400	153	267	288	.5%	.9%	1.0%
AROOSTOOK	24,651	24,900	26,300	256	272	397	1.0	1.1	1.5
CUMBERLAND	61,631	62,300	63,500	586	883	951	1.0	1.4	1.5
FRANKLIN	6,800	6,900	7,200	43	48	68	.6	.7	.9
HANCOCK	11,495	11,600	12,800	101	112	115	.9	1.0	.9
KENNEBEC	28,663	28,500	30,200	284	428	531	1.0	1.5	1.8
KNOX	9,878	10,000	10,800	107	150	177	1.1	1.5	1.6
LINCOLN	7,307	7,500	7,600	95	139	156	1.3	1.9	2.1
OXFORD	13,988	14,300	15,000	164	144	157	1.2	1.0	1.0
PENOBSCOT	36,437	36,600	38,700	259	300	400	.7	.8	1.0
PISCATAQUIS	5,177	5,100	5,500	22	28	13	.4	.5	.2
SAGADAHOC	5,480	7,500	8,300	52	55	61	1.0	.7	.7
SOMERSET	12,490	12,500	13,700	59	55	56	.5	.4	.4
WALDO	7,161	7,200	800	57	60	59	.7	.8	.7
WASHINGTON	8,767	9,900	10,400	20	12	17	.2	.1	.2
YORK	35,580	36,200	37,300	865	96	961	2.4	.3	2.6
VERMONT									
ADDISON	7,030	7,200	7,400	93	121	92	1.3%	1.7%	1.2%
BENNINGTON	9,648	9,900	10,100	176	210	169	1.8	2.1	1.7
CALEDONIA	7,321	7,400	7,500	155	178	117	2.1	2.4	1.6
CHITTENDEN	29,971	33,200	31,300	180	238	311	.6	.7	1.0
ESSEX	1,501	1,500	1,500	46	45	42	2.9	3.0	2.8
FRANKLIN	9,431	9,800	10,000	27	20	22	.3	.4	.2
GRAND ISLE	1,116	1,200	1,300	1	—	—	.1	—	—
LAMOILLE	4,066	4,300	4,500	15	32	72	.4	.7	1.6
ORANGE	5,335	5,400	5,400	108	127	102	2.0	2.3	1.9
ORLEANS	6,022	6,000	6,000	62	72	61	1.0	1.2	1.0
RUTLAND	16,469	16,200	16,300	91	294	37	.5	1.8	.2
WASHINGTON	14,760	14,600	14,700	357	278	199	2.4	1.9	1.3
WINDHAM	11,005	11,000	11,200	392	446	466	3.6	4.1	4.2
WINDSOR	14,856	14,000	14,000	319	340	397	2.1	2.4	2.8

Source: Annual ABC Reports 1972-1974

WASHINGTON STAR SYNDICATE, INC.,
New York, N.Y., August 9, 1972.

Mr. JOE MOSIER,
Editor, Cape Cod Standard-Times, Hyannis, Mass. 02601.

DEAR MR. MOSIER: We regret having inadvertently offered you the James J. Kilpatrick column. The Boston Globe normally preempts the territory. I will, however, ask them tomorrow if they will release Hyannis. I am not sanguine.

Sincerely,

HARRY E. ELMLARK.

APPENDIX 10

COMMENTS OF THE JOURNAL, LORAIN, OHIO, AND 4 OTHER HORVITZ NEWSPAPERS

The Final Judgment in the above case is a blueprint for monopoly in the newspaper industry. It will greatly diminish the ability of smaller papers to compete with the metropolitan giants, and for all time be a method of birth control that will prevent new competitive dailies from coming to life in most of the major cities of the United States.

The Judgment has major weaknesses. They are:

(1) It ignores common reason or the legal "rule of reason" in that it rewards the Globe by legalizing continued exclusivity in the geographical areas where the Globe has been successful in obtaining significant market penetration.

(2) It conflicts with what I thought was the central policy of the Sherman Act, "against contracts which take away from freedom of purchasers to buy in an open market."

(3) It is a backwards decision; not only failing to aid the papers who need help, but making legal the anticompetitive practice of giants who need no help.

A FULL SCALE HEARING BY THE COURT IS NECESSARY TO EXAMINE THE TERMS AND THE EFFECTS OF THE PROPOSED CONSENT JUDGMENT, AND WHETHER IT WILL INCREASE OR DECREASE COMPETITION

It is not determinative of the issues, because the complaints sought an adjudication of illegality and a modification of those contracts to restrict the area of exclusivity to a newspaper's city of publication.

The government's admission that the relief specified in the proposed consent judgment will not have a significant effect on improving competitive conditions should alone be enough to justify the courts rejection of the decree.

No evaluation of the anti-competitive effects of sanctioning the continuation of the Globe's exclusivity can be made without a comparison of the qualitative difference between the features controlled by the Globe, and the features the Globe allows to be sold to other newspapers in the territory.

Paragraph IV of the proposed final judgment gives the blessings of the Attorney General to exclusive agreements in areas where the Boston Globe has a combined daily circulation of at least 20 percent of the households and circulation of at least 5,000 copies. These are the Boston Globe's strongest areas. If the non-competitive practice of restricting a competitor from purchasing a feature that can be essential to his existence is wrong, it must be more wrong in the areas where the Boston Globe has the greatest strength, the area's nearest to Boston; and, this decision makes legal the Globe's control of news disseminated over two-thirds (67 percent) of all households in the State of Massachusetts. Even this can be increased, because the proposed judgment permits the Globe to extend its monopoly position where they can increase their market penetration.

The terms of the proposed consent judgment may become an acceptable standard of business conduct for feature syndicates and newspapers holding exclusive territory contracts to features in cities throughout the United States.

Many papers throughout the country, such as ours, have been waiting almost eight years for this decision and hoping it would bring some relief.

If the decision is allowed to stand, the following adverse effects will follow:

(1) The terms of the consent judgment will be used by many newspapers to justify the perpetration of illegal exclusive territory agreements.

(2) Newspapers attempting to compete with major metropolitan dailies will continue to be unlawfully denied access to important features.

(3) Readers of many newspapers will have to forego quality features for second-rate features if they wish to continue subscribing to their local newspaper.

(4) The terms of this consent decree will in practice become the enforcement policy of the Anti-Trust Division. Other consent decrees may be patterned after this one.

Each metropolitan area is different in size, market characteristics and isolation from or closeness to other markets. To suggest that a 20 percent penetration figure or a 5,000 circulation penetration, or a limitation based on a circulation of 11,750 copies is anything but arbitrary is not logical. These criteria would make no sense in other markets as Philadelphia, Los Angeles or Cleveland, but the illogic of the figures could establish a precedent for future restrictions.

I would also like to point out that one of the detrimental anti-competitive effects on smaller papers around major markets that are closed-out from getting the best Sunday comics, is the higher price that must be paid by smaller papers for printing when certain comics are not available.

The methods by which color comics are bought, is that papers purchase a ready-made section of comics, and this section is just a continuation of a standard run for other papers. The ready-made comics are up to $250 per week less than sections that must be individually designed and put together, because many of the component comics of the standard section are closed-out by the territory restrictions.

The result is that Sunday comics cost a smaller paper more per section than it does the larger competitor.

The rejection of this proposed Final Judgment will be an important milestone in the efforts of newspapers to provide their readers with the features they desire to read.

The rejection will be an impetus to restoring competition where it is fast disappearing in the larger metropolitan areas of the United States.

It is interesting to note that the defendant Field Enterprises, Inc. is a part of the Marshall Field empire. It was a significant milestone in newspaper history when Marshall Field came into Chicago with a new newspaper, The Sun, to compete with the Chicago Tribune. It was the lawsuit undertaken by the Justice Department on Marshall Field's behalf that resulted in the law that the Associated Press wire service should be available to any who wants to buy it. The majority opinion of the Supreme Court stated:

"Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all and not for some. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not."

Should not the same reasoning apply to the top comics and columns available today?

Respectfully submitted,

H. R. HORVITZ,
Publisher.

(The Journal, Lorain, Ohio; News Journal, Mansfield, Ohio; The News-Herald, Willoughby, Ohio; The Times-Reporter, Dover-New Philadelphia, Ohio; Times-Record, Troy, New York)

APPENDIX 11

COMMENTS OF THE MORRISTOWN DAILY RECORD, INC. 55 PARK PLACE, MORRISTOWN, N.J. 07960

MAY 12, 1975.

By this letter The Morristown Daily Record, Inc., files its objection to the proposed consent decree in what is commonly referred to as the "Boston Globe" case, more specifically the three anti-trust suits now pending in the United States District Court, Southern District of New York, Docket Nos. 67-CIV 4596, 4597 and 4598.

As your records will reflect, our attorneys, by letter dated September 12, 1973, advised the United States Justice Department of what it believed to be unlawful restrictions placed upon syndicated comic strips which involved agreements for territorial exclusivity entered into between King Features Syndicate and the New York Daily News and the Newark Star Ledger. Enclosed for your consideration is letter dated August 21, 1973, from Lipton, Wasserstrom & Siefken, attorneys for King Features Syndicate Division of the Hearst Corporation, which makes reference to the pending litigation of the Justice Department in the United States District Court for the Southern District of New York to determine the validity and extent of territorial exclusivity in respect to syndicated feature materials. By letter of September 20, 1973, you responded to our attorneys stating in part, "We can only hope that eventually the litigation we are now pursuing will result in the elimination of all illegal territorial exclusivity over features."

It is the judgment of The Morristown Daily Record, Inc., that you have abandoned the above objective. The proposed consent decree, rather than encouraging competition, in fact curtails competition. By permitting exclusivity of feature material where a newspaper has 20 percent coverage of households in a county and a circulation that exceeds 5,000 in such county, competition among newspapers will be stifled.

For example, this ruling would effectively keep features from many suburban newspapers competing with suburban daily newspapers. In Morris County, New Jersey, there are 109,823 households, according to United States Census 1970. Two papers are published in Morris County, New Jersey. These are the Daily Record in Morristown and the Daily Advance in Dover. The Daily Record circulation in Morris County for the 12 months ending March 31, 1974, was 34,713. The Daily Advance circulation for 12 months ending December 31, 1973, was 18,435. Circulation of the Sunday Daily Record was 28,925 for the 12 months ending March 31, 1974.

Under the proposed 20 percent rule, a circulation coverage of 21,965 is sufficient for a metropolitan paper to claim feature exclusivity. On a daily basis the Newark (New Jersey) Star Ledger has a daily paid circulation of 28,556 in Morris County per 12 months ending December 31, 1974. No other metropolitan paper qualifies for feature exclusivity on a daily basis. It should be noted that the exclusivity rule permits the Star Ledger to exclude both the Dover and Morristown papers

from any features of interest to and requested by its readers.

If by virtue of this proposed decree current exclusivity of features is allowed to continue, both the Daily Record and Daily Advance are being and will be materially impeded in their efforts to compete for readers, many of whom are used to the features of their metropolitan paper when they move to suburban areas such as Morris County. These new residents are used to such features and desire continuity as they leave the metropolitan area. Approximately 59 percent of new residents in Morris County, New Jersey, come from the New York or Newark metropolitan area. (Source, survey of 331 residential moves by Consumers Marketing Research Services, Inc.).

When local papers are prohibited by combined action of the metropolitan newspaper and feature syndicates from meeting feature requests, effective competition is materially curtailed. Thus many desired comics, syndicated writers and columns are denied to readers of the suburban papers and readers are forced to turn to the metropolitan paper. The result hurts the circulation and thereby the advertising of the local papers, thereby curbing competition by aiding the economically more powerful metropolitan paper.

In Morris County the Sunday competitive situation would be even further aggravated by the 20 percent rule. In addition to the Newark Star Ledger (49,070 for the 12 months ending December 31, 1974), the New York Daily News (31,411 for 12 months ending September 30, 1974) also qualifies. This has an effect of enabling two metropolitan newspapers to utilize exclusivity to obtain and control many highly-desirable features.

In an effort to increase competition in Morris County, New Jersey, the Sunday Daily Record was begun on April 1, 1973. Although it was intended to foster competition, the 20 percent rule plus practices then in effect prohibited the Sunday Daily Record from containing Parade Magazine, the leading Sunday syndicated supplement. The other Sunday supplement, Family Weekly, is not available due to lack of availability of newsprint to enable it to take on new papers. Several other features and syndicated materials were not available. The result was that the Sunday paper was launched without a national magazine section, a fact which made the newspaper seeking to increase competition markedly inferior to those metropolitan newspapers which through their feature suppliers exercised exclusivity. Yet many towns of similar size in monopoly situations normally carry such Sunday features and supplements. However, the rule envisaged by the Globe decree would permit the metropolitan paper with its huge advertising and circulation revenues to effectively impede competition from its suburban rivals.

The Daily Record supports comments of the Oakland (Michigan) Press relative to the success of metropolitan papers in "blacking out" suburban newspapers from syndicated features except in those cases where the suburban newspapers purchased features a number of years ago. We also concur with the comment from the Oakland Press that "what is referred to in the impact statement as a 'substantial reduction in Globe exclusivity' is largely imaginary. The Globe is forced to give up exclusivity only in areas where it makes little difference (i.e. where their circulation is so insubstantial as not to require monopolistic protection)." It seems to us that the conclusion that there are large numbers of features available elsewhere is demonstrably untrue. The very reason for such exclusivity is the recognized quality of the features sought to be excluded. Thus the government's view enables the metropolitan paper to monopolize the very best features leaving the suburban papers less desirable features.

The Daily Record supports the position that "the soundest rule is that of a totally free market." Restrictive provisions should be at most limited to the city of publication. Otherwise, any paper willing to buy a feature should be permitted to do so.

Inasmuch as the Justice Department's original complaint theory that exclusivity beyond the city of publication is unreasonable, we urge the department to reassess its consent decree and the impact effects of the county and 20 percent rules.

Application of the Globe formula materially affects the quality and saleability of newspapers in Quincy, Brockton, Lowell, Lawrence, Framingham, Lynn, Salem, Haverhill, Hyannis, Waltham and Malden, which would all be adversely affected by any formula which permits exclusivity outside Boston. The arguments for the Daily Record, Daily Advance and Oakland Press would appear directly in point in the Massachusetts situation.

We feel that such situations as Oakland, Michigan, and Morris County, New Jersey, portray the "chilling effect" of protecting metropolitan dailies from suburban daily competition. For the government to support such exclusivity provisions is to make a shambles of the theory of encouraging competition. The United States Supreme Court and many other courts of our land have time and again recognized the importance of freedom of the press and the free exchange of ideas and communication which freedom of the press guarantees. Legislative attempts and those of libel litigants to encroach upon and restrict freedom of the press have been uniformly turned aside. The Boston Globe consent decree would sanction what you once pledged to eliminate, namely, "illegal territorial exclusivity of features." We therefore object to this serious diminution of a free press.

Request is made that these objections be made available for the court's consideration. We respectfully request that before final entry the court hold a hearing to determine from the comments of interested newspapers and other parties whether the proposed consent decree is in the public interest.

Very truly yours,

NORMAN B. TOMLINSON, Jr.,
Publisher.

EXHIBIT

LAW OFFICES,
LIPTON, WASSERSTROM & SIEFKEN,
New York, N.Y., August 21, 1973.

Re The Morristown Daily Record Inc., your File No. 3495

ARNOLD H. CHAIT, Esq.,
Vogel, Chait and Wacks, P.C., Maple Avenue and Miller Road, Morristown, N.J. 07960

DEAR MR. CHAIT: We are general counsel to the King Features Syndicate Division of The Hearst Corporation, to whom your letter of August 3 last addressed to Mr. Clarence Rabinow has been referred.

We have carefully considered your request and have concluded that our client's decision not to license the feature which your client has requested ("Hagar the Horrible") was completely reasonable and lawful conduct.

While we are unaware of the extent of territorial exclusivity which the New York News requires to meet its competitive needs (this being a matter more properly within the province of that newspaper), we have reviewed the circulation patterns of The Morristown Daily Record, the New York News and the Newark Star-Ledger, as set forth in American Newspaper Markets Circulation '72. It clearly appears that substantial competition exists among those newspapers in the principal circulation territory of The Morristown Daily Record. As a result, it is our judgment that the rationale expressed in "United States v. Paramount Pictures, Inc.", 66 F. Supp. 323, affirmed and modified in part, 334 U.S. 131, and in a score of other cases thereafter decided, in respect of "clearances" and other exclusivity provisions directly supports the lawfulness of the specific territorial exclusivity to which you refer.

Moreover, and as you may be aware, the subject of the extent of territorial exclusivity in respect of syndicated feature materials currently is being litigated in three companion cases instituted in the United States District Court for the Southern District of New York by the Justice Department against three feature syndicates and a newspaper. The basic position of the Government is that certain territorial exclusivity accorded to certain newspapers is overly broad. Of course, this contention has been asserted with regard to certain very extensive territories and in our judgment in no way reasonably relates to the rather modest territorial exclusivity accorded to the New York News. Under such circumstances, we do not anticipate that these lawsuits will affect the soundness of our above stated conclusion with regard to your client's competitive situation in respect of the New York News and the Newark Star-Ledger.

Yours very truly,
LIPTON, WASSERSTROM & SIEFKEN,
By HARVEY L. LIPTON.

U. S. DEPARTMENT OF JUSTICE,
Washington, D.C., September 20, 1973.

Re Syndicated Features Cases

LAWRENCE J. FOX, Esquire,
Vogel, Chait and Wacks, Maple Avenue at Miller Road, Morristown, N.J. 07960

DEAR MR. FOX: This is in reply to your letter of September 12 concerning the problem that your client, the Morristown Daily Record, has had in attempting to obtain the comic strip known as "Hager the Horrible" from King Features Syndicate. When we spoke about this on the telephone, I explained to you that the Antitrust Division presently has pending three cases challenging the exclusivity practices of three of the major newspaper feature syndicates. I also explained to you that under a ruling of the district court the trial of those cases will be limited in many respects to the territorial exclusivity of the Boston Globe. We are obviously not in a position to deal with individual feature exclusivity problems such as that being faced by your client. We can only hope that eventually the litigation we are now pursuing will result in the elimination of all illegal territorial exclusivity over features.

Sincerely yours,
BRUCE B. WILSON,
Acting Assistant Attorney General, Antitrust Division.
By GERALD A. CONNELL,
Chief, General Litigation Section.

APPENDIX 12

COMMENTS OF THE EVENING NEWS, 25 ELM ST., SOUTHBRIDGE, MASS. 01550

MAY 12, 1975.

I am on vacation in California and normally I would leave the matter of responding to your proposed consent decree until my return to the office. But, as I recall, the deadline for objections is about to lapse. I would deeply appreciate your response to the following objections:

1. The 11,750-circulation cutoff is an arbitrary one that makes no sense. It is particularly questionable because the next paper below that cutoff—the Gloucester Times—is owned by Phil Weld, a former member of the Globe's board.

As with other aspects of the consent decree, the Globe is giving up little and strengthening its position in areas where it is concerned about competition. The Globe is not concerned about competition from the tiny dailies that have to be almost totally local in news content to survive. It is concerned with Quincy, Lowell, Lawrence—papers that have a large enough newshole to include an adequate mix of international, national, and local news as well as syndicated staples. These papers, in turn, face competition from other suburban dailies and weeklies. For example, the Patriot Ledger in Quincy competes in one area with the Dedham Transcript, a new daily that has less than 11,750 circulation. Your 11,750 cutoff, I suspect, will place the Patriot Ledger at a slight disadvantage in its competition with the Dedham Transcript, a prospect that ought to delight the Globe.

There is no justification in the consent decree for a cutoff—11,750 or otherwise—and I would be interested in learning what the justification is from your point of view.

2. The consent decree ignores weeklies. It relies on ABC circulation figures, when weeklies and some dailies distribute many free copies that do not qualify as circulation under ABC guidelines. I can readily conceive of how your agreement would work to the disadvantage of a suburban daily competing with a large saturation-circulation weekly-shopper. I don't think your guidelines respond to the realities of the marketplace.

3. The Globe historically has had first shot at new features in New England. Other papers have been at an unfair disadvantage. The Globe may not even run a feature—just hold it, preventing other papers from getting it. The consent decree does not respond to the arrangement whereby the Globe gets to see features first and lock them up.

4. In addition, the once-every-two-months guideline is inadequate and does not serve the public interest. It means that the Globe can prevent most of the residents in the eastern half of Massachusetts from reading the views of a columnist by publishing that columnist only six times a year. The standard should be very much tougher. Also, there should be some way for all papers to run a syndicated feature after it has run in the Globe; the Globe should not be permitted to keep a paper from running a particular syndicated column or cartoon forever.

5. The county definition of a circulation penetration makes no sense. Cambridge, right across the river from Boston, and Framingham are in the same county. But the Globe's penetration of the two cities is significantly different. In Framingham it is below 20 percent. And yet the South Middlesex County News would be forced to operate under what I regard as an unfair arrangement.

There is a certain irony in this aspect of your consent proposal. It was the government's ruling that the Boston Herald-Traveler had to divest itself of its television station that led to the merger of the Herald-Traveler and the Record-American. That merger has not been a success and the Globe has been able, as a result, to increase rather easily its circulation among former Herald-Traveler readers. In three counties (Essex, Plymouth, and Barnstable) between 1972–1974, the Globe went above 20 percent of the households, thanks, I suspect, to the government's ruling in the Herald-Traveler case. Now we have the government saying that the 20 percent penetration level is adequate to prevent other dailies from publishing features that the Globe publishes. Is the government really concerned about encouraging newspaper competition? I ask this seriously, not rhetorically.

6. Judging from the way it is cutting its coverage of northern New England, the Globe is not particularly concerned with the extent of its circulation in most of that area. So when it gives of exclusivity in those areas it really isn't giving up anything. But you do not serve the best interests of the public or the press when you legitimize exclusivity in those areas around Boston where real competition does exist. I would prefer no consent decree to one that creates bad law—one that protects a metropolitan daily against the only competition it receives.

I believe that the best policy would guarantee a completely free marketplace. We are dealing here with ideas and information, not shoe polish or soda pop. A democracy requires the best informed public it can get. That is why wire services needed to be available to all papers and that is why syndicated material needs to be available to all papers. Territorial excusivity shoud be barred.

If the Justice Department feels it must compromise, perhaps it can justify arguing for a restriction involving only the city of publication. But I do not feel the Justice Department is doing its job by conceding anymore than that. An important principle is involved. The press and the public would be better served by the Justice Department going to trial for what is right than being a party to a consent decree that legitimizes unfair competition and discourages the free flow of information and ideas. When it comes to information and ideas, any restraint of trade is unreasonable.

I remember when I bought The Evening News in 1969. I was liberal and wanted the best liberal cartoonist—then Mauldin or Herblock—in my paper. But the Globe locked out The Evening News. Since the Globe is liberal, I can foresee it continuing to prevent the best liberal comment and cartoons from appearing in other papers simply by exercising its preference for liberal syndicated material. I don't think the public is served by the resulting narrowness of choice in columnists and cartoonists.

Of course when I bought Oliphant—the Globe had not yet begun to print his cartoons, as I recall—I could not prevent the Globe and other papers from publishing him. The one-way exclusivity strikes me as unfair.

Enough. I look forward to your response.

Sincerely,

LOREN GHIGLIONE,
Editor and Publisher

APPENDIX 13

COMMENTS OF THE LOWELL SUN PUBLISHING CO., LOWELL, MASS.

MAY 15, 1975.

In accordance with the notice in 40 FEDERAL REGISTER, Vol. 40, No. 55, page 12,687, enclosed please find Comments of Lowell Sun Publishing Company on the above matter.

Very sincerely yours,

GOLDMAN, CURTIS, CASHMAN, LEAHEY & LATHAM

By ROBERT H. GOLDMAN,

The Lowell Sun Publishing Company (hereinafter sometimes referred to as "The Sun") hereby makes its comments concerning the Proposed Consent Judgment between the plaintiff and the defendants, Globe Newspaper Company ("Globe") filed in the above action on March 5, 1975. Such comments are made and filed pursuant to 15 U.S.C. 16 (d), (e), and (f) and pursuant to notice published in the FEDERAL REGISTER, Vol. 40, No. 55, March 20, 1975.

STATEMENT OF INTEREST

The Lowell Sun Publishing Company is the publisher of the daily (afternoon) Newspaper The Lowell Sun and the Sunday newspaper The Sunday Sun both published in Lowell, Middlesex County, Massachusetts.

The total circulation of The Lowell Sun (daily) is 55,725 and The Sunday Sun is 46,300 (Audit Bureau of Circulation figures).

The Lowell Sun has several editions which are primarily distributed in the following communities:

The City Edition is primarily distributed in Lowell. The first Metro Edition is primarily distributed in Westford, Littleton, Ayer, Shirley, Townsend, Pepperell, Dunstable, Groton, and Harvard. The second Metro Edition is primarily distributed in Wilmington, Burlington, Bedford, Concord, Acton, Maynard, Boxboro, and Carlisle. The Suburban Edition is published in Lowell and primarily distributed in Chelmsford, Billerica, Tewksbury, Dracut, and Tyngsboro.

For many years The Lowell Sun and The Sunday Sun have tried unsuccessfully to obtain a number of features licensed under territorially restrictive agreements of the Globe.

REFERENCE TO AND ADOPTION OF CERTAIN COMMENTS MADE BY OTHER INTERESTED PARTIES

The Sun has read the comments of George W. Prescott Publishing Company of Quincy, Massachusetts, Publisher of The Patriot Ledger with respect to this proposed Consent Judgment, and approves and adopts pages 5–6.

"B. The Use Of Combined Morning And Evening Circulation Figures Is Unrealistic In The Greater Boston Newspaper Market And Unduly Favors The Globe".

Also, pages 6–7:

"C. The Use Of County Circulation Figures Is Unrealistic In Eastern Massachusetts."

(With particular reference to Middlesex County in which The Sun primarily circulates.)

Also, pages 9–10.

"E. The Proposed Provisions For Abandonment of Exclusivity Over A Particular Feature Are Insufficiently Strict."

And, pages 10–11:

"F. In Any Event, The Notice Provisions Of The Proposed Consent Judgment Are Inadequate."

FURTHER COMMENTS

1. *Under the Proposed Consent Judgment the Globe gives up little or nothing.* The Sun strongly adopts the language used on pages 3 and 4, being paragraph IIA of the Patriot Ledger's Statement of Interest and because of its importance repeats it here, merely substituting one phrase particularly applicable to the Sun.

"Under the Proposed Judgment, the Globe will still be able to insist on exclusivity in any county in which it '(1) has a Combined daily Circulation equal to at least 20% of the Households in the county, and (2) has a Combined daily circulation equal to at least 5,000 copies' (Proposed Judgment, Sec. V). This would preserve exclusivity as to six eastern Massachusetts counties—Essex, *Middlesex*, Norfolk, Suffolk, Plymouth, Barnstable. (See Chart attached to Competitive Impact Statement filed March 5, 1975) (Emphasis Supplied).

"It would appear at first glance that such a settlement includes substantial concessions by the Globe whose prior exclusivity often also encompassed the three northern New England States and the other Massachusetts counties east of Worcester (Competitive Impact Statement, p. 3).

"However, a further look at the Globe's 1974 circulation figures as attached to the Competitive Impact Statement shows otherwise: The 1974 circulation did not exceed 1,000 or 3% of the households in any Maine or Vermont county. In New Hampshire, the highest circulation was 4,114 in populous Hillsboro County and highest penetration 11.0% in rural Carroll County. The largest circulation in any Massachusetts county on

which exclusivity is being yielded was Worcester where 6,814 amounted to 3.4% of the households. It thus appears undisputable that the Globe is giving up exclusivity only in areas where its presence in the market is marginal at best.

"On the other hand, the 20% figure is extremely favorable to the Globe. Were that level to be raised a mere 2% exclusivity would be lost in three of the six counties for which it is to be retained, namely, Essex, Plymouth and Barnstable.

"The Globe does not, of course, license all available features and it is suggested in the Competitive Impact Statement (p. 6) that there "are large numbers of syndicated features available to (those prevented from licensing Globe features) other than the approximately 120 features that the Globe licenses."

From the point of view of the Sun, this argument in the C.I.S. overlooks three vital points.

"First, the other Boston daily licenses between eighty and one hundred other features. Second, the two Boston dailies have between them almost all the most popular comics and columnists. Third, as a practical matter, a syndicate salesman will ordinarily approach the city dailies first with any new feature.

"In summary, the Proposed Consent Decree provides for the Globe to give up nothing of substance. Rather what it really does is strengthen the Globe's legal position on feature exclusivity in all areas where the Globe has any significant circulation."

II. It is indeed puzzling as to why the government, which took such a strong position in its briefs filed in this case, now is willing to go along with a Proposed Consent Judgment so favorable to the Globe. In its original Conclusion on its brief filed October 18, 1974, the Globe said:

"We believe that the evidence to be offered at the trial of these cases will show that the Boston Globe's territorial exclusivity agreements with feature syndicates represent an irrational, unreasonable and illegal practice that does not enhance the value of the licensed features to the Globe, and that unreasonably conflicts with the public interest in the *broad dissemination of information.*" (Brief p. 23). (Emphasis Supplied).

In discussing the evidence, the government said on page 16 of its brief:

"The evidence will show that the newspapers excluded by the Boston Globe from licensing certain syndicated features are significantly different from the Globe and from each other insofar as their news coverage is concerned and insofar as their advertising copy is concerned, since they will draw their basic news coverage and advertising lineage from their own locality. *This evidence will support the inference that the circulation of another newspaper otherwise offering a vastly different content will not be enhanced at the expense of the Globe if it is able to publish some of the same features that appear in the Globe.*" (Emphasis Supplied).

Yet now the "Competitive Impact Statement" attached to the proposed Consent Decree states that:

"It does not appear that the exclusivity permitted to the Globe by the proposed consent judgment *will affect the ability of those newspapers that may continue to be prevented from licensing features licensed to the Globe to operate profitably.* There are large numbers of syndicated features available to them other than the approximately 120 features that the Globe licenses. Moreover, to the extent that Globe *features exclusivity over these newspapers can be said to have the effect of materially assisting the Globe to sell newspapers in competition with them it would, under the Government's theory of the case, be justifiable.* The Government's claim was that the agreement of a syndicate with the Globe not to license features to others was an unreasonable restraint on the trade in those features only to the extent the restriction was not needed by the Globe in order to benefit its use of the features." (p. 6–7) (Emphasis Supplied).

In the last quote from the Competitive Impact Statement, the Government apparently concentrated on whether The Sun and other papers in the particular counties affected may still "operate profitably". In its brief referred to above, the Government indicated that The Sun and other papers would not have their circulation enhanced at the expense of the Globe, if able to publish some of the exclusive Globe features. But the Impact Statement indicates that the Globe exclusivity may well have the effect of "materially assisting the Globe" to sell newspapers in competition with the other newspapers prevented from licensing Globe exclusivity features. Such inconsistencies in the Government's theories are most interesting. It is also interesting that the government is deciding that sufficient other features are available rather than permitting publishers to decide which features to publish. Even if there were 12,000 rather than 120 (as alleged by the government) other features available, no mention has been made relative to the quality of such features from an individual publisher's rather than the government's point of view.

We can only agree with the Government's original position on the Government's interest in "broad dissemination" of information and quote from the Government's brief, pages 9 and 10:

"In 1945 the Supreme Court struck down bylaws of Associated Press that restricted access to that organization and to the news it disseminated. Those bylaws 'prohibited all Associated Press members from selling news to non-members, and . . . granted each member power to block its non-member competitors from membrship.' (Associated Press v. United States, 326 U.S. 1, 4, (1945). In rejecting the contention that the restrictive bylaws were protected by the First Amendment, the Court said that:

" 'The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all and not for some. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests.' (326 U.S. at 20).

"In June of this year the Supreme Court reaffirmed its dedication to that proposition. In Miami Herald Publishing Co. v. Tornillo, 42 U.S.L. Week 5098, 5101–02 (U.S. June 25, 1974), it quoted with approval the above language from the AP decision."

As the Government's brief said also at page 11:

"The evidence will establish that the exclusive territorial agreements of the Globe, restricting the distribution of syndicated features are unreasonable restraint of the trade in features because they are not necessary to the Globe's obtaining any benefit from the use of the features. We would add only that *we are not challenging in these cases the Globe's exclusivity over the other Boston daily newspaper of general circulation, although we do not concede that such exclusivity is justifiable. The apparent lack of any interest by newspapers published in the same city for access to each other's features is the reason for this position.* We seek an adjudication that *in all other respects the Globe's exclusive agreements are violations of the Sherman Act.*" (Emphasis Supplied)

CONCLUSION

As one of the newspaper publishers that will, in all likelihood, continue to remain under the umbrella of the Globe's exclusive contracts—that will be unable to obtain licenses to publish features which, in its opinion, would be the most suitable features for its newspapers, the Lowell Sun Publishing Company respectfully requests that the Proposed Consent Decree not be allowed and barring a meaningful Consent Decree that this case proceed to trial.

By its attorneys.
Respectfully submitted,

GOLDMAN, CURTIS, CASHMAN,
LEAHEY & LATHAM,
By ROBERT H. GOLDMAN.

APPENDIX 14

COMMENTS OF MALDEN PUBLICATIONS, INC., MALDEN, MASS.

MAY 15, 1975.

In accordance with the notice in FEDERAL REGISTER, Vol. 40, No. 55, page 12,687, enclosed please find Comments of Malden Publications, Inc. on the above matter.

Very sincerely yours,

GOLDMAN, CURTIS, CASHMAN,
LEAHEY & LATHAM,
By ROBERT H. GOLDMAN.

Malden Publications, Inc. (hereinafter sometimes referred to as "Malden") hereby makes its comments concerning the Proposed Consent Judgment between the plaintiff and the defendant, Globe Newspaper Company ("Globe") filed in the above action on March 5, 1975. Such comments are made and filed pursuant to 15 U.S.C. 16 (d), (e), and (f) and pursuant to notice published in the FEDERAL REGISTER, Vol. 40, No. 55, March 20, 1975.

STATEMENT OF INTEREST

Malden Publications, Inc. (Malden) publishes, among other newspapers, the Malden Evening News. The Malden Evening News, is an evening newspaper published in Malden, Middlesex County, Massachusetts and distributed Monday through Friday primarily in Malden, Melrose, Everett, Medford, and Revere. Its daily circulation exceeds 12,000 copies.

For many years, Malden has attempted to obtain a number of features for which the Globe has territorily restrictive licenses to publish. Malden has thus been unsuccessful in obtaining licenses to publish such features.

ADDITIONAL COMMENTS

Malden by its comments herein wishes to emphasize its view that by the proposed consent decree the Globe has lost little or no exclusivity with respect to its licensed features.

The Government presented a very strong indication of illegality of the Globe's licensing agreements in its trial brief even refusing to concede that the exclusivity with respect to the other Boston newspaper of general circulation is justifiable. (The Government failed to press its position with re-

spect to access of the Globe's features by such newspaper only because it showed no interest in obtaining such feaures (Government brief, page 11)). However, in the proposed consent decree the Government has permitted the Globe to maintain its territorially exclusive agreements in areas where there is any circulation of the Globe other than marginal circulation. The Government has permitted this exclusivity to continue even after claiming in its brief (p. 16) that lack of such exclusivity would not be detrimental to the Globe since such newspapers do not compete with the Globe but serve mostly local areas as to their news coverage and advertising.

In its Impact Statement (pp. 6 and 7), the Government seems to reverse its former position and permit exclusivity to continue so long as other newspapers can continue to operate "profitably"; however, the Government does not discuss whether other newspapers might operate more profitably and competition be enhanced by obtaining such features.

More importantly, the proposed consent decree imposes substantial limitations on the freedom and ability of a substantial number of newspaper publishers, including Malden, which will receive no relief from the proposed consent decree in choosing what they deem necessary to print in their newspapers.

CONCLUSION

For the reasons stated above, Malden Publications, Inc., respectfully urges that the proposed consent decree not be accepted.

By its attorneys.

Respectfully submitted,

GOLDMAN, CURTIS, CASHMAN, LEAHEY & LATHAM,
By ROBERT H. GOLDMAN.

APPENDIX 15

COMMENTS OF SALEM EVENING NEWS PUBLISHING CO., SALEM, MASS. SUBMITTED BY WILLIAM J. TINTI, ESQ., 70 WASHINGTON ST., SALEM, MASS. 01970

MAY 16, 1975.

Enclosed please find a copy of the Comment of Salem Evening News Publishing Company with respect to proposed Consent Judgment filed March 5, 1975 with regard to the above captioned matter.

Yours sincerely,

WILLIAM J. TINTI,
Attorney for
Salem Evening News.

Pursuant to the provisions of 15 U.S.C. 16 (d), (e) and (f) and in accordance with notice published in the FEDERAL REGISTER March 20, 1975, the Salem Evening News Publishing Company files hereunder its comments with respect to the Proposed Consent Judgment between plaintiff and defendant Globe Newspaper Company ("Globe") filed in this action on March 5, 1975.

STATEMENT OF INTEREST

The Salem Evening News Publishing Company ("Salem News") is the publisher of the Salem Evening News, a newspaper published in Salem, Essex County, Massachusetts.

The Salem Evening News is an afternoon paper published Monday through Saturday.

The area of circulation includes sixteen cities and towns in Essex County, Massachusetts. The communities are located North and Northwest of Boston. The total circulation as of March 31, 1975, as certified by the Audit Bureau of Circulation was 30,703.

One edition is published each day with international, national, state and local news, editorials, cartoons, features and advertising. Certain sections of the paper are directed specifically at certain cities and towns within the circulation area of the paper.

The Salem Evening News has attempted, without success, to obtain a number of features licensed exclusively to the Globe Newspaper Company. Specifically, the Salem Evening News has attempted to purchase, among others, Ema Bombeck, David Broder, Mauldin, Herblock, Doonesbury, Andy Capp, Broomhilda and the Wizard of Id.

Similarly, the Salem Evening News has attempted without success to obtain the Knight News Service licensed exclusively to the Globe Newspaper Company.

As a matter of policy, the Salem Evening News does not ask exclusively on any syndicated feature carried by it.

James M. Shea, Editor of the Salem Evening News was designated as a Government witness for the trial of this action and his deposition was taken by the Globe on July 29, 1974.

COMMENTS

The proposed consent Judgment is not in the public interest in that the United States did not consider the competitive impact within the newspaper industry of the Consent Judgment.

This suit was originally commenced by the United States charging the defendants with an unreasonable restraint of interstate trade and commerce in violation of section 1 of the Sherman Act. The complaint of the United States stated that the unreasonable restraint of trade consisted in the fact that the defendants licensed features on an exclusive basis within an arbitrary and unreasonably broad territory surrounding the contracting newspaper's city of publication. The effect of that action was to deprive arbutrarily other newspapers of the opportunity to obtain the same features.

The United States argued in its Complaint that the exclusivity should be limited to a newspaper's city of publication. Judge Wyatt held that the test of the case would be on the issue of whether the exclusive territories granted to contracting newspapers are greater than needed to protect such newspapers in the use of the purchased features.

"United States vs. Chicago Tribune—New York Times Syndicate Inc." 309 Federal Supplement 1301 at pg. 1308.

If the Consent Judgment is to be in the public interest, then it must provide some relief in regard to the claimed restraint of trade set forth in the United States Complaint and trial brief.

The fact is that the Consent Judgment does not accomplish that purpose.

Instead of arriving at some form of compromise that would take into consideration the need of the Boston Globe for exclusive territory from the standpoint of legitimate competition, the United States and the defendants have agreed to establish arbitrary and meaningless limitations on the exclusive territory of the Boston Globe.

The Consent Judgment establishes mathematical computations that would limit the Globe's area of exclusivity with the primary tests being Globe penetration of any County up to 20 percent of the households and 5,000 copies, both on the basis of combined morning and evening Globe circulation.

A detailed examination of the Globe's 1974 circulation figures as attached to the Competitive Impact Statement show that exclusivity is surrendered only in those areas where the Globe's circulation is unimportant. For example, the 1974 Globe circulation did not exceed 1,000 or 3 percent of the households in any Maine or Vermont county. In New Hampshire, the highest circulation was 4,114 and the highest penetration 11 percent. The largest circulation in any Massachusetts county on which exclusivity is being yielded is Worcester, where 6,814 amounts to only 3.4 percent of the households. Similarly, the 20 percent figure gives up little of the Globe's exclusive territory. Were the 20 percent level to be raised a mere 2 percent, exclusivity would be lost in three of the six counties for which it is to be retained, namely Essex, Plymouth and Barnstable.

In no instance does the United States explain how these arbitrary computations are established on the issues of competition or restraint of trade.

In fact, the United States admits in its Competitive Impact Statement that no alternative was considered to the arbitrary standards established in the Consent Judgment except the prosecution of the case.

The conclusion appears to the Salem Evening News that no real attempt was made to frame a Judgment which would alleviate the injury claimed in the original complaint. The injury consists of a restraint of trade not required by the legitimate needs of competition.

The Government claims in its Competitive Impact Statement, thta the Consent Judgment represents "a substantial reduction in Globe exclusivity" (Competitive Impact Statement, pg. 9). On the basis of actual circulation, however, the Globe retains 92% of its exclusivity. It is difficult to characterize such a minimal reduction as "substantial."

The Competitive Impact Statement of the United States also states that no serious anticompetitive effects would "result from the Globe exclusivity permitted by the Judgment" (Competitive Impact Statement pg 9). Similarly, the argument of the United States is that "it does not appear that the exclusivity permitted to the Globe by the proposed Consent Judgment will affect the ability of those newspapers that may continue to be prevented from licensing features licensed to the Globe to operate profitably" (Competitive Impact Statement pg. 6).

At the present time, all newspapers are treated equally in being excluded from features licensed to the Globe.

If the Consent Judgment proposed by the United States is accepted, then some newspapers will be treated differently than others and the issue is raised as to the competition between those newspapers.

For example, Salem Evening News is in direct competition with the Beverly Times, a newspaper with a circulation of slightly under 10,000 while the circulation of the Salem Evening News is over 30,000.

Under the proposed Consent Judgment, the Globe's exclusive control on features is limited to newspapers that have a circulation over 11,750; newspapers with circulation under that number would be free to license all features licensed by the Globe.

If this Consent Judgment were carried out, then the Beverly Times would be given an unfair competitive advantage over the Salem Evening News in that it would be able to run features unavailable to the Salem Evening News.

In effect, the Government is imposing a form of restraint of trade which presently does not exist.

It certainly cannot be the intention of the United States to create additional competitive hardships over and above the violations that are the cause of this action.

Yet the effect of the Consent Judgment will be to establish a Government imposed system of unfair competition.

The Salem Evening News is also in competition with the Gloucester Times, a daily newspaper with a circulation of 11,194 which is owned by the same publishing company, Essex County Newspapers, Inc., as the Beverly Times. Once again, the Salem Evening News will find itself at a severe competitive disadvantage as against the Gloucester Times

if the Consent Judgment, with its arbitrary figure of 11,750 is accepted by the Court.

Why should a newspaper with a circulation of 12,000 be in competition with the Boston Globe, while a newspaper with a circulation of 11,000 is not in competition with the Boston Globe? The United States make no attempt to answer this question in its competitive Impact Statement.

The Salem Evening News finds itself severely threatened by a proposed settlement of a case in which it was looking for relief. If the case was tried and the Government failed to sustain its allegations, then the Salem Evening News would be no worse off than it presently is; but, if this Consent Judgment is allowed, then the Salem Evening News will suffer new and serious economic damage.

Furthermore, the circulation figures upon which the Proposed Consent Judgment and the Competitive Impact Statement are based are "Combined Daily Circulation" which is defined to mean "the sum of the defendant Globe Newspaper Company's morning and evening circulation" (Proposed Judgment, see II (F)).

The papers identified in the Competitive Impact Statement, as adversely affected are the "newspapers published in the Massachusetts cities of Boston, Quincy, Brockton, Lowell, Lawrence, Framingham, Lynn, Salem, Haverhill, Hyannis, Waltham and Walden." (Competitive Impact Statement pg. 5.) None of these papers have both a morning and an evening edition. The other Boston daily (The Boston Herald American) publishes in the morning only. The remaining eleven papers mentioned, including the Salem Evening News, do not publish in the morning and are strictly evening papers.

The morning Globe circulation figures, which are substantially larger than the figures for the afternoon Globe, are being used as if they competed with the afternoon local papers which are published and read some twelve (12) hours later.

Therefore, the use of "combined daily circulation" unduly weights the County circulation numbers and percentages of the Globe. Only the afternoon edition circulation numbers should be used if the logic with which the United States began this case is not to be abandoned along the way to the Consent Judgment.

The question must also be raised as to the use of County lines for determining exclusivity. The Commonwealth of Massachusetts has counties that are completely unlike the compact and powerful political entities that exist in other states. In Massachusetts, the counties were established prior to the foundation of this Country and exhibit all the idiosyncracies of ancient time.

Essex County stretches from the urban fringe of Boston to suburbs to older independent cities with their own suburbs. Connecting a 20 percent Globe circulation figure in Essex County to the right of the Globe to retain exclusivity throughout the county does not make sense from the standpoint of competitive need.

Another failure of the Proposed Judgment exists in its allowance of the Globe to retain exclusivity even though regular use is not made of a feature. The Globe need only publish a feature once every two months and even this rule is relaxed if the feature is not made available to the Globe by the syndicate for more than two weeks during such period. In effect, the Globe is allowed to continue to hoard all the best features even though they do not print them, which the United States characterizes in its Trial Brief as "a naked restraint of trade".

The proposed Judgment also fails to make any provision for notice to the newspapers which are to be excluded from the Globe licensed features by the calculations established by the Judgment. Since there may be legitimate argument on such calculations, the minimum requirement of justice is for notice to the newspapers effected.

For these reasons and in accordance with these comments, the Salem Evening News contends that the entry of the proposed Consent Judgment would grieviously violate the public interest in that it not only fails to mitigate the original alleged violations, but complicates the situation by imposing, in effect, a government ordered unfair competition by allowing exclusivity to be applied in an unfair and haphazard manner over some newspapers and not others, and further, that the Salem Evening News would suffer greater injury from the entry of the Consent Judgment than from any determination of the issues at trial.

SALEM EVENING NEWS,
BY WILLIAM J. TINTI.

APPENDIX 16

COMMENTS OF THE JOURNAL PUBLISHING CO., INC., MANCHESTER, CONN., PUBLISHER OF THE JOURNAL-INQUIRER, A DAILY NEWSPAPER CIRCULATING IN TOLLAND AND HARTFORD COUNTIES IN CONNECTICUT

MAY 28, 1975.

Enclosed you will find two copies of the comments of the Journal Publishing Company, Inc., publisher of the Journal-Inquirer, with respect to the proposed consent decree and the competitive impact statement in the Syndicated Features Cases.

Inasmuch as the procedures are new and somewhat unclear, we have sent a copy to the District Court.

Very truly yours,

ETHEL S. SOROKIN.

I. INTRODUCTION AND THE CONTEXT OF COMPETITIVE IMPACT STATEMENT

In November, 1967, the United States brought an anti-trust action against three major syndicates which license feature materials to newspapers throughout the nation. The government alleged that the syndicates' practices of contracting for the feature itself, and contracting to prevent use of the feature by other newspapers outside the city of publication of the licensee were unlawful restraints of trade. The government asserted these practices were detrimental in that they extended monopoly rights to one newspaper at the expense of others, and that they impaired reasonable access of the public to newspaper material controlled by the syndicates.

In 1972, over the government's objections, the syndicates succeeded in having a newspaper joined as an indispensible party. Thus the Globe Newspaper Company, publisher of the Boston Globe, a daily and evening newspaper, controlling exclusive publication rights to some 120 features in four states, become a party defendant. Extensive discovery was undertaken by all parties and the cases were prepared for trial.

On March 5, 1975, however, the United States, pursuant to stipulation, submitted a proposed consent judgment which would bind only the Globe, not the syndicates. Neither the proposed decree nor the government's competitive impact statement resolves or illuminates the anti-trust issues raised by the original complaint. Indeed, the competitive impact statement completely fails to fulfill the governing procedural and policy requirements of the Anti-Trust Procedures and Penalties Act, (P.L. 93-528, 88 Stat. 1706, December 21, 1974):

1. Only one defendant, the Globe, is affected;

2. No allusion is made to the plans of the government with respect to the original defendants, the syndicates;

3. There is no indication of the standards or guidelines to be applied to the objectionable practices of the syndicates with respect to newspapers other than the Globe;

4. The proposed consent decrees previously considered by the government and the syndicates, prior to the entry of the Globe as a party defendant, are undisclosed;

5. Although the statute requires that the basis for the consent proposal and the alternatives actually considered be set forth, the competitive impact statement makes only cursory reference to them.

As a result, it is impossible for the Court to discharge its statutory mandate with respect to the proposed decree, viz, to "determine that the entry of such judgment is in the public interest." Section 2e.

Further proceedings are necessary before the proposed consent decree can be intelligently evaluated in accord with statutory requirements.

THE DEFICIENCIES OF THE PROPOSED DECREE AND THE COMPETITIVE IMPACT STATEMENT ARE HIGHLIGHTED BY THE JOURNAL INQUIRER INTERESTS AND EXPERIENCES

These comments by the Journal Inquirer, a relatively young, small, daily newspaper circulating in ten Connecticut towns on the fringes of the metropolitan area of Hartford, are submitted with the conviction that the proposed consent decree ignores the crucial anti-trust issues raised by the original government complaint. More importantly, the decree fails to protect young, developing newspapers such as the Journal Inquirer. Thus, rather than exploring the adverse impact of objectionable practices of territorial exclusivity, the proposed decree, in effect, institutionalizes exclusivity. The Journal Inquirer respectfully submits that its recent licensing experiences with the syndicates during the pendency of the proposed Globe decree—show the need for standards and guidelines binding on the syndicates. The Journal Inquirer strongly suggests that the proposed decree, while ostensibly binding only the Globe, will be relied upon by the defendant syndicates to shape syndicate dealings with hundreds of newspapers throughout the United States. The experiences of the Journal Inquirer are an independent cause for rejecting the proposed Globe consent judgment.

The Journal Inquirer, like other young newspapers, has sought for years to secure features essential to effectively compete with the dominant newspapers in large cities. But despite conscientious effort over the last several years, the Journal Inquirer has been unable to obtain the features it desired. Those features were "unavailable" presumably because older and more established newspapers, such as the Hartford Times and Hartford Courant, already had the exclusive right to the features—not only in Hartford and the seven immediately continuous towns but also in the more outlying areas where the Journal Inquirer was developing its circulation.

Stimulated by publicity surrounding the government's anti-trust action against the syndicates, the Journal Inquirer renewed its

efforts to secure desired syndicated features in the last six months. On December 12, 1974, the Journal Inquirer sought Bill Mauldin cartoons and the Ann Landers column from Publisher—Hall Syndicate—Field Enterprises (Exhibit A attached hereto) but received no response. On January 6, 1975 (Exhibit B), the request was renewed and on January 15, 1975, the Journal Inquirer was notified by telephone that both features were unavailable because of "contractual limitations." (Exhibit C). On March 13, 1975, the Journal Inquirer sought At Wits End by Erma Bombeck from the Field syndicate and was advised by telephone that the matter would be checked again after the consent decree was entered. (Exhibits D, E). The Journal Inquirer's March 19, 1975 request for Peanuts was declined by United Features on March 24, 1975 because of a "prior contractual commitment." (Exhibits F, G).

The Journal Inquirer's efforts to obtain the Chicago-Tribune syndicate's feature Dear Abby confirm the procedural necessity for inclusion of all syndicate defendants in any disposition of the pending anti-trust litigation. That same experience illustrates the danger implicit in premature entry of a proposed consent decree against the Globe alone. As a result of efforts commencing on February 24, 1975, the Journal Inquirer received a Dear Abby license from the Tribune on March 19, 1975. Within a week, the Journal Inquirer learned that its license was to be terminated forthwith, because another Connecticut newspaper "objected vociferously." (Exhibit H). The threatened termination of Dear Abby raised, in the opinion of Journal Inquirer counsel, serious anti-trust questions under Klor's Inc. vs. Broadway Hale Stores, 359 U.S. 207 (1969), Associated Press vs. United States, 326 U.S. 1 (1945) and Albrecht vs. The Herald Company, 390 U.S. 145 (1968). When this concern was raised by the Journal Inquirer's counsel with the Tribune, counsel was told that when the Globe decree became final, termination by the Tribune would be in accordance with that decree and, hence, the termination would be lawful.

The Journal Inquirer promptly instituted an anti-trust and a breach of contract action (Exhibit H) against the Tribune and, not surprisingly, the matter was settled by the Tribune syndicate within a month. Release (Exhibit I).

Syndicates already use the proposed Decree to deny features. The significance of these events transcends the narrow dispute between various licensors and one licensee; there are far more vital issues at stake. In particular, the Journal Inquirer is concerned that well before the acceptance of the proposed Globe decree, to which the Tribune syndicate is not a party, the Tribune syndicate sought to define its rights and obligations by that decree and further, the Field syndicate sought to defer any decision on the Journal Inquirer's rights until the court's determination of the Globe decree. If, as the syndicates believe, the syndicates' conduct, rather than just the Globe's conduct, is to be determined by the Globe decree, then, it is respectfully submitted, that the court should postpone acceptance of the Globe decree until the principal and underlying controversy with the syndicates is settled or adjudicated. To accept the Globe decree without requiring simultaneous relief against syndicates would provide the instrumentality by which the syndicates could force the Globe decree on other newspapers in other areas and, further, could institutionalize, by judicial decree, the objectionable syndicate practice of arbitrary territorial exclusivity. That result would fly in the face of the original concerns of Judge Palmieri when he ordered that newspaper licensees be joined as indispensable parties to the litigation and defeat the original purpose of the United States as set forth in the complaints which initiated these actions over seven years ago.

Thus acceptance of this decree has both far-reaching substantive and procedural penumbra: substantively, the proposal may affect competition and the free development of the press; procedurally, the consent decree process may set the stage for critical judicial and public evaluation of proposed decrees. That these new and crucial issues are set in the context of constitutionally protected First Amendment freedoms makes this particular consent decree one of vital judicial concern. As Justice Black wrote in one of the leading Supreme Court antitrust cases which opened news services to all newspapers:

"The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-government combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom to all and not for some. *Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not.* Freedom of the press from governmental interference under the first amendment does not sanction repression of that freedom by private interests." *Associated Press vs. United States*, 362 U.S. 1, 20 (1945). (Emphasis added).

Disposition of the proposed consent decree must be made by the court in the context of

1. The anti-trust issues as applied to first amendment freedom matters, and

2. The legislative history and purpose of the new anti-trust procedures act.

The Journal Inquirer submits that such an examination will reveal that the proposed consent decree does not serve such history or purposes nor the enforcement of the Sherman Act.

II. SETTLEMENT WITH GLOBE, APART FROM SYNDICATES, IS NOT IN THE PUBLIC INTEREST

An inherent weakness in the anti-trust consent decree process is the tendency of the Antitrust Division to negotiate "consent decrees with fewer than all defendants in a single proceeding" with the resultant possibility that there may be "different judgments applicable to different defendants." ABA Antritrust Law Developments 239 (1975). That inherent weakness becomes a fundamental defect in the proposed consent decree presently under scrutiny. For the proposed decree would bind only a newspaper licensee in a case originally brought against three newspaper syndicate licensors. The proposed decree would leave unanswered and without any standards or guidelines what relief if any would be imposed against the original defendants—the syndicates—the very parties against whom this anti-trust litigation was instigated.

This anti-trust case is now more than 7½ years old. The three complaints were originally filed on November 21, 1967 against three major newspaper syndicates which franchise "feature" (columns, comic strips, puzzles) to newspapers in the United States. Features, the original complaint alleged, "are a substantial part of the makeup of most daily newspapers published in the United States. * * * Inability to supply popular features, significantly limits a newspaper capacity to provide a well-rounded service to its reading public." (P-5).

The original syndicate defendants were the Chicago Tribune New York News Syndicate (67 CIV 4596), Field Enterprises (67 CIV 4597) and The Hearst Corporation (67 CIV 4598). The theory of the complaint was that the syndicate contracts with various newspapers violated Section 1 of the Sherman Act because the syndicate "in licensing features to a contracting newspaper, agrees not to license the features to any other newspaper published within an arbitrary and unreasonably broad territory surrounding the contracting newspaper's city of population" (P-11). The claimed effect of this practice was that:

"(a) Many newspapers throughout the United States have been deprived arbitrarily of the opportunity to obtain certain features;

(b) Substantial members of the public have been denied reasonable access to certain features." (P-3).

In its prayer for relief, the government asked that the contracts in question be decreed in violation of the Sherman Act. Significantly, the government also asked that each syndicate "be perpetually enjoined and restrained from in any manner directly or indirectly continuing, maintaining, or renewing the aforesaid contracts, agreements, and understandings, and from engaging in any practice having the purpose or effect of continuing, renewing or reviving the violations hereinbefore described" (prayer, P-2). The government also asked that each syndicate "be ordered and directed to terminate and cancel each of said contracts, agreements, or understandings or to cause the same to be modified and amended under such terms and conditions as the court may deem just and proper so that such contracts, agreements, or understandings, shall not be in conflict with the anti-trust laws." (*Id.*, P-3).

Shortly after the complaints were filed the defendant moved for dismissal under Rule 12; these motions were rejected by Judge Wyatt in 1970. "United States vs. Chicago Tribune New York News Syndicate, Inc.," 309 F. Supp. 301 (Southern District N.Y. 1970). In so ruling, the court rejected the defendants' claim that: "by reason of the copyright, an exclusive territorial license may be granted, no matter how 'arbitrary' or how 'unreasonably broad' the territory may be". Memorandum for Movant, p. 2, (309 F. Supp. at 1302.)

Thereafter, the defendants, in 1972 under Rule 19, asserted as an affirmative defense the failure to join each newspaper licensee as an indispensable party. On this matter, Judge Palmieri ruled

"The participation of such newspapers as parties is essential to a fair adjudication. No appraisal can properly be made of the reasonableness of any newspaper's exclusive publication rights without a consideration of the factors affecting such licensee's need for territorial exclusivity in its relevant market area. The financial interests and contractual rights of each licensee will be directly affected by the outcome of this litigation and it is inappropriate to permit a continuance of this lawsuit in their absence."

Having made this ruling, the court was concerned about the deplorable "necessity for now reaching a conclusion that may turn this litigation into a vast controversy of almost unmanageable proportions" (Ibid). Accordingly, the court concluded that it was:

"Disposed to direct that the government's claims be confined to one or two geographical areas, by way of severance or otherwise, thus opening the door, hopefully, to possible dispositions by way of settlement in other geographical areas. Initially, and in order to attenuate the burdens on the litigants as well as to the court, the joinder of the independant newspapers could be limited to such area or areas as to which the parties may agree or which the court may direct" (Ibid).

Judge Palmieri took pains to note that "since this law suit cannot now proceed in its present posture without a careful realignment of the parties and the issues and a schedule of procedural priorities with respect to their disposition, counsel are requested to give careful consideration to the provisions of orders to be filed." (1972 Trade Cases at 92,849). Thereafter, an order was entered, the thrust of which was threefold: first, to amend the complaint in selected geographic areas to add newspaper licensees as parties' defendant; second, to limit the trial on such an amended complaint to agreements between named syndicates and named licensees; third, to sever and stay government claims against syndicate defendants in geographic areas where licensee defendants have not been joined as defendants.

The proposed consent decree threatens to overturn the delicate balance struck by Judge Palmieri in 1972 between the "burdens on the litigants and the court" and the "contractual rights of each licensee" which will be "directly affected" by the decree. The vice in the timing of the proposed Globe decree is that it forces the court to determine whether the provisions against the Globe are in the public interest when it has no idea of what if any provisions will apply to the syndicates or what impact the Globe decree will have on other licensees—the very parties Judge Palmieri was seeking to protect in his 1972 order.[1]

Accordingly, the proposed decree may set the standard for unsound settlements between syndicates and licensees actual or potential in other geographic areas. If so applied, the decree will itself establish an arbitrary basis for further exclusivity. Thus, the decree has no significant affect on any newspaper with circulation over 11,750 despite the fact that such a total circulation is small and, as the government itself notes, unlikely to affect competition. Competitive Impact Statement.

Nor does the decree treat equally the positions of two newspapers competing for a particular feature. Thus the one who has obtained territorial exclusivity by a prior contract may retain that benefit in any county in which it has both 20% of the households and a circulation of only 5,000. Yet the excluded newspaper seeking access to the syndicated features cannot obtain the benefit of county by county examination. If a newspaper's total circulation exceeds 11,750, it cannot challenge the exclusion in *any* county even though, as with the Journal Inquirer, circulation in any one county is below the 11,750 cut-off figure.[2]

Equally objectionable is the syndicates' practice of licensing features exclusively to newspapers which do not regularly publish the features; in effect, the newspaper pays for the privilege of denying access of the public to the feature. See Exhibits C & D. The proposed decree recognizes and legitimates this restrictive practice by permitting territorial exclusivity to be retained by the Globe so long as the feature is published at least six times in one entire year of 365 publication days.

Finally, the proposed decree retreats from the prayer in the original complaints which sought cancellation of the syndicates' contracts with the licensees and, as expressed in the plaintiff's trial brief, sought to limit all territorial exclusivity to the city of publication. Neither the decree nor the competitive impact statement sheds any light on why exclusivity should be retained beyond the city of publication. By seeking judicial approval of the very exclusivity practices attacked in the original complaint, the Government, by its proposed decree, forecloses, pro tanto, the possibility of adjudication that exclusivity is unlawful.

III. THE COMPETITIVE IMPACT STATEMENT IGNORES LEGISLATIVE MANDATE AND MAKES IT IMPOSSIBLE FOR THE COURT TO DETERMINE THAT THE PROPOSED DECREE IS IN THE PUBLIC INTEREST.

The government's failure to discuss, in the Competitive Impact Statement the plaintiff's intentions with regard to the syndicates and what injunctive relief, if any, would be entered against the principal defendants, renders the statutory task of the court almost impossible. The very weakness of the government's competitive impact statement are the strengths of the new Anti-Trust Procedures legislation; that legislation, for the first time, involves both the public and the court in a meaningful process of analysis and scrutiny before any consent decree may be accepted. Because the anti-trust procedures legislation is so new and its procedural impact so radical and far-reaching, we consider it important to understand the legislative history and purpose of the act.

Less than six months ago, Congress approved the Anti-Trust Procedures Act, a statute described by its sponsor as the "first significant reform of the antitrust laws in two decades" (Remarks of Senator Tunney, Floor Manager, Cong. Rec., Dec. 9, 1974, S20862). The basic purpose of the legislation was to "ventilate" and "pierce the secrecy" of the consent decree process, (Remarks of Ms. Jordan, Cong. Rec., Nov. 19, H 10764), and to insure that "judges will take a more active role in assesing the worth of the proposed judgments" (Remarks of Senator Tunney, Cong. Rec., Dec. 9, 1974, S20863).

The background of the legislative reforms rests on the hard fact that the vast majority of the civil anti-trust cases are disposed of by consent decree. In fact, between 1960 and 1972, 28 percent of the cases favorable to the government were the result of the entry of a consent decree. (See Hearings on S782 and S108 before the Subcommittee on Anti-trust and Monopoly of the Senate Committee on the Judiciary, 93rd Cong., 1st Session at 7,458 1973)). In each of the fiscal years 1970 through 1972, the percent of anti-trust judgments for the United States represented by consent decrees exceeded 90 percent. American Bar Association Antitrust Law Developments 237 n.57 (1975).

For several decades, there had been considerable Congressional concern about the secrecy surrounding consent decree negotiations, the inability of the public to respond to proposed consent decrees before they became final, and the limited role of the Court in approving consent decrees. See H.R. Rep. No. 2465, 80th Cong. 2nd Session 27 (1948) (House Select Committee on Small Business); Senate Report No. 1855, 85th Cong. 2nd Sess. 13 (1958) (Senate Select Committee on Small Business); Anti-trust Subcommittee of House Committee on the Judiciary, 86th Cong. 1st Sess. ("Consent Decree Program of The Department of Justice.") Congressional testimony on the subject before the 85th and 86th Congresses totaled more than 4,500 pages. After those hearings, the House Anti-Trust Subcommittee concluded: "The consent decree practice has established an orbit in the twilight zone between established rules of administrative law and judicial process." (See H.R. Rep. No. 93-1463) Responding to this Congressional pressure, Attorney General Robert Kennedy, in 1961, instituted an administrative program by which 30 day advance notice of consent decrees would be given. See 28 CFR 501(a). In spite of this administrative reform, the American Bar Association Antitrust Section reported that as of 1975 "the overwhelming majority of consent judgments have been entered routinely in the exact form proposed, 30 days after filing." (ABA Antitrust Law Developments 240).

Congressional interest in the consent decree process was sparked anew during the Watergate era and particularly when concern was raised about the propriety of the I.T.T. consent decree. In the words of Senator Tunney:

"The genesis of this legislation came during the hearings held by the senate judiciary committee on the nomination of Richard Kleindienst. The hearings which quickly became known as the ITT hearings, because the major issue involved allegations that a massive behind closed doors campaign resulted in halting the Justice Department's prosecution of the ITT case and its hasty settlement favorable to the company. * * * As a result of the information generated during the ITT hearings, Senator Gurney and I introduced a bill in the fall of 1972 to prevent backroom

[1] The governments competitive impact statement asserts: "Following joinder of the *Globe* as a party the rest of the Government's claims against the syndicates were severed and stayed pending a resolution of the claims involving the Globe exclusive territories over syndicated features." (Competitive Impact Statement, P-1). This statement is potentially misleading if it suggests that the severence order precluded the government from proceeding simultaneously against the syndicates and the Globe. We do not understand that to be the result of Judge Palmieri's 1972 order, and we are unaware of any subsequent order to that effect. Cf Plaintiffs Trial Brief, October 18, 1974, p. 3: "The Court * * * (Judge Palmieri in his August 1972 opinion) ordered that such joinder be made, with the rest of the government's claims against the defendant syndicates to be served and stayed pending the trial of the claims against the syndicates and the newspapers joined as parties. On December 6, 1972, an order to this effect was entered." It may well be appropriate for the government, in its response to these comments, to resolve potential inconsistencies.

[2] See Circulation 74/75: Annual Penetration Analysis of Major Print Media by American Newspaper Markets, Inc: 1974, based on Audit Bureau of Circulation Report (ABC) attached hereto as Exhibit J: Journal Inquirer circulation in: Tolland County (5 of 13 towns), #7395, 23.2%; Hartford County (5 of 29 towns), #8406, 3.1%. Total Journal Inquirer ABC Circulation 1974, 15801.

deals in the consent decree process for the department of justice." Congressional Record, December 9, 1974, S20862. See also Congressional Record, November 19, 1974, H10763 (remarks of representative Holtzman) ("The intention * * * is * * * to avoid the kind of secret negotiations which occurred in the ITT matter. * * *")

Thus Watergate and ITT provided the impetus for legislation which was adopted by the Senate by an unusual roll call vote of 92–0.

The underlying legislative purpose is clear. As the House Report unambiguously declared: "given the high rate of settlement in public anti-trust cases, it is imperative that the integrity of and public confidence in procedures relating to settlements via consent decree procedures be assured." H.R. Rep. No. 93–1463, Oct. 11, 1974. The statute was enacted in recognition of the fact that "the public does have an interest in the integrity of judicial procedures incident to the filing of a proposed consent decree by the Justice Department. * * *" (Ibid)

Similar legislative concerns were voiced in the Senate. The Senate Report explains that the bill was designated to permit the district courts to "make an independent determination as to whether or not the entry of a proposed consent judgment is in the public interest as expressed by the anti-trust laws." (S. Rep. 93–298, 93d Cong. 1st Sess. at 4) (Emphasis added). The Senate Committee expressed its concern that "anti-trust violators wield great influence and economic power" and "can often bring significant pressure to bear on government, and even on the courts, in connection with handling of consent decrees." The bill recognizes that in some instances there may be a need for additional participation by interested parties in the approval of consent decrees" and "seeks to encourage additional comment and response by providing more adequate notice to the public." (*Id.* at p. 5)

A dominant legislative purpose which emerges from the hearings and reports is that the public and other interested nonparties be placed in a position to comment effectively on the substance of the proposed decree. Congress believed it was passing significant new legislation to achieve this purpose of opening up the entire consent decree process. As Senator Tunney explained:

"The senate bill was the first significant reform of the anti-trust laws in two decades. It opened up the consent decree process, by requiring the Justice Department to file with the Court and publish an 'impact statement' explaining the background, purpose and effect of each proposed consent decree. . . . Through these reforms, I am convinced that the consent decree process will be opened up to significant public scrutiny, and judges will take a more active role in assessing the worth of the proposed judgments." (Cong. Rec. Dec. 9, 1974, S20862–63).

Similar sentiments were echoed in the House. Representative McClory declared: "S782 opens these pre-trial settlement procedures to public scrutiny. * * * Federal judges are to determine the proposed consent judgments in the public interest—a provision intended to eliminate district court 'rubber stamping' of proposals submitted by the Justice Department * * * This measure will bring all aspects of the case that result in a consent decree out into the open. * * * Those who wish to comment on a proposed consent decree will be given far greater opportunity under the bill as amended." (Cong. Rec. Nov. 19, 1974, H.10761–62).

Representative Jordon echoed a similar point of view:

"Basic to the wide support commanded by this bill is its simple purpose: to ventilate the consent decree process by which the Justice Department disposes of more than 80 percent of all anti-trust cases. * * *

"* * * In addition, [the bill] provides procedures to be employed by the courts upon the submission to it of a proposed consent judgment. During testimony on the bill it was pointed out that some members of the bar felt district courts were 'rubber stamping' proposed consent decrees after having been submitted by the Justice Department. Section 2(e) of the bill is written to correct this practice. For the first time, judges will be able to look to the statutory language for explicit guidance prior to rendering judgment on a proposed consent decree. The bill makes a clear distinction between what the court 'shall do' and 'may do' in evaluating proposed consent decrees. This distinction is necessary in order to preserve maximum judicial flexibility on a case by case basis. District court judges shall be required to find that each proposed consent judgment is in the public interest. The courts will thus be required to make a positive finding that the decree is in the public interest * * *" (Cong. Rec. Nov. 19, 1974, H 10764–65).

It is in light of this clear legislative purpose that the government's competitive impact statement must be appraised.

The Missing Substance of the Impact Statement. Given the history and purpose of the new anti-trust Procedures and Penalties Act, a competitive impact statement which affects a crucial aspect of the newspaper industry—exclusive syndicated features—should do more than pay lip service to the required content of statements. Yet, that is the basic problem with the government's statement. It has mechanically recited the six separate statutory requirements without any apparent effort to fulfill the legislative purpose contemplated by Congressional enactment of the new procedure. The decree would not outlaw exclusivity but instead imposes numerical criteria which, if applicable, limit exclusivity. But the statement never discloses how and why such numerical criteria to legitimate exclusivity were selected. The absence of an underlying explanation denies to the public the opportunity for meaningful substantive comment and leaves the court with little on which to exercise its statutory obligation of independent evaluation.

Nature and Purpose. In the nature and purpose section, the government does not even refer to the vital issue of why a consent decree against a subsequent, indispensible party should leave totally open and undecided three separate complaints charging three separate syndicates with unreasonable restraints of trade. It is not too much to ask that the government explain its view of the litigation and how this settlement serves that nature and purpose.

Practices. In describing the practices giving rise to the alleged violations of the anti-trust laws, the government chose to deal solely with the Globe's rights to territorial exclusivity and not with a description of the syndicate practices which gave rise to the anti-trust violations alleged. Instead, the government chose to merely restate its "primary claim" and the "position" it took in its trial brief.

Explanation. Nor is the "explanation" of the proposal any more complete. Although the new act admonishes the government to set forth an explanation to deal with "unusual circumstances" and to set forth the anticipated effects on competition, the present statement fails to explain, in the context of he original allegations and the facts of the industry, why and how the public interest may be affected by the proposed decree.

Remedies and Modifications. In the fourth and fifth sections, the government leaves the public to seek its own way to find remedies and procedures for modification. With seven and one-half years of litigation concluded, there surely is something private parties can do more than what they cannot do. The government is required by law to set forth in some detail various contractual and statutory remedies available.

Alternatives. In many ways section six is the heart of the new procedures statute. It requires the government to set forth the settlement process so that the negotiating postures can be known. In clear and unambiguous terms it provides that "a description and evaluation of alternatives" be set forth. This new act was passed by Congress to "reform the consent decree procedures". Yet, the government does not disclose the substance of its negotiations with the syndicates; as to the Globe, the government states that the only alternative "actually considered" was proceeding to trial and "an injunction". Trial is hardly the "alternative" Congress required by law to be disclosed. The alternatives considered are those discussed and rejected as well as those accepted in the negotiating process.

The Journal Inquirer finds the explanations of the government inadequate for it to understand why the proposed decree is being recommended, what the process and factors were that led the government to recommend the settlement, and thus what impact the decree may have on the newspaper industry and the interest of the public. It is respectfully submitted that the proceedings as structured at this point similarly handicap the court.

IV. THE IMPACT STATEMENT SHOULD BUT DOES NOT DEAL WITH THE ANTI-TRUST CONCEPTS RAISED BY THE CASE.

A consent decree necessarily forecloses judicial determination of novel anti-trust theories. Indeed, that was the question at issue between the chief of the Anti-Trust Division, Mr. McClaren, and Messrs. Mitchell and Kleindeinst in the ITT case. Mr. McClaren did not want to settle the case; as a public official he favored judicial determination of a novel theory of conglomerate-merger illegality. It is ironic that the Anti-Trust Procedures and Penalties Act—which grew out of Congressional dissatisfaction with the ITT settlement process—should, in the first instance, be applied in a case with a similar problem of important legal issues of first impression—the contours of anti-trust law as applied to the vital field of licensing of copyrighted newspaper syndication. It is neither the function nor responsibility of the Journal Inquirer to develop these legal issues but they are commented upon below for the purpose of directing to them the attention of the government and the court.

A constant theoretical issue in anti-trust litigation is how to characterize a given course of conduct. For example, in "United States v. General Motors Corp.," 384 U.S. 127 (1966), an action against General Motors and three of its dealer associations, the defendants claimed that the conduct in question—use of a "location clause", which pro-

hibited the dealer from moving to or establishing "a new or different location" without Chevrolet's consent, complaint by an association of dealers to General Motors, and policing of the discussions with each situation at GM's request—constituted lawful vertical restrictions. But the Supreme Court saw the conduct in question as horizontal, not vertical:

"We do not decide whether these 'location clauses' may be construed to prohibit the dealer, party to it, from selling to discounters, or whether General Motors could by unilateral action enforce the clause so construed. We have here a classic conspiracy in restraint of trade: joint collaborative action by dealers, the appellant associations and General Motors to eliminate a class of competitors by terminating business dealings between them and a minority of Chevrolet dealers and to deprive franchise dealers of their freedom to deal through discounters if they choose."

So too, in "United States v. Topco Associates, Inc.", 405 U.S. 596 (1972), the defendant Topco, "a cooperative association of approximately 25 small and medium sized regional supermarket chains", claimed that territorial restrictions were lawful; this was accepted in the District Court. But the Supreme Court in an opinion by Justice Marshall, reversed, again viewing the conduct in question as horizontal, not vertical. To the Court, it was "clear that the restraint in this case is a horizontal one, and therefore a per se violation of Section 1."

A similar problem of characterization was present in "Associated Press v. United States," 326 U.S. 1 (1945). The heart of the Government's charge was that Associated Press members "had by concerted action set up a system of by-laws which prohibited all AP members from selling news to non-members, and which granted each member power to block its non-member competitors from membership." The result of the AP scheme, the Supreme Court concluded, is the destruction of competition:

"Inability to buy news from the largest news agency, or any one of its multitude of members, can have most serious effects on the publication of competitive newspapers, both of those presently published and those which but for these restrictions, might be published in the future. . . . Trade restraints of this character, result in the destruction of competition, tend to block the initiative which brings newcomers into a field of business and to frustrate the free enterprise system which it was the purpose of the Sherman Act to protect."

Again, the problem of whether the conduct was unilateral or concerted resulted in sharp disagreement between the defendants and the Supreme Court: AP argued that "the restrictive by -laws should be treated as beyond the prohibitions of the Sherman Act, since the owner of the property can choose his associates and can, as to that which he had produced by his own enterprise and sagacity, efforts or ingenuity, decide for himself whether and to whom to sell or not to sell." The Court summarily rejected the claim:

"The Sherman Act was specifically intended to prohibit independent businesses from becoming 'associates' in a common plan which is bound to reduce their competitors' opportunity to buy or sell the things in which the groups compete. Victory of a member of such a combination over its business rivals achieved by such collective means cannot consistently with the Sherman Act or with practical, everyday knowledge be attributed to individual 'enterprise and sagacity'; such hampering of business rivals can only be attributed to that which really makes it possible—the collective power of an unlawful combination."

AP's argument "that since there are other news agencies which sell news, it is not a violation of the Act for an overwhelming majority of American publishers to combine to sell their news to the minority" also met with short shift:

"But the fact that an agreement to restrain trade does not inhibit competition and all of the objects of that trade cannot save it from the condemnation of the Sherman Act."

The present case presents similar problems. The defendant's advance broad theories of antitrust exculpation—by virtue of the copyright laws—theories already cast in doubt by Judge Wyatt in rejecting defendants' motion to dismiss. Parenthetically, given the unbroken line of cases rejecting copyright as a justification for antitrust violation, Judge Wyatt's ruling was clearly correct. As the Supreme Court explained in "Straus v. American Publishers Ass'n." 231 U.S. 222 (1913), holding resale price maintenance of copyrighted books unlawful:

"It cannot be successfully contended that the monopoly of a copyright is * * * any more extensive than that secured under the patent law. No more than the patent statute was the copyright act intended to authorize agreements in restraint of trade * * * in violation of the specific terms of the Sherman Act. * * *"

See also, e.g., the host of cases in which copyright was involved in antitrust illegalities:

"Interstate Circuit, Inc., v. United States," 306 U.S. 208 (1939) (conspiracy);

"United States v. Paramount Pictures," 334 U.S. 131 (1948) (monopolization);

"United States v. Loew's," 371 U.S. 38 (1962) (tying arrangements).

It is curious that the government's trial brief is so restrained. In the past 7½ years since the filing of this complaint, anti-trust doctrines of both conspiracy, liability and restricted scope of anti-trust exemption have considerably eased the government's burden. But both the government's trial brief and its competitive impact statement are completely silent as to whether crucial factual and legal issues have been considered or rejected. We do not suggest that in every case the government, in its competitive impact statement, must negate every possible theory of illegality—no matter how remote. But surely, when the government is responding to newly enacted legislation designed to re-establish public faith in the consent decree process, it is not too much to ask the government to state publicly that possibly serious anti-trust violations do not exist and that no decree is necessary to protect the public in these areas.

The case literally bristles with unanswered questions. The Journal Inquirer respectfully submits that before a court can conclude that the proposed Globe decree is in the public interest, the government should be prepared to state, publicly, that no more serious syndicate violations were uncovered, and that alternative bases for illegality are not present. Specifically, we suspect that, at a minimum, the government's Competitive Impact Statement should consider the following issues:

1. Horizontal combinations to restrict territories are, under settled antitrust principles, unlawful per se. "United States v. General Motors Corp.," 384 U.S. 127 (1966); "Associated Press v. United States," 326 U.S. (1945). Can the government state that its discovery negates an inference of horizontal combinations or conspiracies between syndicates?

2. Under "Interstate Circuit v. United States," 306 U.S. 208 (1939), an implied conspiracy can be inferred when one entity becomes the conduit for joint action by others. Under "Albrecht v. The Herald Co.," 390 U.S. 145 (1968), an unlawful combination might be inferred between a supplier and his customer. Did the government explore whether the syndicates might be viewed as violating the Sherman Act under these expansive theories of combinations and conspiracy?

3. Under "Associated Press v. United States," 326 U.S. (1945), and its progeny, a joint refusal to sell news items is unlawful per se. Can the government state that the syndicates' conduct should not be waived as an unlawful boycott?

4. The government's trial brief states that "the evidence will show that in some instances the Globe has failed for many months to publish a feature licensed to it" and the "effect of this non-publication is to absolutely prevent the readers in the Globe territory from reading that feature" (Plaintiff's Trial Brief, p. 19). Did the government explore the extent of non-use of licensed features by the syndicates with other licensees and consider whether such non-use is unlawful by analogy to the cases holding non-use of a patent as part of a scheme to foreclose competition as unlawful, "Standard Sanitary Mfg. Co. v. United States," 226 U.S. 20, 49 (1912); "Special Equipment Co. v. Coe," 324 U.S. 370, 380 (1945) (Douglas, Jr. dissenting).

5. In "United States v. Columbia Pictures Corp." 189 F. Supp. 153, 182 (S.D.N.Y.), the Court held that an exclusive license to distribute copyrighted films for television exhibition constituted an "asset" within the meaning of the Celler-Kefaufer Anti-Merger Act, amended § 7 of the Clayton Act. Did the government explore whether the syndicate's acquisition of copyright rights might be violative of Section 7 of the Clayton Act?

6. Can the government state that the syndicates do not engage in package licensing, which might be viewed as an unlawful tying under the tying cases, "United States v. Lowe's, Inc.," 371 U.S. 38 (1962).

We recognize that these questions go to whether the syndicates, as well as the Globe, have violated the Sherman Act, and that the liability of the syndicates is not, technically, before the court. But that, we submit, is the very defect of the unusual procedural history of this case and the equally bizarre position of forcing the court to determine whether this decree is in the public interest before it knows whether far more serious violations on the part of the syndicates might be present. Given the Journal Inquirer's own experience in which a syndicate defendant sought to use the yet unaccepted decree to its advantage in other geographic areas, we respectfully suggest that neither the Court nor the government can avoid facing the issue of syndicate liability and relief before accepting a decree binding only the Globe.

CONCLUSION

We share the dominant Congressional concern that the integrity of the consent decree process is essential to public confidence in the courts and to public confidence in the ability of the government to protect the public interest when it negotiates consent decrees. The new legislation was passed to accomplish these objectives. The

proposed Competitive Impact Statement meets neither the spirit nor the letter of that legislation and makes it virtually impossible for the Court to conclude that the proposed decree is in the public interest. Accordingly, it is respectfully suggested that the Court should reject the proposed decree at this time, pending adjudication on the merits of the litigation with the syndicates or pending simultaneous submission of a proposed consent decree with the syndicates.

Respectfully submitted,

JOURNAL PUBLISHING COMPANY, INC.,

By MILTON AND ETHEL S. SOROKIN,
Sorokin, Sorokin, Hurwitz, Westone & Psarakis, 101 Pearl Street, Hartford, Connecticut 06103.

EXHIBIT A

DECEMBER 12, 1974.

WILLIAM T. MCGEHEE,
Sales Dir., Publisher-Hall Syndicate, 30 E. 42nd St., New York, N.Y.

DEAR MR. MCGEHEE: Please quote prices for: Bill Mauldin editorial cartoons, Ann Landers.

Very truly yours,

ELIZABETH S. ELLIS,
Publisher.

EXHIBIT B

WILLIAM J. MCGEHEE, Sales Director, Publisher-Hall Syndicate,[1] 30 E. 42nd St., New York, N.Y.

JANUARY 6, 1975.

DEAR MR. MCGEHEE: I wrote to you on December 12, 1974 requesting a quote for the following columns: Bill Mauldin editorial cartoons, Ann Landers.

To date I have not received this information. Would you please check into this.

Sincerely,

ELIZABETH S. ELLIS,
Publisher.

(Don Lane on telephone 1-15-75).

EXHIBIT C

Don Lane called re my request for Ann Landers and Bill Mauldin. He said both unavailable to us because of contractual limitations.

I was unaware that any area newspaper had been carrying Mauldin. He told me the Htfd Times has it. I told him they must not use it very often because I haven't noticed it; that we would give the cartoon every-day exposure—which would be much more than it's getting now.

He said he's "sorry".

Bombeck unavailable to us—f/u in June after consent decree finalized.

[1] Field Newspaper Synd., 401 N. Wabash, Chicago, Ill. 60611.

EXHIBIT D

MARCH 13, 1975.

MR. DON LANE,
Field Newspaper Syndicate, 401 M. Wabash Avenue, Chicago, Ill. 60611.

DEAR MR. LANE: We would like to subscribe to At Wits End by Erma Bombeck.

We are a 17,000 ABC 6 day (5e, 1m) two edition paper. Our main office and printing plant is located in Manchester, Conn. (We do not circulate in Manchester.) We have a bureau in Enfield, Conn.

We circulate in the following towns: Vernon, Ellington, Tolland, Stafford, and Somers in Tolland County, Enfield, East Windsor, South Windsor, Windsor Locks and Suffield in Hartford County.

Though the feature appears in the Hartford Times, their saturation in our towns is negligible so this should not pose any problem.

I look forward to your reply.

Cordially,

ELIZABETH S. ELLIS,
Publisher.

EXHIBIT E

Erma Bombeck-4, 5-1-75, Irwin Smith. March 13 conversation said he'd check back after consent decree is signed by judge.

EXHIBIT F

HARRY GILBERT,
Vice President—Sales Manager, United Features Syndicate, Inc., 220 E. 42nd St., New York, N.Y.

MARCH 19, 1975.

DEAR MR. GILBERT: The Journal Inquirer would like to subscribe to Peanuts.

We are an ABC paper (5e, Sat. a.m.) circulating to the following towns: Vernon, Ellington, Somers, Suffield, Windsor Locks, East Windsor, South Windsor, Enfield, Ellington & Tolland.

Our main office and printing plant is in Manchester, Conn. We do not publish in Manchester.

I shall look forward to an early reply.

Cordially,

ELIZABETH S. ELLIS,
Publisher.

EXHIBIT G

UNITED FEATURE SYNDICATE,
New York, N.Y., March 24, 1975.

MS. ELIZABETH S. ELLIS,
Publisher, The Journal Inquirer, 508 Progress Drive, Manchester, Conn. 06040

DEAR MS. ELLIS: We are sorry to advise you that the PEANUTS daily strip is unavailable to the Journal Inquirer due to a prior contractual commitment. However, I am pleased to enclose an open sheet listing our available features. If you would like to see samples on any of these features, please don't hesitate to call on us. Thank you.

Cordially,

JOHN J. CARROLL,
Sales Manager.

From UNITED FEATURE SYNDICATE, 220 East 42nd Street New York, N.Y. 10017

FEATURES AVAILABLE TO: MANCHESTER, CONNECTICUT DATE: 5-30-75

IMPORTANT NOTE: ALL TEXT COLUMNS AVAILABLE CAMERA READY, SCANNABLE (ANY TYPE FACE), or by electronic feed.

COMIC STRIPS (daily 4-col. size. Available camera ready /and mat form

~~COLONIAL CAPERS~~	~~Gag-a-day replay of history~~	~~Joe Escourido~~
EB & FLO	Married life's laughs & tears	Paul Sellers
DOCTOR SMOCK	Humorous doctor/nurse/patient situations	George Lemont
~~FERD' NAND~~	~~Family humor in pantomine~~	~~Dahl Mikkelsen~~
GORDO	South of the border amusement	Gus Arriola
~~NANCY~~	~~Darling of the comics (also 5-col)~~	~~Ernie Bushmiller~~
NORBERT	A boy and his animal "friends"	George Fett
~~MIXED SINGLES~~	~~A buliding full of laughs~~	~~Brown & Casson~~
~~PEANUTS~~	~~Nuggets of humor (also 1, 2, 5 - col.)~~	~~Charles M. Schulz~~
TARZAN	Action-filled adventure	Edgar Rice Burroughs
Dropouts	Captivating castaways	Howard Post
~~THE SENATOR~~		~~Jim Miller~~

DAILY PANELS(1 and 2 col. Available on coated proofs, camera ready/ and mat form

~~COLLECTORS CORNER-ANTIQUES AND COLLECTIBLES (2 col)~~		~~Tom Bateson~~
EMMY LOU	teen-agers-parents "now" humor	Marty Links
FUNLAND	2 column size, Educational	Art Nugent, Jr.
GINGER	Little girl next door (2 col)	Orla Getterman
GOOD OLD DAYS	3-column - black only	1 a week
~~HEALTH CAPSULES~~	~~Illustrated medical facts, 1 col only~~	~~M. Petti, M.D.~~
LIFE'S LIKE THAT	Family humor in good taste	Fred Neher
PIXIES	Letters, numbers that talk, 1 col. only	Jack Whol
SPURGEON	NATURAL-BORN LOSER (proofs only) 1 & 2 col.	Al Johns
TEE VEE LAFFS	Spoofing TV (1 col. only)	Cliff Rogerson
THERE OUGHTA BE A LAW	Home office gags (5 -col)	Whipple & Borth
ZODY	Astrological gags, 1 col only	Mary Myers
WE HOLD THESE TRUTHS...		McNelly & McKenzie

SUNDAY COLOR PAGES (1/2 and 1/3 standard, tabloid sizes, and 1/4/ standard. Also 8 page tabloid color, and standard page ready print sections. Available on progressive proofs, camera ready.)

CAPTAIN & THE KIDS	Also in 1/2 tabloid size and 1/3 tab.
DOCTOR SMOCK	
EB & FLO	Also in 1/2 tabloid - 1/3 tabloid
EMMY LOU	Also in 1/2 tabloid - 1/3 tabloid
~~FERD' NAND~~	~~Also in 1/2 tabloid - 1/3 tabloid~~
FUNLAND	
GORDO	
MIXED SINGLES	
~~NANCY~~	~~Also in 1/2 tabloid and 1/3 tabloid~~
~~PEANUTS~~	~~Also in 1/2 tabloid and 1/3 tabloid~~
~~TARZAN~~	
~~THE BOSLEYS~~	~~1/3 tabloid and 1/3 standard only 4, 5 col. Black only.~~
THE DROPOUTS	
THE GOOD OLD DAYS	
ANTIQUES FAIR	1/2 tab; 3 col. black only; 1/3 standard
THERE OUGHTA BE A LAW	in 1/2 tabloid size & 1/3 tablois
~~THE SENATOR~~	

EXHIBIT G-1

From UNITED FEATURE SYNDICATE, 220 East 42nd Street New York, N.Y. 10017

EDITORIAL CARTOONS (in mat or coated proof, camera ready)		
GENE BASSET	3 & 4 col size (proofs only)	6tw
MIKE PETERS	3 & 4 col size	4tw
ANOTHER VIEW	14 ems and 2 col. Topical humor, John Stees	6tw
ART POINTER	3 col. (proofs only)	6tw
NATIONAL AND WORLD AFFAIRS		
~~JACK ANDERSON, Washington Merry-Go-Round~~	~~Investigative reporting~~	~~7tw~~
JACK ANDERSON'S WEEKLY SPECIAL	For weeklies, college papers	1tw
MARQUIS CHILDS, Washington Calling	Sharp, liberal analysis	2tw
ERNEST CUNEO National Whirligig	Erudite,, Witty, Conservative	3tw
COL. ROBERT D. HEINL, Of Arms and Men	Military analysis, news	2tw
VICTOR LASKY, Say it straight	Conservative commentary	1tw
FRANK VAN DER LINDEN	News-breaking conservative	3tw
JOHN D. LOFTON, JR.	Investigative, conservative	3tw
MARTIN F. NOLAN, The Nation	Fresh, liberal analysis	3tw
VIRGINIA PAYETTE	Witty and womanly wise	3tw
HENRY J. TAYLOR	Global view, Conservative	3tw
GUS TYLER	Astute, liberal commentary	3tw
THE LIGHTER SIDE		
NOEL ANTHONY, Continental Diary	High life in Europe	1tw
TRIXIE BELMONT, Ladies First	Jet-set women, "in" trends	1tw
HARRY GOLDEN, Only in America	Genial humor, nostalgia	3tw
IRIS HARTMAN, Women's World	Brief, amusing items on women	4tw
MARY MCGRATH, Liberated Woman	In defense of the female	3tw
NORTON MOCKRIDGE	Champion story teller	5tw
DON MACLEAN	Washington's funnybone	6tw
ISABELLE SHELTON, Mirrors of Washington	Social side of the Potomac	1tw
~~BILL VAUGHAN, Senator Soaper~~	~~Wryly humorous photographs~~	~~6tw~~
BILL VAUGHAN, Vaughan at Large	From a jaundiced eye	3tw
BUSINESS AND FINANCE		
~~DON G. CAMPBELL, Daily Investor~~	~~Q & A on investments~~	~~5tw~~
~~DON G. CAMPBELL, Mutual Funds~~	~~Expert advice on mutuals~~	~~1tw~~
LOU SCHNEIDER, Trade Winds	Inside business news	6tw
HERBERT STEIN	Economy, business & fin. news	1tw
CONSUMERISM		
~~MARGARET DANA, Before-You-Buy~~	~~What smart shoppers should know~~	~~1tw~~
~~MARGARET DANA, Consumer's Question Box~~	~~Q & A on consumer problems~~	~~1tw~~
SIDNEY MARGOLIUS, For the Consumer	Expert guide to the market place	2tw
BETTY YARMON, Family Finance	Keeping the household solvent	1tw
HEALTH, EDUCATION & WELFARE		
DR. F. J. L. BLASINGAME, Let's stay well	Medical Q & A by a physician	6tw
BENJAMIN FINE, Spotlight on Education	News and trends in schools	1tw
MILTON G. RECTOR, of Crime and Punishment	Expert views on soaring crime	1tw
THEODORE SCHUCHAT, Retirement Report	Retirement, social security	1tw
JOHN WYKERT, Insight	Psychological perspective to news	1tw

EXHIBIT G-2.

From UNITED FEATURE SYNDICATE, 220 East 42nd Street New York, N.Y. 10017

FOOD AND DIETING		
BARBARA GIBBONS, Slim Gourmet	Calorie-conscious cooking	3tw
ROBERT J. MISCH, Eat, Drink & Be Merry	Gourmet wining and dining	1tw
MARCIA BURG, Chef Marcia	5 Recipes a week, Illust.	1tw
BEAUTY AND FASHION		
MARIAN CHRISTY, After a Fashion	Celebrity fashion interviews	3tw
FLORENCE de SANTIS, Fashion, Face, & Figure	Package of fashion news, beauty features	1tw
HOUSE AND HOME		
GERRY BISHOP, House Plans	Rebate to paper for blueprints	1tw
GENEVIEVE FERNANDEZ, Interior Decorating	News, tips, photos, features	3tw
EMILY MALINO, Design for People	Expert's decor tips; drawing	1tw
ROGER WHITMAN, 1st Aid to Ailing House	Everything for home handyman	4tw
TV AND FILMS		
JAMES BACON, Hollywood Hotline	Goings-on in the film capital	6tw
AL KILGORE, TV Starscreen Puzzle (2 col)	TV crossword, with caricature	1tw
DAN LEWIS, With Dan Lewis	Show biz from coast to coast	3tw
CLIFF ROGERSON, Tee Vee Laffs	1-col panels spoofing TV	6tw
RICHARD K. SHULL, TV Answer Man	Q & A on TV personalities	6tw
TV TIME FILM SOURCE SERVICE	22,000 capsule TV film reviews	(weekly)
TV PREVIEWS	Previews of network TV shows	7tw
TV TIME SERVICE	Everything for the TV page	7tw
SPORTS		
Cal, The Computer, Bud Goode	Computer football (Seasonal)	1tw
Sportin' Life, Bill Verigan	Sports interviews, news	1tw
YOUTH AND ADVICE		
JEAN ADAMS, Teen Forum	Q & A on teen problems	6tw
POP SCENE ANSWER MAN	Q & A on the pop scene	1tw
JOHN KEASLER, By George!	Advice -- strictly for laughs	6tw
BARBARA LEWIS, Pop Scene Service	Package of youth news, features	1tw
SUSIE MAC, SUSIE McDOUGAL	Q & A on personal problems	5tw
DEAR JAMIE, JAMIE C. COLEMAN	Q & A on personal problems with Male point of view	6tw
SPECIALTY COLUMNS		
YOUR STARS THIS WEEK, Stella Wilder	Your Future in the stars	1tw
IRA G. CORN, JR., THE ACES	World champions on bridge	7tw
OLD FARMER'S ALMANAC	Advance weather, Americana	1tw
ALICE SCOTT, Pets and their People	For all pet owners	1tw
JACK STRAUSS, What's the Law?	Court cases--with a twist	6tw
STELLA WILDER, Your Birthday	Daily horoscopes	7tw
ROBERT W. IRVIN, Driver's Seat	Best automotive reporter	1tw
MARTIN ALWYN, Ask anybody...anything	Questions from newsmakers, timely topics	1tw
PUZZLES AND WORD GAMES		
ANAGRAMS	Make one word from two words	6tw
BLOCK BY BLOCK, BILL CROWDER	Daily Puzzle	7tw
CROSSWORD PUZZLER	For average reader	7tw

EXHIBIT G-3

From UNITED FEATURE SYNDICATE, 220 East 42nd Street New York, N.Y. 10017

TODAY'S CROSSWORD PUZZLE	Somewhat more difficult	7tw
FUNLAND, Art Nugent	Puzzles and games for kiddies	1tw
~~LITTLE PEOPLE'S PUZZLE, Lee White(2 col)~~	~~Crosswords for youngsters~~	~~3tw~~
PRIZEWEEK CROSSWORDS	Biggest braintease; cash prizes	1tw
WORD GAME	Creating many words from one	7tw

NEWS SERVICES, SERIES		
LONDON EXPRESS FEATURE SERVICE	Features from around the world	3tw
LONDON EXPRESS NEWS REPORT	Worldwide news service	6tw
NANA NEWS SERVICE	News, features, columns	5tw
NANA PHOTO SERVICE	4 to 6 glosses	1tw
NANA PONY SERVICE	News service for weeklies	1tw
SPOTLITE SERVICE	52 timely series a year	1tw
WOMEN'S NEW SERVICE	Women's news, features, columns	5tw

NOTE: ALL TEXT COLUMNS AVAILABLE CAMERA READY, SCANNABLE, or by electronic feed

EXHIBIT G-4

EXHIBIT H

To the Sheriff of the County of Hartford, his Deputy or Either of the Constables of the Town of Hartford, Within Said County, Greeting:

By authority of the State of Connecticut, you are hereby commanded to summon, pursuant to and in the manner prescribed in Connecticut General Statutes § 33–411, Chicago Tribune-New York News Syndicate, Inc., a Delaware corporation with a principal place of business at 220 East 42nd Street, New York, New York to appear before the Superior Court to be holden at Hartford within and for the County of Hartford on the Fifth Tuesday of April 1975, said appearance to be made by said defendant; or its attorney, by filing a written statement of appearance with the clerk of said court on or before the day following said return date, then and there to answer unto the Journal Publishing Company, Inc., a Connecticut corporation having its principal place of business in the Town of Manchester, County of Hartford and State of Connecticut, in a civil action wherein the plaintiff complains and says:

First count:

1. The plaintiff is a Connecticut corporation with places of business within this State in Enfield and Manchester.

2. The plaintiff is the publisher of the Journal-Inquirer a daily newspaper which circulates in Tolland County and outlying towns in Hartford County.

3. The defendant Chicago Tribune-New York News Syndicate Inc. (hereinafter called "Syndicate"), is a foreign corporation which furnishes various features including the well-known feature column Dear Abby to newspapers throughout the United States including newspapers in the State of Connecticut such as the plaintiff, the Hartford Times and the Manchester Herald.

4. Dear Abby is published in more than 800 newspapers, is very popular and widely read, enjoys instant recognition by the public and cannot be obtained from any source other than the defendant Syndicate.

5. From time to time in the last few years, the plaintiff has contracted the defendant Syndicate in an effort to purchase Dear Abby but the defendant Syndicate refused to sell the column to the plaintiff because the Hartford Times received the column and objected to the sale.

6. In February 1975, the plaintiff learned that the defendant Syndicate had begun to furnish Dear Abby to another newspaper, The Manchester Herald, circulating in an outlying town of Hartford County.

7. By letter, on or about February 28, 1975, the plaintiff renewed its offer to purchase Dear Abby. A copy of that leter is attached as Exhibit A.

8. Thereafter, the parties discussed various terms including price, circulation and promotions by telephone over a period of a few weeks.

9. On March 17, 1975, the defendant confirmed by letter the purchase by the plaintiff for the daily Dear Abby. A copy of the confirmation letter is attached hereto as Exhibit B.

10. The defendant Syndicate's March 17, 1975 letter enclosed a contract executed by the defendant Syndicate and to be signed and returned by the plaintiff.

11. The plaintiff executed the contract in Connecticut on March 19, 1975 and returned the completed original contract to the defendant Syndicate. A copy of the completed contract is attached hereto as Exhibit C.

12. The defendant Syndicate's March 17, 1975 letter enclosed seven (7) different samples of advertisements for promoting Dear Abby and copies are attached hereto as Exhibits D–1 through D–7.

13. The defendant Syndicate undertook to supply the plaintiff with Dear Abby for an unconditional term of thirty (30) days commencing March 24, 1975 and forwarded a supply of twelve (12) columns which will be exhausted on Saturday, April 5, 1975.

14. Because of its nationwide reputation, wide distribution and daily serial character, newspaper readers expect publication on a regular, daily basis.

15. In reliance upon the executed contract, the extensive promotional materials supplied and the letter of confirmation of the defendant Syndicate, the plaintiff notified its readers on Saturday, March 22, 1975, that the Journal-Inquirer would carry Dear Abby starting with the next issue, Monday, March 24, 1975. A copy of that announcement is attached hereto as Exhibit E.

16. On Monday, March 24, 1975 in accordance with the contract, the Journal-Inquirer printed the first column with a special page one announcement informing the readers of the page location of the column. A copy of that announcement is attached hereto as Exhibit F.

17. The Journal-Inquirer continued the publication of Dear Abby regularly thereafter each day as required by the contract.

18. There was an immediate public response to Dear Abby. Readers notified the plaintiff of their appreciation, interest and pleasure at the new availability of Dear Abby in the Journal-Inquirer.

19. The reputation of the Journal-Inquirer for reader interest and appeal, for its ability to continue serials and columns once started and for its reliability in meeting the expectations of its readers is an asset of special value.

20. The value to the Journal-Inquirer of Dear Abby cannot be measured by the contract cost of the column and the column cannot be bought from anyone other than the defendant Syndicate.

21. On March 28, 1975, the defendant Syndicate's representative telephoned the plaintiff to advise because of vociferous objections by the Hartford Times, it did not wish to honor the contract.

22. On April 2, 1975, the plaintiff's attorney informed the defendant Syndicate's representative by telephone that the plaintiff was entitled to performance of the contract according to its terms and further that the proposed grounds for termination were improper and illegal. That notice was confirmed by telegram and letter, a copy of which is attached hereto as Exhibit G.

23. On April 2, 1975, the defendant Syndicate's representative refused to disclose the name of its attorney to the plaintiff thus thwarting direct contact or notice to them of the instant action.

24. On April 3, 1975, the plaintiff received a letter attempting a premature termination in breach of the contract and violating anti-trust and other law. A copy of the premature attempt at termination is attached hereto as Exhibit H.

25. On April 3, 1975, the plaintiff denied the defendant Syndicate's attempt at premature termination by telegram and letter, a copy of which is attached hereto as Exhibit I.

26. Between ten and ten-thirty a.m. on Friday, April 4, 1975, the defendant Syndicate advised the plaintiff:

(a) That it was terminating Dear Abby as of May 3, 1975;

(b) That a letter dated April 3, 1975 had been sent to the plaintiff to this effect;

(c) That Dear Abby for release on Monday, April 7, 1975 would be timely supplied to the plaintiff.

A copy of that termination letter will be made Exhibit J when received by the plaintiff.

27. The plaintiff advised the defendant Syndicate on April 4, 1975 that it would not request ex parte relief at two p.m. in the Superior Court in reliance upon the defendant Syndicate's agreement to furnish Dear Abby for thirty (30) days.

28. The plaintiff believes and therefore alleges that the defendant Syndicate termination effective May 3, 1975 is illegal and in violation of anti-trust laws, improperly depriving the plaintiff, its readers and the public of Dear Abby.

29. The defendant Syndicate has no proper factual or legal basis to terminate the contract.

30. The plaintiff has no adequate remedy at law.

31. The conduct of the defendant is in willful and wanton disregard of the rights of the plaintiff and its newspaper.

32. Unless a temporary injunction is issued to preserve the status quo until determination of the issues on the merits, the plaintiff believes the defendant Syndicate will attempt to illegally and improperly deprive the plaintiff of Dear Abby in violation of law.

Second count:

Paragraphs 1 through 31 of the First Count are made paragraphs 1 through 31 of the Second Count.

32. The defendant Syndicate is the defendant in a pending civil anti-trust action brought by the United States in the Federal District Court of New York for actions in violation of the Sherman Act in restraint of trade and commerce.

33. Sections 36–24 through 36–45 of the Connecticut General Statutes contain the Connecticut Anti-Trust Act (herein referred to as "anti-trust law").

34. The defendant Syndicate engages in trade or commerce in Connecticut pursuant to the anti-trust law.

35. The defendant Syndicate has attempted to terminate and/or deprive the plaintiff of its right to publish Dear Abby because of pressure and activities of competitors of the plaintiff including the Hartford Times and others and/or because the defendant Syndicate, in combination, by contract and/or conspiracy with others including the Hartford Times, seeks to restrain and monopolize the use of Dear Abby all in violation of the anti-trust law.

36. The defendant Syndicate in combination with and/or under a conspiracy with and/or contract with the Hartford Times and others has:

(a) Engaged in a concerted refusal to deal with the plaintiff;

(b) Been induced and persuaded to deprive the plaintiff of its valuable contractual right to publish Dear Abby;

(c) Allocated or divided the market area, depriving the plaintiff of its contractual right to publish Dear Abby;

(d) Fixed, controlled, maintained, limited and discontinued the sale and/or supply of Dear Abby to the plaintiff;

all in violation of the anti-trust law.

37. The acts of the defendant Syndicate in seeking to stop the plaintiff's publication of Dear Abby have in the past and will continue to cause substanial injury and irreparable harm to the plaintiff for which there is no adequate remedy at law.

38. The acts of the defendant Syndicate with respect to its contract and/or concert with others destroys and suppresses competition and tends to create monopoly in the press.

39. Unless a temporary injunction is issued to preseve the status quo, the plaintiff believes the defendant Syndicate will deprive the plaintiff of the columns causing loss and damage to the plaintiff's property and business by violations of the anti-trust law.

Wherefore, the plaintiff prays:

1. A temporary injunction ordering that the defendant Chicago Tribune—New York News Syndicate, its officers, agents, servants, employees and attorneys be enjoined from discontinuing the timely furnishing of Dear Abby to the Journal-Inquirer until the determination of the issues in this case.

2. A permanent injunction ordering the defendant Chicago Tribune-New York News Syndicate, its officers, agents, servants, employees and attorneys be enjoined from discontinuing the timely furnishing of Dear Abby to the Journal-Inquirer or otherwise violating the anti-trust law.

3. The costs of this action.

4. The plaintiff's reasonable attorneys' fees.

5. Damages in the amount of one hundred twenty-five thousand (125,000) dollars.

6. Treble damages pursuant to the anti-trust law.

7. Such other and further relief as the court shall deem just and proper at law and equity.

Ethel S. Sorokin, of West Hartford, Connecticut, is recognized in the sufficient sum of $100 to prosecute, etc.

Of this writ with your doings thereon, make due return.

Dated at Hartford, Connecticut, this 4th day of April, 1975.

MILTON SOROKIN,
Commissioner of the Superior Court.

We hereby enter our appearance for the plaintiff in the above matter.

CONCLUSION OF EXHIBIT H—ATTACHMENTS OMITTED

The Journal Publishing Co., a corporation organized and existing under and by virtue of the laws of the State of Connecticut for and in consideration of the sum of Ten dollars ($10.00) lawful money of the United States of America to it in hand paid by Chicago Tribune-New York News Syndicate, Inc., the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said Chicago Tribune-New York News Syndicate, Inc., its heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, account, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against Chicago Tribune-New York News Syndicate, Inc. it ever had, now has or which it or its successors hereinafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, arising out of facts alleged in the complaint in an action entitled "Journal Publishing Company, Inc. v. Chicago Tribune-New York News Syndicate, Inc." commenced on or about April 4, 1975 in the Superior Court, Hartford County, State of Connecticut.

This release may not be changed orally.

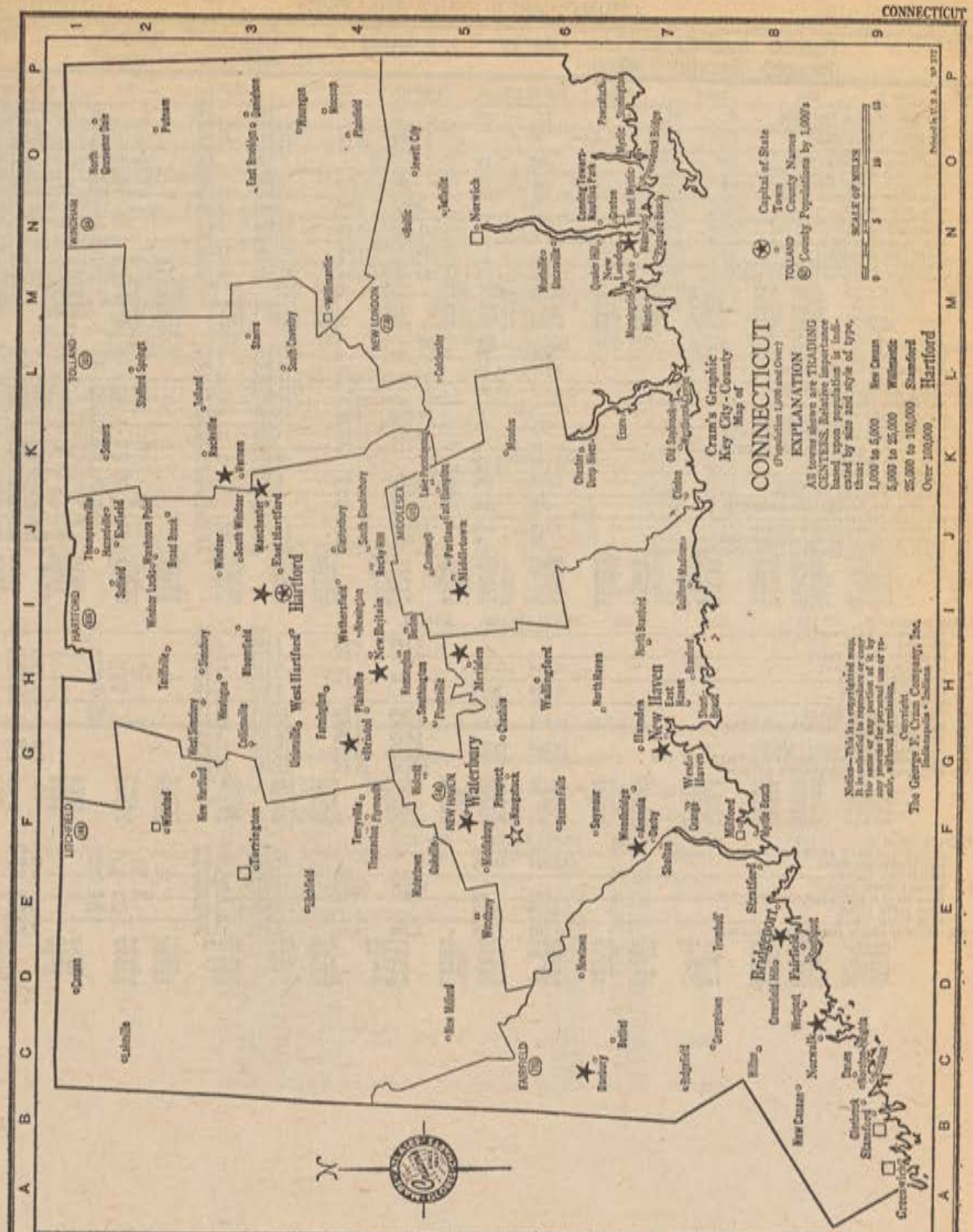
In witness thereof, the said Journal Publishing Company, Inc. has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the first day of May 1975.

[SEAL] JOURNAL PUBLISHING COMPANY, INC.,
BY ELIZABETH ELLIS.

State of Connecticut, County of Hartford, ss.: On the first day of May 1975 before me personally came Elizabeth Ellis to me known, who, being by me duly sworn, did depose and say that she resides at No. 43 Butternut Road, Manchester, Ct., that she is the President of Journal Publishing Company, Inc., the corporation described in, and which executed, the foregoing instrument; that She knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that She signed her name thereto by like order.

GLORIA ROCHA,
Notary Public.

EXHIBIT J


CONNECTICUT
CONNECTICUT
EXPLANATION
Capital of State
Town
County Names
(County Populations by 1,000's
SCALE OF MILES
Cram's Graphic Key City-County Map of
1,000 to 5,000
5,000 to 25,000
25,000 to 100,000
Over 100,000
New Canaan
Willimantic
Stamford
Hartford
Hartford
New Britain
Waterbury
New Haven
Bridgeport
Norwalk
Middletown
Meriden
Wallingford
Torrington
Danbury
Norwich
Groton
Stonington
Putnam
Thompsonville
Enfield
Windsor Locks
Rockville
Stafford Springs
Willimantic
Colchester
Old Saybrook
Essex
Clinton
Madison
Guilford
Branford
North Haven
Milford
Orange
Woodbridge
Derby
Shelton
Seymour
Ansonia
Oxford
Southbury
Woodbury
Litchfield
Torrington
Terryville
Thomaston
Plymouth
Harwinton
Bristol
Plainville
Farmington
Avon
Simsbury
Canton
Granby
Suffield
East Granby
Windsor
Bloomfield
Windsor Locks
Enfield
Somers
Stafford
Tolland
Ellington
Vernon
Rockville
Manchester
East Hartford
Glastonbury
South Windsor
Wethersfield
Newington
Rocky Hill
Cromwell
Portland
East Hampton
Chester
Deep River
Essex
Old Saybrook
Westbrook
Clinton
Madison
Guilford
Branford
North Haven
Hamden
East Haven
New Haven
West

COUNTY AREA PRINT ANALYSIS — Connecticut

	Population (Thousands)	Households (Thousands)	Retail Sales ($ Millions)	Morning		Evening		Total-Daily		Group		Sunday	
FAIRFIELD CONN B	800	260.4	2,087	(A.H.I.) $18,632		MAP D7							
ANSONIA SENTINEL						4,255	1.6%	4,255	1.6%				
BOSTON HERALD AMERICAN				761	.3%			761	.3%		PC	624	.2%
★ BRIDGEPORT POST,TELEGRAM				11,693	4.5%	73,601	28.3%	85,294	32.8%		PA FQ	78,382	30.1%
★ DANBURY NEWS-TIMES						27,921	10.7%	27,921	10.7%		F1	24,622	9.5%
★□ GREENWICH TIME						13,897	5.3%	13,897	5.3%		FQ		
HARTFORD COURANT				190	.1%			190	.1%		SU PC PA	451	.2%
HARTFORD TIMES						495	.2%	495	.2%		SU MC HN F1	661	.3%
NEW HAVEN REGISTER,JOURNL-COUR				288	.1%	781	.3%	1,069	.4%		PC PA HN	2,448	.9%
NEW YORK NEWS				40,463	15.5%			40,463	15.5%		SU MC	64,883	24.9%
NEW YORK POST						3,863	1.5%	3,863	1.5%				
NEW YORK TIMES				29,824	11.5%			29,824	11.5%			47,417	18.2%
★ NORWALK HOUR						21,848	8.4%	21,848	8.4%		FQ		
PORT CHESTER ITEM						1,784	.7%	1,784	.7%		WG		
★□ STAMFORD ADVOCATE						30,596	11.7%	30,596	11.7%		FQ		
WATERBURY REPUBLICAN,AMERICAN				172	.1%	22	-%	194	.1%		NH F1 CT	277	.1%
FQ FAIRFIELD COUNTYS QUALITY DAILIES				11,693	4.5%	139,942	53.7%	151,635	58.2%			78,382	30.1%
FM WKLY	*25,560*	*9.8%*	*AM HME*	*17,595*	*6.8%*	*FORTN*	*5,950*	*2.3%*	*NEWSWK*	*16,676*	*6.4%*	*RED BK*	*19,964*	*7.7%*	*TV GUI*	*158,822*	*61.0%*
PARADE	*81,281*	*31.2%*	*BET HO*	*33,924*	*13.0%*	*GDHSK*	*28,488*	*10.9%*	*NWYRKR*	*6,306*	*2.4%*	*17*	*9,768*	*3.8%*	*USNEWS*	*7,669*	*2.9%*
SUNDAY	*65,995*	*25.3%*	*COSMO*	*6,523*	*2.5%*	*LHJ*	*33,008*	*12.7%*	*OTDR L*	*4,398*	*1.7%*	*SPRTIL*	*15,496*	*6.0%*	*VOGUE*	*3,336*	*1.3%*
METRO C	*65,544*	*25.2%*	*F CIRC*	*46,241*	*17.8%*	*MCCL*	*35,781*	*13.7%*	*PLAY B*	*20,840*	*8.0%*	*TIME*	*32,965*	*12.7%*	*WO DAY*	*44,347*	*17.0%*
PUCK CW	*3,523*	*1.4%*	*FARM J*	*416*	*.2%*	*N GEO*	*41,497*	*15.9%*	*R DGST*	*73,693*	*28.3%*	*TRUE*	*3,741*	*1.4%*			
HARTFORD CONN B	831	274.3	2,107	(A.H.I.) $14,628		MAP I3							
BOSTON GLOBE				243	.1%	10	-%	253	.1%		SU PA MC	1,159	.4%
BOSTON HERALD AMERICAN				3,355	1.2%			3,355	1.2%		PC	2,687	1.0%
★ BRISTOL PRESS						14,945	5.4%	14,945	5.4%				
★ HARTFORD COURANT				125,518	45.8%			125,518	45.8%		SU PC PA	149,996	54.7%
★ HARTFORD TIMES						91,357	33.3%	91,357	33.3%		SU MC HN F1	82,256	30.0%
★ MANCHESTER HERALD						11,866	4.3%	11,866	4.3%		NE		
MERIDEN/WALLINGFORD RECORD,JNL				474	.2%	3,003	1.1%	3,477	1.3%		NH CT		
★ NEW BRITAIN HERALD						33,388	12.2%	33,388	12.2%		CT		
NEW HAVEN REGISTER,JOURNL-COUR				16	-%	544	.2%	560	.2%		PC PA HN	891	.3%
NEW YORK NEWS				8,146	3.0%			8,146	3.0%		SU MC	13,772	5.0%
NEW YORK TIMES				3,682	1.3%			3,682	1.3%			8,761	3.2%
SPRINGFIELD UNION, NEWS				1,405	.5%	4,815	1.8%	6,220	2.3%		PA MC	3,963	1.4%
VERNON JOURNAL INQUIRER						8,406	3.1%	8,406	3.1%		NE		
WATERBURY REPUBLICAN,AMERICAN				665	.2%	461	.2%	1,126	.4%		NH F1 CT	1,413	.5%
□ WINSTED CITIZEN						92	-%	92	-%				
CT CENTRAL CONNECTICUT GROUP				1,139	.4%	36,852	13.4%	37,991	13.9%			1,413	.5%
HN HARTFORD/NEW HAVEN COMBINATION				16	-%	91,901	33.5%	91,917	33.5%			83,147	30.3%
NE NORTHEASTERN CONNECTICUT NEWSP NETWORK						20,272	7.4%	20,272	7.4%				
FM WKLY	*83,669*	*30.5%*	*AM HME*	*14,400*	*5.2%*	*FORTN*	*3,013*	*1.1%*	*NEWSWK*	*15,700*	*5.7%*	*RED BK*	*20,106*	*7.3%*	*TV GUI*	*56,857*	*20.7%*
PARADE	*156,009*	*56.9%*	*BET HO*	*32,710*	*11.9%*	*GDHSK*	*29,031*	*10.6%*	*NWYRKR*	*3,125*	*1.1%*	*17*	*8,119*	*3.0%*	*USNEWS*	*7,440*	*2.7%*
SUNDAY	*247,183*	*90.1%*	*COSMO*	*7,030*	*2.6%*	*LHJ*	*28,801*	*10.5%*	*OTDR L*	*5,344*	*1.9%*	*SPRTIL*	*11,802*	*4.3%*	*VOGUE*	*1,964*	*.7%*
METRO C	*101,150*	*36.9%*	*F CIRC*	*41,913*	*15.3%*	*MCCL*	*30,352*	*11.1%*	*PLAY B*	*25,914*	*9.4%*	*TIME*	*28,053*	*10.2%*	*WO DAY*	*39,096*	*14.3%*
PUCK CW	*153,574*	*56.0%*	*FARM J*	*772*	*.3%*	*N GEO*	*36,445*	*13.3%*	*R DGST*	*20,746*	*25.8%*	*TRUE*	*4,456*	*1.6%*			
LITCHFIELD CONN C	152	50.9	374	(A.H.I.) $14,158		MAP D3							
BOSTON HERALD AMERICAN				190	.4%			190	.4%		PC	311	.6%
BRISTOL PRESS						2,149	4.2%	2,149	4.2%				
DANBURY NEWS-TIMES						4,026	7.9%	4,026	7.9%		F1	3,573	7.0%
HARTFORD COURANT				6,314	12.4%			6,314	12.4%		SU PC PA	10,209	20.1%
HARTFORD TIMES						568	1.1%	568	1.1%		SU MC HN F1	1,096	2.2%
NEW YORK NEWS				3,349	6.6%			3,349	6.6%		SU MC	8,042	15.8%
NEW YORK TIMES				1,908	3.7%			1,908	3.7%			3,773	7.4%
★□ TORRINGTON REGISTER						12,036	23.6%	12,036	23.6%		WS		
WATERBURY REPUBLICAN,AMERICAN				10,084	19.8%	6,636	13.0%	16,720	32.8%		NH F1 CT	18,646	36.6%
★□ WINSTED CITIZEN						5,026	9.9%	5,026	9.9%				
CT CENTRAL CONNECTICUT GROUP				10,084	19.8%	6,636	13.0%	16,720	32.8%			18,646	36.6%
NH NEW HAVEN COUNTY/WATERBURY-MERIDEN GRP				10,084	19.8%	6,636	13.0%	16,720	32.8%			18,646	36.6%
WS WESTERN N E NEWSPAPER NETWORK						12,036	23.6%	12,036	23.6%				
FM WKLY	*23,315*	*45.8%*	*AM HME*	*3,532*	*6.9%*	*FORTN*	*454*	*.9%*	*NEWSWK*	*2,967*	*5.6%*	*RED BK*	*4,497*	*8.8%*	*TV GUI*	*16,388*	*32.2%*
PARADE	*10,209*	*20.1%*	*BET HO*	*7,085*	*13.9%*	*GDHSK*	*6,334*	*12.4%*	*NWYRKR*	*875*	*1.7%*	*17*	*1,395*	*2.7%*	*USNEWS*	*1,426*	*2.8%*
SUNDAY	*19,347*	*38.0%*	*COSMO*	*884*	*1.7%*	*LHJ*	*6,161*	*12.1%*	*OTDR L*	*1,574*	*3.1%*	*SPRTIL*	*2,009*	*3.9%*	*VOGUE*	*322*	*.6%*
METRO C	*9,138*	*18.0%*	*F CIRC*	*9,941*	*19.5%*	*MCCL*	*7,179*	*14.1%*	*PLAY B*	*3,501*	*6.9%*	*TIME*	*5,245*	*10.3%*	*WO DAY*	*8,100*	*15.9%*
PUCK CW	*10,520*	*20.7%*	*FARM J*	*780*	*1.5%*	*N GEO*	*7,569*	*14.9%*	*R DGST*	*16,329*	*32.1%*	*TRUE*	*1,129*	*2.2%*			
MIDDLESEX CONN C	119	38.1	290	(A.H.I.) $14,730		MAP J5							
BOSTON HERALD AMERICAN				336	.9%			336	.9%		PC	474	1.2%
HARTFORD COURANT				12,136	31.9%			12,136	31.9%		SU PC PA	18,604	48.8%
HARTFORD TIMES						1,360	3.6%	1,360	3.6%		SU MC HN F1	1,947	5.1%
★ MIDDLETOWN PRESS						19,937	52.3%	19,937	52.3%				
NEW HAVEN REGISTER,JOURNL-COUR				303	.8%	4,888	12.8%	5,191	13.6%		PO PA HN	5,671	14.9%
NEW YORK NEWS				1,606	4.2%			1,606	4.2%		SU MC	3,431	9.0%
NEW YORK TIMES				818	2.1%			818	2.1%			2,057	5.4%
HN HARTFORD/NEW HAVEN COMBINATION				303	.8%	6,248	16.4%	6,551	17.2%			7,618	20.0%
FM WKLY	*1,947*	*5.1%*	*AM HME*	*3,171*	*8.3%*	*FORTN*	*330*	*.9%*	*NEWSWK*	*2,416*	*6.3%*	*RED BK*	*3,546*	*9.3%*	*TV GUI*	*8,403*	*22.1%*
PARADE	*24,275*	*63.7%*	*BET HO*	*5,748*	*15.1%*	*GDHSK*	*5,268*	*13.8%*	*NWYRKR*	*538*	*1.4%*	*17*	*1,090*	*2.9%*	*USNEWS*	*1,060*	*2.8%*
SUNDAY	*23,982*	*62.9%*	*COSMO*	*854*	*2.2%*	*LHJ*	*4,696*	*12.3%*	*OTDR L*	*1,116*	*2.9%*	*SPRTIL*	*1,660*	*4.4%*	*VOGUE*	*219*	*.6%*
METRO C	*5,378*	*14.1%*	*F CIRC*	*6,032*	*15.8%*	*MCCL*	*5,159*	*13.5%*	*PLAY B*	*2,945*	*7.7%*	*TIME*	*4,335*	*11.4%*	*WO DAY*	*7,333*	*19.2%*
PUCK CW	*24,749*	*65.0%*	*FARM J*	*328*	*.9%*	*N GEO*	*6,583*	*17.3%*	*R DGST*	*12,211*	*32.0%*	*TRUE*	*914*	*2.4%*			

COUNTY AREA PRINT ANALYSIS — Connecticut

	Population (Thousands)	Households (Thousands)	Retail Sales ($ Millions)	Morning		Evening		Total Daily		Group	Sunday	
NEW HAVEN CONN B	758	250.2	1,902	(A.H.I.) $13,723		MAP G6						
★ ANSONIA SENTINEL						13,236	5.3%	13,236	5.3%			
BOSTON GLOBE				88	-%			88	-%	SU PA MC	518	.2%
BOSTON HERALD AMERICAN				2,483	1.0%			2,483	1.0%	PC	2,375	.9%
BRIDGEPORT POST,TELEGRAM				870	.3%	6,461	2.6%	7,331	2.9%	PA FQ	8,267	3.3%
DANBURY NEWS-TIMES						381	.2%	381	.2%	F1	373	.1%
HARTFORD COURANT				2,357	.9%			2,357	.9%	SU PC PA	5,375	2.1%
HARTFORD TIMES						2,447	1.0%	2,447	1.0%	SU MC HN F1	6,530	2.6%
★ MERIDEN/WALLINGFORD RECORD,JNL				21,666	8.7%	5,572	2.2%	27,238	10.9%	NH CT		
★□ MILFORD CITIZEN						N.A.					N.A.	
★ NAUGATUCK NEWS						4,923	2.0%	4,923	2.0%			
★ NEW HAVEN REGISTER,JOURNL-COUR				32,112	12.8%	101,364	40.5%	133,476	53.3%	PC PA HN	115,538	46.2%
NEW YORK NEWS				22,853	9.1%			22,853	9.1%	SU MC	34,540	13.8%
NEW YORK POST						606	.2%	606	.2%			
NEW YORK TIMES				6,983	2.8%			6,983	2.8%		14,193	5.7%
★ WATERBURY REPUBLICAN,AMERICAN				19,630	7.8%	33,095	13.2%	52,725	21.1%	NH F1 CT	44,195	17.7%
CT CENTRAL CONNECTICUT GROUP				41,296	16.5%	38,667	15.5%	79,963	32.0%		44,195	17.7%
FQ FAIRFIELD COUNTYS QUALITY DAILIES				870	.3%	6,461	2.6%	7,331	2.9%		8,267	3.3%
HN HARTFORD/NEW HAVEN COMBINATION				32,112	12.8%	103,811	41.5%	135,923	54.3%		122,068	48.8%
NH NEW HAVEN COUNTY/WATERBURY-MERIDEN GRP				41,296	16.5%	38,667	15.5%	79,963	32.0%		44,195	17.7%
FM WKLY 51,098 20.4%	AM HME 12,997 5.2%	FORTN 2,051 .8%	NEWSWK 14,071 5.6%	RED BK 19,326 7.7%	TV GUI 101,066 40.4%							
PARADE 129,698 51.8%	BET HO 26,312 10.5%	GOHSK 22,685 9.1%	NWYRKR 3,525 1.4%	TT 6,973 2.8%	USNEWS 5,488 2.2%							
SUNDAY 46,963 18.8%	COSMO 5,290 2.1%	LHJ 25,799 10.3%	OTOR L 4,430 1.8%	SPRTIL 10,325 4.1%	VOGUE 1,745 .7%							
METRO C 41,588 16.6%	F CIRC 37,893 15.1%	MCCL 32,397 12.9%	PLAY B 17,147 6.9%	TIME 25,189 10.1%	WO DAY 36,146 14.4%							
PUCK CW 123,288 49.3%	FARM J 542 .2%	N GEO 27,014 10.8%	R DGST 61,892 24.7%	TRUE 4,617 1.8%								
NEW LONDON CONN B	241	74.8	536	(A.H.I.) $13,402		MAP N6						
BOSTON GLOBE				230	.3%			230	.3%	SU PA MC	1,178	1.6%
BOSTON HERALD AMERICAN				1,887	2.5%			1,887	2.5%	PC	3,620	4.8%
★□ GROTON NEWS						N.A.						
HARTFORD COURANT				5,808	7.8%			5,808	7.8%	SU PC PA	11,903	15.9%
HARTFORD TIMES						1,438	1.9%	1,438	1.9%	SU MC HN F1	2,383	3.2%
NEW HAVEN REGISTER,JOURNL-COUR				2	-%	95	.1%	97	.1%	PC PA HN	822	1.1%
★ NEW LONDON DAY						36,835	49.2%	36,835	49.2%	CT		
NEW YORK NEWS				6,170	8.2%			6,170	8.2%	SU MC	12,526	16.7%
NEW YORK TIMES				1,663	2.2%			1,663	2.2%		3,658	4.9%
★□ NORWICH BULLETIN				22,755	30.4%			22,755	30.4%	F1	24,560	32.8%
PROVIDENCE BULLETIN,JOURNAL				530	.7%	13	-%	543	.7%	SU MC	592	.8%
WESTERLY SUN						2,471	3.3%	2,471	3.3%	PV	2,500	3.3%
□ WILLIMANTIC CHRONICLE						735	1.0%	735	1.0%	NE		
CT CENTRAL CONNECTICUT GROUP						36,835	49.2%	36,835	49.2%			
FM WKLY 26,943 36.0%	AM HME 4,131 5.5%	FORTN 462 .6%	NEWSWK 3,934 5.2%	RED BK 6,128 8.2%	TV GUI 40,427 54.0%							
PARADE 13,903 18.6%	BET HO 9,180 12.3%	GOHSK 7,985 10.7%	NWYRKR 827 1.1%	TT 2,976 4.0%	USNEWS 1,640 2.2%							
SUNDAY 28,582 38.2%	COSMO 1,738 2.3%	LHJ 8,057 10.8%	OTOR L 1,903 2.5%	SPRTIL 3,015 4.0%	VOGUE 365 .5%							
METRO C 16,679 22.3%	F CIRC 14,259 19.1%	MCCL 8,606 11.5%	PLAY B 6,206 8.3%	TIME 7,319 9.8%	WO DAY 14,130 18.9%							
PUCK CW 16,345 21.9%	FARM J 629 .8%	N GEO 11,303 15.1%	R DGST 23,125 30.9%	TRUE 1,452 1.9%								

CONNECTICUT NEWSPAPER CIRCULATION SUMMARY

NEWSPAPER NAME	MORNING	EVENING	TOTAL	SUNDAY
HARTFORD COURANT	172,072		172,072	221,139
NEW HAVEN REGISTER,JOURNL-COUR	32,756	107,907	140,663	125,916
HARTFORD TIMES		107,542	107,542	108,438
BRIDGEPORT POST,TELEGRAM	12,620	80,387	93,007	87,031
WATERBURY REPUBLICAN,AMERICAN	30,851	40,355	71,206	64,933
NEW LONDON DAY		37,462	37,462	
□ NORWICH BULLETIN	34,642		34,642	34,341
DANBURY NEWS-TIMES		34,340	34,340	30,191
NEW BRITAIN HERALD		33,835	33,835	
MERIDEN/WALLINGFORD RECORD,JNL	22,652	8,644	31,296	
□ STAMFORD ADVOCATE		30,800	30,800	
NORWALK HOUR		22,040	22,040	
MIDDLETOWN PRESS		20,304	20,304	
ANSONIA SENTINEL		17,583	17,583	
BRISTOL PRESS		17,581	17,581	
VERNON JOURNAL INQUIRER		15,853	15,853	
MANCHESTER HERALD		14,770	14,770	
□ GREENWICH TIME		14,198	14,198	
□ TORRINGTON REGISTER		12,282	12,282	
□ WILLIMANTIC CHRONICLE		10,200	10,200	
□ MILFORD CITIZEN		9,200	9,200	9,200
□ WINSTED CITIZEN		5,394	5,394	
NAUGATUCK NEWS		5,037	5,037	
□ GROTON NEWS		4,719	4,719	
TOTAL PUBLISHED IN STATE	305,593	650,433	956,026	681,189

Connecticut

COUNTY AREA PRINT ANALYSIS

	Population (Thousands)	Households (Thousands)	Retail Sales ($ Millions)	Morning		Evening		Total Daily		Group		Sunday	
TOLLAND CONN C	112	31.9	163	(A.H.I.) $14,659		MAP L3							
BOSTON HERALD AMERICAN				190	.6%			190	.6%		PC	366	1.1%
HARTFORD COURANT				15,439	48.4%			15,439	48.4%	SU PC	PA	18,683	58.6%
HARTFORD TIMES						5,490	17.2%	5,490	17.2%	SU MC HN	F1	6,379	20.0%
MANCHESTER HERALD						2,708	8.5%	2,708	8.5%		NE		
NEW YORK NEWS				264	.8%			264	.8%	SU	MC	915	2.9%
NEW YORK TIMES				346	1.1%			346	1.1%			915	2.9%
SPRINGFIELD UNION, NEWS				177	.6%	812	2.5%	989	3.1%	PA	MC	327	1.0%
★ VERNON JOURNAL INQUIRER						7,395	23.2%	7,395	23.2%		NE		
□ WILLIMANTIC CHRONICLE						3,431	10.8%	3,431	10.8%		NE		
HN HARTFORD/NEW HAVEN COMBINATION						5,490	17.2%	5,490	17.2%			6,379	20.0%
NE NORTHEASTERN CONNECTICUT NEWSP NETWORK						13,534	42.4%	13,534	42.4%				
FM WKLY	*6,379*	*20.0%*	*AM HME*	*1,758*	*5.5%*	*FORTN*	*343*	*.8%*	*NEWSWK*	*2,224*	*7.0%*	*RED BK*	*2,462*	*7.7%*	*TV GUI*	*7,301*	*22.9%*
PARADE	*19,010*	*59.6%*	*BET HO*	*4,259*	*13.4%*	*GDHSK*	*3,452*	*10.8%*	*NWYRKR*	*393*	*1.2%*	*17*	*491*	*1.5%*	*USNEWS*	*819*	*2.6%*
SUNDAY	*25,977*	*81.4%*	*COSMO*	*405*	*1.3%*	*LHJ*	*3,064*	*9.6%*	*OTDR L*	*925*	*2.9%*	*SPRTIL*	*1,352*	*4.2%*	*VOGUE*	*133*	*.4%*
METRO C	*7,821*	*23.9%*	*F CIRC*	*4,800*	*15.0%*	*MCCL*	*3,400*	*10.7%*	*PLAY B*	*3,270*	*10.3%*	*TIME*	*3,821*	*12.0%*	*WO DAY*	*4,508*	*14.1%*
PUCK CW	*19,049*	*59.7%*	*FARM J*	*394*	*1.2%*	*N GEO*	*5,217*	*16.4%*	*R DGST*	*8,855*	*27.8%*	*TRUE*	*666*	*2.1%*			
WINDHAM CONN C	90	30.5	224	(A.H.I.) $11,914		MAP 03							
BOSTON GLOBE				157	.5%	1	%	158	.5%	SU PA	MC	465	1.5%
BOSTON HERALD AMERICAN				934	3.1%			934	3.1%		PC	1,702	5.6%
HARTFORD COURANT				3,224	10.6%			3,224	10.6%	SU PC	PA	4,399	14.4%
HARTFORD TIMES						2,407	7.9%	2,407	7.9%	SU MC HN	F1	3,754	12.3%
NEW YORK NEWS				673	2.2%			673	2.2%	SU	MC	2,006	6.6%
NEW YORK TIMES				311	1.0%			311	1.0%			726	2.4%
□ NORWICH BULLETIN				10,450	34.3%			10,450	34.3%		F1	8,430	27.6%
PROVIDENCE BULLETIN,JOURNAL				74	.2%	77	.3%	151	.5%	SU	MC	833	2.7%
★□ WILLIMANTIC CHRONICLE						5,751	18.9%	5,751	18.9%		NE		
WORCESTER TELEGRAM,GAZETTE				151	.5%	1,566	5.1%	1,717	5.6%	SU	MC	973	3.2%
NE NORTHEASTERN CONNECTICUT NEWSP NETWORK						5,751	18.9%	5,751	18.9%				
FM WKLY	*12,184*	*39.9%*	*AM HME*	*1,438*	*4.7%*	*FORTN*	*126*	*.4%*	*NEWSWK*	*1,375*	*4.5%*	*RED BK*	*2,250*	*7.4%*	*TV GUI*	*17,688*	*58.6%*
PARADE	*4,864*	*15.9%*	*BET HO*	*3,347*	*11.0%*	*GDHSK*	*3,064*	*10.0%*	*NWYRKR*	*181*	*.6%*	*17*	*129*	*.4%*	*USNEWS*	*635*	*2.1%*
SUNDAY	*12,430*	*40.8%*	*COSMO*	*574*	*1.9%*	*LHJ*	*2,491*	*8.2%*	*OTDR L*	*838*	*2.7%*	*SPRTIL*	*899*	*2.9%*	*VOGUE*	*89*	*.3%*
METRO C	*8,031*	*26.3%*	*F CIRC*	*5,781*	*19.0%*	*MCCL*	*3,036*	*10.0%*	*PLAY B*	*1,240*	*4.1%*	*TIME*	*2,020*	*6.6%*	*WO DAY*	*5,272*	*17.3%*
PUCK CW	*6,101*	*20.0%*	*FARM J*	*502*	*1.6%*	*N GEO*	*3,337*	*10.9%*	*R DGST*	*8,762*	*28.7%*	*TRUE*	*504*	*1.7%*			
STATE COUNTY TOTALS	3,103	1,011.1	7,683										
NEWSPAPERS				444,786	44.0%	644,921	63.8%	1,089,707	107.8%			910,410	90.0%
FM WKLY	*231,095*	*22.9%*	*AM HME*	*59,022*	*5.8%*	*FORTN*	*12,629*	*1.2%*	*NEWSWK*	*59,353*	*5.9%*	*RED BK*	*78,279*	*7.7%*	*TV GUI*	*407,152*	*40.3%*
PARADE	*439,249*	*43.4%*	*BET HO*	*122,565*	*12.1%*	*GDHSK*	*106,307*	*10.5%*	*NWYRKR*	*15,770*	*1.6%*	*17*	*30,941*	*3.1%*	*USNEWS*	*26,177*	*2.6%*
SUNDAY	*470,459*	*46.5%*	*COSMO*	*23,298*	*2.3%*	*LHJ*	*112,078*	*11.1%*	*OTDR L*	*20,508*	*2.0%*	*SPRTIL*	*46,558*	*4.6%*	*VOGUE*	*8,173*	*.8%*
METRO C	*255,129*	*25.2%*	*F CIRC*	*166,860*	*16.5%*	*MCCL*	*125,910*	*12.5%*	*PLAY B*	*81,063*	*8.0%*	*TIME*	*108,947*	*10.8%*	*WO DAY*	*158,932*	*15.7%*
PUCK CW	*357,149*	*35.3%*	*FARM J*	*4,371*	*.4%*	*N GEO*	*138,965*	*13.7%*	*R DGST*	*275,613*	*27.3%*	*TRUE*	*17,484*	*1.7%*			

INDIVIDUAL NEWSPAPER'S AREA ANALYSIS — Connecticut

		Population (Thousands)	Households (Thousands)	Retail Sales ($ Millions)	Morning		Evening		Total Daily		Group	Sunday	
ANSONIA SENTINEL													
PUBL STMT			3-74 MAP G6				17,812						
AUDIT			12-73				17,583						
CITY ZONE		79	24.0				15,697	66.2%					
METRO AREA		758	250.2	1,902			13,236	5.3%					
FAIRFIELD	CONN	800	260.4	2,087			4,235	1.6%					
★→NEW HAVEN	CONN	758	250.2	1,902			13,236	5.3%					
5% MAC EVENING		758	250.2	1,902			13,236	5.3%					
BRIDGEPORT POST,TELEGRAM													
PUBL STMT			3-74 MAP D7		11,850		79,369		91,219		PA FQ	87,566	
AUDIT			12-73		12,620		80,387		93,007			87,031	
CITY ZONE		268	86.6		9,648	11.1%	56,739	65.5%	66,387	76.7%		56,218	64.9%
N E SMSA			133.9		10,675	8.0%	77,180	57.6%	87,855	65.6%		79,387	59.3%
METRO AREA		800	260.4	2,087	11,693	4.5%	73,601	28.3%	85,294	32.8%		78,382	30.1%
★→FAIRFIELD	CONN	800	260.4	2,087	11,693	4.5%	73,601	28.3%	85,294	32.8%		78,382	30.1%
NEW HAVEN	CONN	758	250.2	1,902	870	-%	6,461	2.6%	7,331	2.9%		8,267	3.3%
5% MAC MORNING		800	260.4	2,087	11,693	4.5%							
5% MAC EVENING		800	260.4	2,087			73,601	28.3%					
20% MAC EVENING		800	260.4	2,087			73,601	28.3%					
5% MAC COMBINED		800	260.4	2,087									
20% MAC COMBINED		800	260.4	2,087					85,294	32.8%			
5% MAC SUNDAY		800	260.4	2,087					85,294	32.8%			
20% MAC SUNDAY		800	260.4	2,087								78,382	30.1%
												78,382	30.1%
BRISTOL PRESS													
PUBL STMT			3-74 MAP I3				18,062						
AUDIT			3-73				17,581						
CITY ZONE		64	19.8				15,953	80.6%					
N E SMSA			22.5				17,072	75.9%					
METRO AREA		943	306.2	2,270			14,945	4.9%					
★→HARTFORD	CONN	831	274.3	2,107			14,945	5.4%					
LITCHFIELD	CONN	152	50.9	374			2,149	4.2%					
5% MAC EVENING		831	274.3	2,107			14,945	5.4%					
DANBURY NEWS-TIMES													
PUBL STMT			3-74 MAP D7				34,964				FI	32,654	
AUDIT			3-73				34,340					30,191	
CITY ZONE		63	19.3				16,255	84.2%				14,098	73.0%
N E SMSA			37.3				27,204	72.9%				25,020	67.1%
METRO AREA		800	260.4	2,087			22,921	10.7%				24,622	9.5%
★→FAIRFIELD	CONN	800	260.4	2,087			27,921	10.7%				24,622	9.5%
LITCHFIELD	CONN	152	50.9	374			4,026	7.9%				3,573	7.0%
NEW HAVEN	CONN	758	250.2	1,902			381	-%				373	-%
PUTNAM	N Y	67	20.0	121			1,507	7.5%				1,435	7.2%
5% MAC EVENING		1,019	331.3	2,582			33,454	10.1%					
5% MAC SUNDAY		1,019	331.3	2,582								29,630	8.9%
‡ GREENWICH TIME													
P.O. STMT			MAP D7				14,198				FQ		
N E SMSA			69.3				13,897	20.1%					
METRO AREA		800	260.4	2,087			13,897	5.3%					
★→FAIRFIELD	CONN	800	260.4	2,087			13,897	5.3%					
5% MAC EVENING		800	260.4	2,087			13,897	5.3%					
‡ GROTON NEWS													
P.O. STMT			MAP N6				4,719						
METRO AREA		241	74.8	536									
★→NEW LONDON	CONN	241	74.8	536			N.A.						
HARTFORD COURANT													
PUBL STMT			3-74 MAP I3		177,027						SU PC PA	230,840	
AUDIT			9-73		172,072							221,139	
PRM MKT AREA		1,185	365.0		162,335	44.5%						203,247	55.7%
CITY ZONE		342	114.4		55,874	48.8%						59,571	52.1%
N E SMSA			235.4		127,575	54.2%						138,960	59.0%
METRO AREA		943	306.2	2,270	140,957	46.0%						168,679	55.1%
FAIRFIELD	CONN	800	260.4	2,087	190	-%						451	-%
★→HARTFORD	CONN	831	274.3	2,107	125,518	45.8%						149,996	54.7%
LITCHFIELD	CONN	152	50.9	374	6,314	12.4%						10,209	20.1%
MIDDLESEX	CONN	119	38.1	290	12,136	31.9%						18,604	48.8%
NEW HAVEN	CONN	758	250.2	1,902	2,357	-%						5,375	2.1%
NEW LONDON	CONN	241	74.8	536	5,808	7.8%						11,903	15.9%
→TOLLAND	CONN	112	31.9	163	15,439	48.4%						18,683	58.6%
WINDHAM	CONN	90	30.5	224	3,224	10.6%						4,399	14.4%
HAMPDEN	MASS	473	157.0	1,149	139	-%						383	-%
5% MAC MORNING		1,545	500.5	3,694	168,439	33.7%							
20% MAC MORNING		1,062	344.3	2,560	153,093	44.5%							
5% MAC SUNDAY		1,545	500.5	3,694								213,794	47.7%
20% MAC SUNDAY		1,214	393.2	2,934								197,452	50.0%
50% MAC SUNDAY		943	306.2	2,270								168,679	55.1%
HARTFORD TIMES													
PUBL STMT			3-74 MAP I3				103,390				SU MC HN FI	102,284	
AUDIT			9-73				107,542					108,438	
CITY ZONE		342	114.4				57,699	50.4%				46,957	41.0%
N E SMSA			235.4				101,917	43.3%				88,402	37.6%
METRO AREA		943	306.2	2,270			96,847	31.6%				88,635	28.9%
FAIRFIELD	CONN	800	260.4	2,087			495	-%				661	-%
★→HARTFORD	CONN	831	274.3	2,107			91,357	33.3%				82,256	30.0%
LITCHFIELD	CONN	152	50.9	374			568	1.1%				1,096	2.2%
MIDDLESEX	CONN	119	38.1	290			1,360	3.6%				1,947	5.1%
NEW HAVEN	CONN	758	250.2	1,902			2,447	1.0%				6,530	2.6%
NEW LONDON	CONN	241	74.8	536			1,438	1.9%				2,383	3.2%
→TOLLAND	CONN	112	31.9	163			5,490	17.2%				6,379	20.0%
WINDHAM	CONN	90	30.5	224			2,407	7.9%				3,754	12.3%
BERKSHIRE	MASS	156	51.5	450			41	-%				393	-%
HAMPDEN	MASS	473	157.0	1,149			1,082	-%				1,191	-%
5% MAC EVENING		1,033	336.7	2,494			99,254	29.5%					
20% MAC EVENING		831	274.3	2,107			91,357	33.3%					
5% MAC SUNDAY		1,152	374.8	2,784								94,336	25.2%
20% MAC SUNDAY		943	306.2	2,270								88,635	28.9%
MANCHESTER HERALD													
PUBL STMT			3-74 MAP I3				14,756				NE		
AUDIT			3-73				14,770						
CITY ZONE		55	17.4				11,504	66.1%					
METRO AREA		943	306.2	2,270			14,574	4.8%					
★→HARTFORD	CONN	831	274.3	2,107			11,866	4.3%					
→TOLLAND	CONN	112	31.9	163			2,708	8.5%					
5% MAC EVENING		112	31.9	163			2,708	8.5%					
MERIDEN/WALLINGFORD RECORD,JNL													
PUBL STMT			3-74 MAP G6		23,122		8,657		31,779		NH CT		
AUDIT			9-73		22,652		8,644		31,296				
PRM MKT AREA		126	38.0		21,769	57.3%	8,525	22.4%	30,294	79.7%			
CITY ZONE		92	28.4		21,380	75.3%	5,533	19.5%	26,913	94.8%			
N E SMSA			18.9		14,158	74.9%	5,669	30.0%	19,827	104.9%			
METRO AREA		758	250.2	1,902	21,666	8.7%	5,572	2.2%	27,238	10.9%			
HARTFORD	CONN	831	274.3	2,107	474	-%	3,003	1.1%	3,477	1.3%			
★→NEW HAVEN	CONN	758	250.2	1,902	21,666	8.7%	5,572	2.2%	27,238	10.9%			
5% MAC MORNING		758	250.2	1,902	21,666	8.7%							
5% MAC COMBINED		758	250.2	1,902					27,238	10.9%			

Connecticut — INDIVIDUAL NEWSPAPER'S AREA ANALYSIS

	Population (Thousands)	Households (Thousands)	Retail Sales ($ Millions)	Morning		Evening		Total Daily		Group	Sunday	
MIDDLETOWN PRESS												
PUBL STMT		3-74 MAP J5				20,912						
AUDIT		9-73				20,304						
CITY ZONE	55	16.4				12,719	77.6%					
METRO AREA	119	38.1	290			19,937	52.3%					
★→MIDDLESEX CONN	119	38.1	290			19,937	52.3%					
5% MAC EVENING	119	38.1	290			19,937	52.3%					
20% MAC EVENING	119	38.1	290			19,937	52.3%					
50% MAC EVENING	119	38.1	290			19,937	52.3%					
□ **MILFORD CITIZEN**												
P.O. STMT		MAP G6				9,200					9,200	
METRO AREA	758	250.2	1,902									
★→NEW HAVEN CONN	758	250.2	1,902			N.A.					N.A.	
NAUGATUCK NEWS												
PUBL STMT		3-74 MAP G6				5,085						
AUDIT		9-73				5,037						
PRM MKT AREA	36	10.7				4,876	45.6%					
METRO AREA	758	250.2	1,902			4,923	2.0%					
★→NEW HAVEN CONN	758	250.2	1,902			4,923	2.0%					
NEW BRITAIN HERALD												
PUBL STMT		3-74 MAP I3				34,254				CT		
AUDIT		9-73				33,835						
CITY ZONE	114	36.9				28,175	76.4%					
N E SMSA		46.9				38,133	81.3%					
METRO AREA	943	306.2	2,270			33,388	10.9%					
★→HARTFORD CONN	831	274.3	2,107			33,388	12.2%					
5% MAC EVENING	831	274.3	2,107			33,388	12.2%					
NEW HAVEN REGISTER,JOURNL-COUR												
PUBL STMT		3-74 MAP G6		32,030		107,880		139,910		PC PA HN	128,256	
AUDIT		6-73		32,756		107,907		140,663			125,916	
CITY ZONE	321	103.3		25,439	24.6%	71,906	69.6%	97,345	94.2%		74,729	72.3%
N E SMSA		141.8		31,560	22.3%	93,836	66.2%	125,396	88.4%		100,884	71.1%
METRO AREA	758	250.2	1,902	32,112	12.8%	101,364	40.5%	133,476	53.3%		115,538	46.2%
FAIRFIELD CONN	800	260.4	2,087	288	-%	781	-%	1,069	-%		2,448	-%
HARTFORD CONN	831	274.3	2,107	16	-%	544	-%	560	-%		891	-%
MIDDLESEX CONN	119	38.1	290	303	-%	4,888	12.8%	5,191	13.6%		5,671	14.9%
★→NEW HAVEN CONN	758	250.2	1,902	32,112	12.8%	101,364	40.5%	133,476	53.3%		115,538	46.2%
NEW LONDON CONN	241	74.8	536	2	-%	95	-%	97	-%		822	1.1%
5% MAC MORNING	758	250.2	1,902	32,112	12.8%							
5% MAC EVENING	877	288.3	2,192			106,252	36.9%					
20% MAC EVENING	758	250.2	1,902			101,364	40.5%					
5% MAC COMBINED	877	288.3	2,192					138,667	48.1%			
20% MAC COMBINED	758	250.2	1,902					133,476	53.3%			
50% MAC COMBINED	758	250.2	1,902					133,476	53.3%			
5% MAC SUNDAY	877	288.3	2,192								121,209	42.0%
20% MAC SUNDAY	758	250.2	1,902								115,538	46.2%
NEW LONDON DAY												
PUBL STMT		3-74 MAP N6				38,346				CT		
AUDIT		6-73				37,462						
PRM MKT AREA	152	43.3				37,462	86.5%					
CITY ZONE	90	26.0				22,390	86.1%					
N E SMSA		77.9				37,153	47.7%					
METRO AREA	241	74.8	536			36,835	49.2%					
★→NEW LONDON CONN	241	74.8	536			36,835	49.2%					
5% MAC EVENING	241	74.8	536			36,835	49.2%					
20% MAC EVENING	241	74.8	536			36,835	49.2%					
NORWALK HOUR												
PUBL STMT		3-74 MAP D7				21,971				FQ		
AUDIT		12-73				22,040						
PRM MKT AREA	177	53.5				21,624	40.4%					
N E SMSA		81.8				20,515	49.1%					
METRO AREA	800	260.4	2,087			21,848	8.4%					
★→FAIRFIELD CONN	800	260.4	2,087			21,848	8.4%					
5% MAC EVENING	800	260.4	2,087			21,848	8.4%					
□ **NORWICH BULLETIN**												
P.O. STMT		MAP N6		34,642						F1	34,341	
N E SMSA		77.9		22,750	29.2%						24,560	31.5%
METRO AREA	241	74.8	536	22,755	30.4%						24,560	32.8%
★→NEW LONDON CONN	241	74.8	536	22,755	30.4%						24,560	32.8%
WINDHAM CONN	90	30.5	224	10,450	34.3%						8,430	27.6%
5% MAC MORNING	331	105.3	760	33,205	31.5%							
20% MAC MORNING	331	105.3	760	33,205	31.5%						32,990	31.3%
5% MAC SUNDAY	331	105.3	760								32,990	31.3%
20% MAC SUNDAY	331	105.3	760									

INDIVIDUAL NEWSPAPER'S AREA ANALYSIS — Connecticut

	Population (Thousands)	Households (Thousands)	Retail Sales ($ Millions)	Morning		Evening		Total Daily		Group	Sunday	
☐ STAMFORD ADVOCATE												
P.O. STMT		MAP D7				30,800				FQ		
N E SMSA		69.3				30,596	44.2%					
METRO AREA	800	260.4	2,087			30,596	11.7%					
★→FAIRFIELD CONN	800	260.4	2,087			30,596	11.7%					
5% MAC EVENING	800	260.4	2,087			30,596	11.7%					
☐ TORRINGTON REGISTER												
P.O. STMT		MAP D3				12,282				WS		
★ LITCHFIELD CONN	152	50.9	374			12,036	23.6%					
5% MAC EVENING	152	50.9	374			12,036	23.6%					
20% MAC EVENING	152	50.9	374			12,036	23.6%					
VERNON JOURNAL INQUIRER												
PUBL STMT		3-74 MAP L3				16,269				NE		
AUDIT		12-72				15,853						
PRM MKT AREA	137	37.2				15,659	42.1%					
METRO AREA	943	306.2	2,270			15,801	5.2%					
→HARTFORD CONN	831	274.3	2,107			8,406	3.1%					
★→TOLLAND CONN	112	31.9	163			7,395	23.2%					
5% MAC EVENING	112	31.9	163			7,395	23.2%					
20% MAC EVENING	112	31.9	163			7,395	23.2%					
WATERBURY REPUBLICAN AMERICAN												
PUBL STMT		3-74 MAP G6		30,609		40,084		70,693		NH F1 CT	65,135	
AUDIT		9-73		30,851		40,355		71,206			64,933	
PRM MKT AREA	326	100.9		28,801	28.5%	39,521	39.2%	68,322	67.7%		61,170	60.6%
CITY ZONE	165	51.9		17,729	34.2%	29,245	56.3%	46,974	90.5%		38,531	74.2%
N E SMSA		71.8		21,848	30.4%	37,249	51.9%	59,097	82.3%		48,927	68.1%
METRO AREA	758	250.2	1,902	19,630	7.8%	33,095	13.2%	52,725	21.1%		44,195	17.7%
FAIRFIELD CONN	800	260.4	2,087	172	-%	22	-%	194	-%		277	-%
HARTFORD CONN	831	274.3	2,107	665	-%	461	-%	1,126	-%		1,413	-%
LITCHFIELD CONN	152	50.9	374	10,084	19.6%	6,636	13.0%	16,720	32.8%		18,646	36.6%
★→NEW HAVEN CONN	758	250.2	1,902	19,630	7.8%	33,095	13.2%	52,725	21.1%		44,195	17.7%
5% MAC MORNING	910	301.1	2,276	29,714	9.9%							
20% MAC MORNING	152	50.9	374	10,084	19.8%							
5% MAC EVENING	910	301.1	2,276			39,731	13.2%					
5% MAC COMBINED	910	301.1	2,276					69,445	23.1%			
20% MAC COMBINED	910	301.1	2,276					69,445	23.1%			
5% MAC SUNDAY	910	301.1	2,276								62,841	20.9%
20% MAC SUNDAY	152	50.9	374								18,646	36.6%
☐ WILLIMANTIC CHRONICLE												
P.O. STMT		MAP O3				10,200				NE		
NEW LONDON CONN	241	74.8	536			735	1.0%					
TOLLAND CONN	112	31.9	163			3,431	10.8%					
★ WINDHAM CONN	90	30.5	224			5,751	18.9%					
5% MAC EVENING	202	62.4	387			9,182	14.7%					
☐ WINSTED CITIZEN												
P.O. STMT		MAP D3				5,394						
★ LITCHFIELD CONN	152	50.9	374			5,026	9.9%					
TOTAL CIRCULATION PUBLISHED IN STATE				305,593		650,433					681,189	

APPENDIX 17

COMMENTS OF THE NEWS-JOURNAL CO., WILMINGTON, DEL.

Thank you for giving me the information concerning the filing of comments on the Boston Globe consent decree. I enclose herewith the News-Journal's comments.

Very truly yours,

RICHARD G. ELLIOTT, Jr.

COMMENTS ON "THE COMPETITIVE IMPACT STATEMENT" AND PROPOSED CONSENT JUDGMENT IN UNITED STATES V. CHICAGO TRIBUNE—NEW YORK NEWS SYNDICATE, INC., ET AL., [CIVIL NOS. 67-4596, 4597, 4598 (S.D.N.Y., filed March 5, 1975)]

INTRODUCTION

The firm of Richards, Layton & Finger is general counsel to The News-Journal Company, a Delaware corporation ("News-Journal"). News-Journal has certain comments concerning the consent decree to be entered in the so-called Boston Globe case.

NEWS-JOURNAL COMPANY MARKET

As background information, the News-Journal publishes a morning and evening paper in Wilmington, Delaware, with a combined daily circulation as of December 31, 1974 of 137,874 copies.[1] The News-Journal distributes newspapers in the state of Delaware; Chester and Delaware Counties, Pennsylvania; Cecil, Kent, Queen Anne's and Caroline Counties, Maryland; and Salem County, New Jersey. The primary area of distribuiton is New Castle County, Delaware. In New Castle County, there were estimated to be 120,500 households in 1974, and the News-Journal has a combined daily circulation of 108,928 in New Castle County. The News-Journal presently does not publish a Sunday newspaper.

Wilmington, Delaware is approximately 25 milles from Philadelphia, Pennsylvania.

The Philadelphia Inquirer distributes approximately 8,528 copies daily in New Castle County, and the Philadelphia Bulletin distributes approximately 3,130 copies daily in New Castle County.

There are 31,832 copies of the Philadelphia Inquirer Sunday newspaper distributed in New Castle County, and approximately 33,265 copies of the Philadelphia Sunday Bulletin distributed in New Castle County.[2]

The News-Journal is presently considering the possibility of publishing a Sunday newspaper. Others have attempted to publish a Sunday newspaper in New Castle County, and all have failed. In an effort to determine the feasibility of a Sunday newspaper, the News-Journal has endeavored to contract with and secure certain comic strips and other features essential to the success of a Sunday newspaper. For example, United Features Syndicate has refused to allow the News-Journal to publish "Nancy" or "Peanuts" because those comic strips presently appear in the Philadelphia Sunday papers. Similar attempts have been made to secure numerous other comic strips, including, for example, "Beetle Bailey", "Doonesbury", and "The Family Circus". In each case, the News-Journal has been denied the privilege of securing these Sunday features because they appear in the Philadelphia Sunday papers.

Such a result is totally anti-competitive and unfair to the News-Journal. It is clear that on a daily basis, the News-Journal will be entitled to receive all syndicated features presently restricted to Philadelphia newspapers. There appears to be absolutely no justification to bar the News-Journal from receipt of the same syndicated material for its proposed Sunday edition.

The News-Journal Company would strongly urge that the Department of Justice take the position that all restraints on syndication be removed. All newspapers should be given the opportunity to purchase features, regardless of the size of the newspaper.

In the alternative, News-Journal would most strenuously urge that the penetration requirement of a competitor's market area necessary to claim exclusivity of a feature should be not less than 45 percent. Such a percentage figure is far more realistic than

PROPOSED CONSENT DECREE

The News-Journal must criticize the proposed form of consent decree because it does not appear to deal with the situation confronting the News-Journal. As presently drawn, the consent decree would appear to prohibit the News-Journal from access to the Sunday market. It would appear that the Philadelphia Inquirer and the Philadelphia Bulletin would be permitted to syndicate within New Castle County for Sunday papers because the circulation for both exceed the guidelines set forth under the consent decree.

[1] All statistics are based upon 1974 A.B.C. reports.

[2] Philadelphia *Inquirer* statistics are based upon September 30, 1973 A.B.C. Reports. Philadelphia *Bulletin* statistics are based upon September 30, 1974 A.B.C. Reports.

the proposed 20 percent figure in light of the close proximity which numerous smaller newspapers have to large metropolitan areas.

Finally, the News-Journal would urge that the consent decree be revised to provide for access to the Sunday market by newspapers that otherwise would enjoy a free market. A newspaper such as the News-Journal, which qualifies for syndicated material based on copies of Monday through Saturday sold, should not be denied the right to the same syndicated material for a Sunday newspaper. In short, the consent decree is anti-competitive in that it fails to permit access to markets by already established newspapers—it continues the dominance by major newspapers over the Sunday market and precludes entry and thus competition by smaller newspapers into the Sunday market.

The News-Journal suggests that Paragraph II(E) be amended as follows:

"(E) 'Circulation' means the average daily paid circulation of a newspaper, including Sunday newspaper, such circulation to be determined from the applicable Audit Bureau of Circulation's annual audit report or, for non-A.B.C. newspapers, from the 'Statement of Ownership, Management and Circulation' filed with the U.S. Postal Service. If a newspaper publishes a Sunday newspaper, average daily paid circulation is determined by adding its total average weekly paid circulation (all editions published including Sunday) and dividing that total by the number of days in the week the newspaper publishes."

Respectfully submitted,

RICHARD G. ELLIOTT, Jr.,
Richards, Layton & Finger, 4072 Du-Pont Building, Wilmington, Delaware 19899, Attorneys for The News-Journal Company.

APPENDIX 18

COMMENTS OF THE FREE PRESS, BUCKS COUNTY, PA.

LAW OFFICES
BIEHN & THATCHER,
Quakertown, Pa., May 28, 1975.

This is to be considered as comments from an interested person with respect to the Proposed Consent Judgment in the above matter.

This office represents The Free Press, a small daily newspaper (circulation approximately 8,500) located in the northwest section of Bucks County, Pennsylvania, approximately 18–20 miles from Allentown, the location of the Call Chronicle newspapers. It is also about 20 miles from Bethlehem, the location of the Bethlehem Globe, 30 miles from Easton, the location of the Easton Express and 40 miles from Philadelphia, the location of the Inquirer, the Bulletin and the Daily News. The Call Chronicle publishes a morning and afternoon newspaper, the Bethlehem Globe publishes an afternoon paper, the Easton Express publishes an afternoon paper, and the Bulletin publishes an afternoon paper, and the Inquirer and Daily News are morning papers. Allentown is located in Lehigh County, Bethlehem is located in Lehigh and Northampton Counties, Easton is located in Northampton County and Philadelphia is located in Philadelphia County. All of these counties are adjacent to Bucks County in which Quakertown is located. The Free Press publishes five days a week in the afternoon.

In the past The Free Press has experienced the inability to obtain certain syndicated features as defined in the proposed Final Judgment in the above cases by reason of exclusive arrangements between the above referred to papers and various syndicates. The Free Press has always thought this to be an unfair restraint of competition in that the territory was arbitrary and unreasonably broad since, in the Free Press' opinion, the exclusivity is not needed by any of these papers to permit them to benefit from the licensing of features and that it, therefore, constituted an unreasonable restraint of trade.

Under the circumstances, therefore, as it would now be applied to the situation of the Free Press, the Consent Decree or Proposed Final Judgment, would have the effect of eliminating what the Free Press considers to be an unreasonable restraint of trade. However, the maximum circulation number of 11,750 does seem unrealistically low compared to the much larger circulations of "city newspapers". The Free Press feels that if it doubled or trebled its present circulation the use by it of syndicated features would in no way impair the benefits which these newspapers obtain from the licensing of these features. Indeed, it is doubtful if any Free Press subscriber is not also a subscriber to at least one or more of the above referred to newspapers. I understand that the Call Chronicle's total circulation is approximately 150,000, 115,000 for the morning paper and 35,000 for the evening paper, but that the evening paper does not circulate far beyond the city limits. The other newspapers' circulations are somewhat less and do not affect Quakertown as much except the Philadelphia papers which, of course, all have much larger circulations.

Accordingly, The Free Press would suggest that the maximum circulation number be increased to perhaps 20,000 or 25,000 rather than 11,750.

Although this letter is directed towards a specific situation, it is suggested that its applicability is general and The Free Press will appreciate the government's considering this viewpoint and negotiate towards the amendment of the Consent Decree to conform to the suggestions.

Very truly yours,

WILLIAM THATCHER.

APPENDIX 19

COMMENTS OF THE WAUKESHA FREEMAN, 200 PARK PLACE, WAUKESHA, WIS. 53186

WAUKESHA FREEMAN,
Waukesha, Wis., May 29, 1975.

The Waukesha Freeman objects to the entry of the proposed Consent Decree in the matter of U.S. of America vs. Chicago Tribune et al., U.S. Of America vs. Field Enterprises et al., and U.S. of America vs. Hearst Corp. et al; namely 67 Civ. 4596, 67 Civ. 4597 and 67 Civ. 4598. If the proposed consent decree is entered, it will provide a precedent that will harm the Waukesha Freeman and prove dangerous to its future as a daily newspaper.

The Waukesha Freeman is a newspaper published Monday through Saturday in the City of Waukesha, county seat of Waukesha County, State of Wisconsin. The principal area of circulation of the Waukesha Freeman is the western three-fourths of Waukesha County, which includes Waukesha City. The Waukesha Freeman has been published regularly since 1859. No other daily newspaper is published in either the City or County of Waukesha. However, Waukesha County is adjacent to Milwaukee County, Wisconsin whose county seat is the City of Milwaukee.

The City of Milwaukee is approximately 20 miles from the City of Waukesha and is the site of publication of two daily newspapers under common ownership, The Milwaukee Journal published Monday through Saturday afternoons and Sunday morning and the Milwaukee Sentinel published Monday through Saturday mornings.

The City of Milwaukee has a population of slightly more than 700,000. The City of Waukesha has an estimated 1975 population of 46,000. Both of the commonly owned Milwaukee dailies are printed in the single plant owned by their common owner, and both daily newspapers circulate throughout Milwaukee and Waukesha Counties as well as other counties of the State of Wisconsin with varying penetration of the circulation markets. The Waukesha Freeman has no significant penetration of additional counties in the State.

According to the March, 1974 Audit Bureau of Circulation Report, the paid circulation of the Milwaukee newspapers was as follows: The Journal, daily except Sunday, 353,124, and Sunday, 544,907; The Sentinel, 179,295. The Waukesha Freeman's circulation in March, 1974 was 22,811. A year later it was 23,656.

The Freeman concurs in the objections asserted by the Oakland Press of Pontiac, Michigan and the George W. Prescott Publishing Co. of Quincy, Mass., contained in comments filed about the proposed consent judgment. In particular, the Freeman agrees that the proposed decree provides no relief at all to newspapers which in fact compete with metropolitan papers such as those in Boston, Detroit and Milwaukee. The large newspapers are asked to yield nothing significant. Under the decree, they could continue to license features to the exclusion of their actual competitors.

More disturbing to the Freeman is the proposed decree's silence on the subject of the news services which are also denied to small, competing newspapers by virtue of exclusive licenses sought by metropolitan newspapers and agreed to by the agencies which sell news reports.

The Milwaukee Journal and The Milwaukee Sentinel in the aggregate subscribe to at least the following:

Associated Press, provided by wire; United Press International, provided by wire; New York Times News Service, provided by wire; Washington Post-Los Angeles Times News Service, provided by wire.

Through the agency of New York Times or Washington Post-Los Angeles Times News Services or separately, the Milwaukee newspapers subscribe to the news services of the London Observer, Religious News Service, Newsday, Sunday Group, The London Times, Women's News Service, Manchester Guardian, Washington Star, North American Newspaper Alliance, Agence-France Presse and perhaps others.

The Waukesha Freeman subscribes to United Press International and the Christian Science Monitor News Service. Christian Science Monitor distributes its news through the unhurried and unreliable mail system. Freeman requests to purchase the New York Times and Los Angeles Times-Washington Post News Services have been denied, the services citing exclusive rights they have granted the Milwaukee Journal in their contracts with it.

The proposed decree is not the first time U.S. Courts have dealt with the problem of agreements by which news services and newspapers keep other newspapers from buying their service. A key case is Associated Press in 1945.

The U.S. Supreme Court wrote:

"The District Court found that the Associated Press By-Laws in and of themselves were contracts in restraint of commerce in that they contained provisions designed to stifle competition in the newspaper publishing field. * * *"

"The By-Laws provide a very simple and non-burdensome road for admission of a non-competing applicant. The Board of Directors in such case can elect the applicant without payment of money or the imposition of any other onerous terms. In striking contrast are the By-Laws which govern admission of new

members who do compete. Historically, as well as presently, applicants who would offer competition to old members have a hard road to travel. * * *"

"For the court below found, and we think correctly, that the By-Laws on their face, and without regard to their past effect, constitute restraints of trade. Combinations are no less unlawful because they have not as yet resulted in restraint. An agreement or combination to follow a course of conduct which will necessarily restraint or monopolize a part of trade or commerce may violate the Sherman Act, whether it be 'wholly nascent or abortive on the one hand, or successful on the other.' "

In a concurring opinion, Justice Frankfurter wrote:

"But in addition to being a commercial enterprise, The Associated Press has a relation to the public interest unlike that of any other enterprise pursued for profit. A free press is indispensable to the workings of our democratic society. The business of the press, and therefore the business of the Associated Press, is the promotion of truth regarding public matters by furnishing the basis for an understanding of them. Truth and understanding are not wares like peanuts or potatoes. * * *

"From this point of view it is wholly irrelevant that the Associated Press itself has rival news agencies. As to ordinary commodities, agreements to curtail the supply and to fix prices are in violation of the area of free enterprise which the Sherman Law was designed to protect. The press in its commercial aspects is also subject to the regulation of the Sherman Law. Indiana Farmer's Guide Pub. Co. v. Prairie Farmer Pub. Co., 293 U.S. 268, 55 S.Ct. 182, 79 L.Ed. 356. But the freedom of enterprise protected by the Sherman Law necessarily has different aspects in relation to the press than in the case of ordinary commercial pursuits. The interest of the public is to have the flow of news not trammeled by the combined self-interest of those who enjoy a unique constitutional position precisely because of the public dependence on a free press. A public interest so essential to the vitality of our democratic government may be defeated by private restraints no less than by public censorship."

What the Supreme Court said in 1945 about the Associated Press applies to other wire services today. Yet, while neither the Associated Press nor United Press International in fact award exclusive territories for their services, the New York Times and Los Angeles Times-Washington Post and others do.

The trends in newspaper publishing during the past 30 years have made such news services as indispensable today as Associated Press was in 1945. Los Angeles Times-Washington Post, for example, is only 13 years old—yet it has been purchased by more than 375 newspapers around the world. Its success is a measure of its usefulness.

In the 30 years, the newspaper "extra" has disappeared. Radio and television provide the first reports of major events for most citizens. Newspapers more and more take as their goal that of explaining the news, of drawing practical applications of the news to their readers. So commonplace today are interpretive news stories that they are rarely so identified. Major news events get lengthy treatment in newspapers, with analysis offered from all the sources a publisher has at hand.

Supreme among the purveyors of news are the Associated Press, United Press International, the New York Times and Los Angeles Times-Washington Post, which latter service comes as an indivisible package with Newsday, Agence-France Press, London Observer and the Guardian of Manchester.

The Supreme Court wasted no words describing the business of the Associated Press in 1945: "Its business is the collection, assembly and distribution of news." So, in 1975, is the business of the New York Times and Los Angeles Times-Washington Post news services.

The New York Times and Los Angeles Times news services sell news as well as comment and features. It cannot be argued that they escape the ban on exclusive dealing which applies to the Associated Press and United Press International, the present day news services which were also of importance in 1945. Nor can it be argued that the Associated Press and United Press International do not sell comment, interpretation and features as well as news.

The biggest news stories of their days were the stories of the Pentagon Papers and the pre-election investigations of Nixon's involvement in Watergate. Those stories were developed especially by the New York Times and Washington Post and sold to clients through their services. Obviously all citizens needed to know about those subjects, the most significant events in which their federal government was, for the day, involved.

It was in the setting of the earlier era that the Supreme Court held flatly and without equivocation that all newspapers were entitled to access to the then primary tool of newspapers, the wire services. The Court recognized that to allow the strong, entrenched, and economically powerful major metropolitan dailies to enter into exclusive contracts with the wire services of the day would prevent all comers, except those powerful dailies from access to the tools then necessary to the very operation of a daily newspaper. A newspaper of that era, like newspapers today, had to know the facts before they became stale. Without current facts there was no newspaper, and without other newspapers the powerful publisher with his exclusive contract rights had no competition. Therefore, the Supreme Court acted to strike down the attempted contractual monopoly. While the decision striking down the attempted contractual monopoly opened the competitive arena, it should be noted that newspapers were not hurt; this country has a very large number of strong, viable, and free newspapers. The defendant wire service did not go out of existence either.

The Waukesha Freeman has asked both the New York Times and the Washington Post-Los Angeles Times services to quote. Both services have declined because the Journal Company (the common owner of the only two daily newspapers in Milwaukee and of television and AM and FM radio stations there) has the exclusive right to their services.

Upon receiving that response, the Waukesha Freeman asked the Journal Company to waive its exclusivity sufficiently to permit the Waukesha Freeman to avail itself of such services. The Journal Company refused, copy of its letter is attached. Note that the creators of the tools so vital to all newspapers are not declining to quote, they are citing their customer's contractual rights as preventing their doing business with another newspaper. Thus, the Waukesha Freeman not only finds itself similarly situated to the questions presented in the proposed Consent Decree, it is an actual victim of exclusive contractual provisions.

Examination of the exclusive clause in any setting such as that posed in Boston, in Milwaukee, or any other major metropolitan area with a large metropolitan newspaper inevitably must reflect that the clause is not only anti-competitive but monopolistic. As set out above, it prevents competitive access to the very tools necessary to compete.

If such tools were readily available from numerous sources, there would of course, be no value to the clause in the hands of a customer of a service. The customer would neither insist on the clause or refuse to waive its application. But we have seen this is not the fact with this clause.

If this clause were being used to protect either a fledgling service or a new entrant customer, it might not have the proscribed competitive impact which prohibits its operation under the anti-trust laws. But in Boston, in Milwaukee and inevitably wherever excercised it will be found to be inserted at the behest of and insisted upon by the entrenched powerful newspaper against the smaller competitor or new entrant. This is what we believe the antitrust laws were meant to prevent and what the Supreme Court prohibited in ruling against exclusivity in respect of the Associated Press.

In this context and under the Supreme Court decision, the proposed Consent Decree here does not do the job. In essence, the proposed Consent Decree allows a major metropolitan newspaper to exclude competitors if two conditions exist: first, the major metropolitan daily needs only a substantial penetration in the county of exclusion, (i.e., have combined circulation of not less than 5,000 which must equal at least 20 percent without any upper limit on that success—it could have 100 percent circulation), in order, second, to exclude any newspaper that could offer any effective competition (i.e. have a total circulation of 11,750 or more). Obviously, the major metropolitan daily will have total circulation well in excess of 11,750 in its home city, but no limit is placed on its use of exclusivity by virtue of its numerical circulation or the percentage of its home city market it enjoys. Just as obviously, a newspaper having an aggregate circulation of 11,750 does not describe a real threat to a major metropolitan daily. Thus the proposed Consent Decree allows contractual exclusivity to be used against newspapers that are very small indeed; 11,750 total circulation is not sizeable for a daily. Likewise the proposed Consent Decree does not measure the size or dominance of the newspaper availing itself of the contractual protection against competition.

Surely a metropolitan newspaper having a dominant position in the metropolitan market should not be permitted to build contractually a wall and moat against all effective competition. Yet, the proposed Consent Decree is a blueprint for precisely that anti-competitive contractual barrier. The proposed Decree says to the large metropolitan daily, "You may continue to extend your contractual barriers out from your central position so long as you have a 20 percent penetration in the geographical area of the barrier. When you finally get out far enough from your base of operations that you haven't penetrated one out of five households, there you must let others have the tools to compete with you. Of course, in all counties surrounding your base of operations where you have a 20 percent penetration, you may exclude anyone having even minimal strength, i.e., over 11,750 in circulation." Surely with such sanctions contractual fences there is little likelihood that competitors will come into being to challenge major metropolitan dailies.

The proposed Consent Decree, rather than furthering competition, in fact would judicially confer a permanent sinecure on all existing monopolists. Such monopolies are dangerous not only because they prevent economic competition, but because they stultify competitive distribution of news with consequences far transcending a mere economic dislocation in a society dependent, as ours is, on free flow of thought and news.

Only an economically strong local newspaper can effectively prevent local governments from dropping a veil of secrecy over

their activities. Investigating and publishing what local officials don't want reported is costly. A local newspaper weakened by its inability to purchase wire service news could eventually find itself unable to pursue its local reporting responsibilities vigorously.

It is submitted that the proposed Consent Decree should be modified to include wire news services and so that paragraph IV would contain only the first independent clause ending with the present semicolon, viz:

"Globe is enjoined from licensing any feature or news service from any syndicate with a condition, agreement or understanding limiting the territory within which or the persons to whom such feature may be licensed . . ."

The proposed Consent Decree should then be modified wherever necessary to conform to the requirements of the rewritten paragraph IV.

Very truly yours,

JAMES L. HUSTON,
Managing Editor.

EXHIBIT A

THE MILWAUKEE JOURNAL,
Milwaukee, Wis., May 6, 1975.

Mr. ELWIN J. ZARWELL,
Quarles & Brady, 780 North Water St., Milwaukee, Wis. 53202

DEAR MR. ZARWELL: This is in reply to your letter to Mr. Maier dated April 21, 1975, in which you asked if we would relinquish certain rights we have under contracts with the New York Times Wire Service and the Washington Post-Los Angeles Times Wire Service.

We see no reason or justification for relinquishing these valid contractual rights, and therefore must decline your request.

Very truly yours,

RICHARD H. LEONARD,
Editor and Vice President.

Exhibit B, "A report on the Freemanland market area" cannot be reproduced. It is filed as part of the original document.

[FR Doc.75-19640 Filed 7-28-75;8:45 am]