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Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[1960 C.C.C. Grain Price Support Bulletin 1, Supp. 1, Soybeans]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Soybean Loan and Purchase Agreement Program

Correction

In F.R. Doc. 60-6194, appearing at page 6317 of the issue for Wednesday, July 6, 1960, the following corrections are made:

1. In the tabular material of § 421.5433 (c)(2), the figures under Damaged kernels—Total, for 51.0-51.9 pounds test weight per bushel, should read "5.1-6.0" instead of "5-1.6.0".

2. In the first sentence of § 421.5436 (b), the words "authorized is to delivered to CCC" should read "authorized to be delivered to CCC".

Title 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—United States Standards For Grades of Canned Sweet Cherries¹

RECOMMENDED MINIMUM DRAINED WEIGHTS

On June 2, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 4867) regarding an amendment to the United States Standards for Grades of Canned Sweet Cherries (7 CFR 52.821-52.836).

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the following amendment to the United States Standards for Grades of Canned Sweet Cherries is hereby promulgated pursuant to the authority contained in

¹ Compliance with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable state laws and regulations.

the Agricultural Marketing Act of 1946 (secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627).

Table I in § 52.828 is amended to read as follows:

TABLE I—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR FITTED AND UNFITTED CANNED SWEET CHERRIES

Container size or designation (metal, unless otherwise stated)	In extra heavy sirups and in declared "dietetic packs" whether or not packed in water	In heavy sirups	In light sirup and in slightly sweetened water or juice	Other than declared "dietetic packs" packed in water
	(Ounces)	(Ounces)	(Ounces)	(Ounces)
8 Z tall.....	4 $\frac{3}{4}$	5	5 $\frac{1}{4}$	5 $\frac{1}{4}$
No. 1 tall.....	9 $\frac{3}{4}$	10	10 $\frac{1}{4}$	10 $\frac{1}{4}$
No. 303.....	9 $\frac{3}{4}$	10	10 $\frac{1}{4}$	10 $\frac{1}{4}$
No. 303 glass.....	9 $\frac{3}{4}$	10	10 $\frac{1}{4}$	10 $\frac{1}{4}$
No. 2.....	12	12 $\frac{1}{2}$	12 $\frac{1}{2}$	12 $\frac{1}{2}$
No. 2 $\frac{1}{2}$	17 $\frac{1}{2}$	18	18 $\frac{1}{2}$	18 $\frac{1}{2}$
No. 2 $\frac{1}{2}$ glass.....	17 $\frac{1}{2}$	17 $\frac{3}{4}$	18 $\frac{1}{2}$	18 $\frac{1}{2}$
No. 10.....	64 $\frac{1}{2}$	66 $\frac{1}{2}$	70	70

It is hereby found that good cause exists for not postponing the effective date of this amendment beyond that herein specified (5 U.S.C. 1001-1011) in that (1) the processing season of sweet cherries in most areas is now underway and it is necessary for purposes of inspection and marketing that these standards be made effective at once; (2) the industry has been apprised of the amendment and no contrary views have been submitted; and (3) the amendment will not require any special preparation for compliance.

(Secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627)

Dated: July 12, 1960, to become effective upon publication hereof in the FEDERAL REGISTER.

S. T. WARRINGTON,
Acting Deputy Administrator,
Marketing Services.

[F.R. Doc. 60-6579; Filed, July 14, 1960; 8:47 a.m.]

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—United States Standards for Grades of Concentrated Tomato Juice¹

On June 2, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 4867) regarding the issuance of United States Standards for Grades of Concentrated Tomato Juice.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the following United States Standards for Grades of Concentrated Tomato Juice

are hereby promulgated pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627):

PRODUCT DESCRIPTION AND GRADES

Sec.
52.5201 Product description.
52.5202 Grades of concentrated tomato juice.

FILL OF CONTAINER

52.5203 Recommended fill of container.

FACTORS OF QUALITY

52.5204 Ascertaining the grade of a sample unit.
52.5205 Color.
52.5206 Consistency.
52.5207 Defects.
52.5208 Flavor.

LOT INSPECTION AND CERTIFICATION

52.5209 Ascertaining the grade of a lot.

SCORE SHEET

52.5210 Score sheet for concentrated tomato juice.

AUTHORITY: §§ 52.5201 to 52.5210 issued under sec. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627.

PRODUCT DESCRIPTION AND GRADES

§ 52.5201 Product description.

"Concentrated tomato juice" means the product prepared from clean, sound, whole tomatoes of the red or reddish varieties as such product is defined in the Standard of Identity for Tomato Puree (21 CFR 53.20; 25 F.R. 1687) issued pursuant to the Federal Food, Drug, and Cosmetic Act. The product contains not less than 21 percent but less than 25 percent of salt-free tomato solids. When packed in hermetically sealed containers it is sufficiently processed by heat, before or after sealing, to assure preservation of the product.

§ 52.5202 Grades of concentrated tomato juice.

(a) "U.S. Grade A" (or "U.S. Fancy") is the quality of concentrated tomato juice that, when properly reconstituted, (1) has a good color; (2) has a good consistency; (3) is practically free from defects; (4) has a good flavor; and (5) scores not less than 85 points when scored in accordance with the scoring system outlined in this subpart: *Provided*, That the reconstituted tomato juice may have only a fairly good color, scoring not less than 25 points and a fairly good consistency, if the total score is not less than 85 points.

(b) "U.S. Grade C" (or "U.S. Standard") is the quality of concentrated tomato juice that, when properly reconstituted, (1) has a fairly good color; (2) has a fairly good consistency; (3) is fairly free from defects; (4) has a fairly good flavor; and (5) scores not less than 70 points when scored in accordance with the scoring system outlined in this subpart.

(c) "Substandard" is the quality of concentrated tomato juice that fails to meet the requirements of U.S. Grade C.

FILL OF CONTAINER

§ 52.5203 Recommended fill of container.

Fill of container is not incorporated in the grades of the finished product, since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of concentrated tomato juice be filled as full as practicable without impairment of quality, and that the product occupy not less than 90 percent of the capacity of the container.

FACTORS OF QUALITY

§ 52.5204 Ascertaining the grade of a sample unit.

In addition to considering other requirements outlined in the standards, the quality factors of color, consistency, defects, and flavor are evaluated by applying appropriate criteria to the reconstituted tomato juice prepared by thoroughly mixing the concentrated tomato juice with three volumes of water. The relative importance of each factor is expressed numerically on the scale of 100. The maximum number of points that may be given for each such factor is:

Factors:	Points
Color.....	30
Consistency.....	15
Defects.....	15
Flavor.....	40
Total score.....	100

§ 52.5205 Color.

(a) *General.* (1) The amount of red in the reconstituted tomato juice is determined by comparing the color of the product with that produced by spinning a combination of the following Munsell color discs:

- Disc 1—Red (5R 2.6/13) (glossy finish).
- Disc 2—Yellow (2.5 YR 5/12) (glossy finish).
- Disc 3—Black (N1) (glossy finish).
- Disc 4—Grey (N4) (mat finish).

(2) Such comparison is to be made under a diffused light source of approximately 250 foot-candle intensity and having a spectral quality approximating that of daylight under a moderately overcast sky, and a color temperature of 7500 degrees Kelvin $\pm$ 200 degrees. With the light source directly over the disc and product, observation is made at an angle of 45 degrees from a distance of about 24 inches from the product.

(b) (A) *classification.* Concentrated tomato juice that, when reconstituted properly, has a good color may be given a score of 26 to 30 points. "Good color" means a color that is typical of canned tomato juice, made from well ripened red tomatoes, which has been properly prepared and properly processed. Such color contains as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations: 65 percent of the area of Disc 1; 21 percent of the area of Disc 2; 14 percent of the area of Disc 3 or of Disc 4, or 7 percent of the area of Disc 3 and 7 percent of the area of Disc

4, whichever most nearly matches the reflectance of the product.

(c) (C) *classification.* If the reconstituted tomato juice has a fairly good color a score of 23 to 25 points may be given. Concentrated tomato juice that scores 23 or 24 points for color shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a partial limiting rule). "Fairly good color" means a color that is typical of canned tomato juice. To score 25 points for color the reconstituted juice shall contain as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations: 59 percent of the area of Disc 1; 24½ percent of the area of Disc 2; 16½ percent of the area of either Disc 3 or Disc 4, or 8½ percent of the area of Disc 3 and 8½ percent of the area of Disc 4, whichever most nearly matches the reflectance of the product. To score 23 or 24 points for color the reconstituted tomato juice shall contain as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations: 53 percent of the area of Disc 1; 28 percent of the area of Disc 2; 19 percent of the area of either Disc 3 or Disc 4, or 9½ percent of the area of Disc 3 and 9½ percent of the area of Disc 4, whichever most nearly matches the reflectance of the product.

(d) (SStd.) *classification.* Concentrated tomato juice that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 22 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.5206 Consistency.

(a) *General.* This factor has reference to the viscosity of the reconstituted juice. The tendency of the insoluble solids to separate, leaving practically clear liquid at the top is also to be noted in this connection.

(b) (A) *classification.* Concentrated tomato juice that, when properly reconstituted, has a good consistency may be given a score of 13 to 15 points. "Good consistency" means that the reconstituted tomato juice flows readily; has a normal amount of insoluble tomato solids in suspension; and that there is little tendency for such solids to settle out.

(c) (C) *classification.* If the concentrated tomato juice has a fairly good consistency a score of 10 to 12 points may be given. "Fairly good consistency" means that the reconstituted tomato juice flows readily; has a normal amount of insoluble tomato solids in suspension; and that there is not a marked tendency for such solids to settle out.

(d) (SStd.) *classification.* Concentrated tomato juice that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 9 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.5207 Defects.

(a) *General.* The factor of defects refers to the degree of freedom from defects, such as dark specks or scale-like

particles, seeds, particles of seed, tomato peel, core material or other similar substances.

(b) (A) *classification.* Concentrated tomato juice that is practically free from defects may be given a score of 13 to 15 points. "Practically free from defects" means that any defects present in the reconstituted juice do not more than slightly affect the appearance or drinking quality of the juice.

(c) (C) *classification.* If the concentrated tomato juice is fairly free from defects a score of 10 to 12 points may be given. Concentrated tomato juice that falls into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that any defects present in the reconstituted juice may be noticeable, but are not so large, so numerous or of such contrasting color as to seriously affect the appearance or drinking quality of the juice.

(d) (SStd.) *classification.* Concentrated tomato juice that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 9 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.5208 Flavor.

(a) (A) *classification.* Concentrated tomato juice that possesses a good flavor may be given a score of 33 to 40 points. "Good flavor" means a distinct canned tomato juice flavor and odor characteristic of good quality tomatoes. To score in this classification the flavor of the reconstituted juice shall not be adversely affected by stems, leaves, crushed seeds, cores, immature tomatoes, or the effects of improper trimming or processing.

(b) (C) *classification.* If the reconstituted tomato juice possesses only a fairly good flavor a score of 27 to 32 points may be given. Concentrated tomato juice that falls into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good flavor" means a characteristic canned tomato juice flavor. To score in this classification the flavor of the reconstituted juice may be affected adversely, but not seriously so, by stems, leaves, crushed seeds, cores, immature tomatoes, or the effects of improper trimming or processing.

(c) (SStd.) *classification.* Concentrated tomato juice that fails to meet the requirements of paragraph (b) of this section may be given a score of 0 to 26 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

LOT INSPECTION AND CERTIFICATION

§ 52.5209 Ascertaining the grade of a lot.

The grade of a lot of concentrated tomato juice covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (§§ 52.1 to 52.87 of this title).

SCORE SHEET

§ 52.5210 Score sheet for concentrated tomato juice.

Type of container.....	
Container size.....	
Label.....	
Code.....	
Volume (fl. ozs.).....	
Vacuum (inches).....	
Factors	Score points
Color.....	30
Consistency.....	15
Defects.....	15
Flavor.....	40
Total score.....	100
Grade.....	

¹ Indicates partial limiting rule.² Indicates limiting rule.

It is hereby found that good cause exists for not postponing the effective date of these standards beyond July 15, 1960 (5 U.S.C. 1001-1011) in that (1) the processing season for tomatoes is imminent and it is necessary for purposes of inspection and marketing that these standards be made effective at the beginning of the processing season; and (2) the industry has been apprised of the nature of the standards and compliance therewith will not require any special preparation that cannot be completed by the effective time hereof.

The United States Standards for Grades of Concentrated Tomato Juice (which is the first issue) contained in this subpart shall become effective on July 15, 1960.

Dated: July 12, 1960.

S. T. WARRINGTON,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 60-6580; Filed, July 14, 1960;
8:47 a.m.]

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 723—CIGAR-FILLER TOBACCO, CIGAR-BINDER TOBACCO, AND CIGAR-FILLER AND BINDER TOBACCO

Marketing Quota Regulations, 1961-62 Marketing Year

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723.1212 Definitions.
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723.1214 Instructions and forms.
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ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR OLD FARMS

- 723.1216 Determination of 1961 preliminary acreage allotments for old farms.

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ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS

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MISCELLANEOUS

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723.1227 Approval of determinations made under §§ 723.1211 to 723.1226 and § 723.1229; and notices of farm acreage allotments.
723.1228 Application for review.
723.1229 Determination of farm preliminary allotments for 1962 and subsequent years and tobacco acreage history for 1960 and subsequent years.

AUTHORITY: §§ 723.1211 to 723.1229 issued under secs. 301, 313, 363, 375, 378, 52 Stat. 38, as amended, 47, as amended, 63, as amended, 66 as amended 72 Stat. 995, as amended, secs. 106, 112, 377, 70 Stat. 191, 195, 206, as amended; 7 U.S.C. 1301, 1313, 1363, 1375, 1377, 1378, 1824, 1836.

GENERAL

§ 723.1211 Basis and purpose.

The regulations contained in §§ 723.1211 to 723.1228 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the establishment of 1961 farm acreage allotments and normal yields for cigar-binder (types 51 and 52) tobacco and cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco. The purpose of the regulations in §§ 723.1211 to 723.1228 is to provide the procedure for allocating, on an acreage basis, the national marketing quota for cigar-binder (types 51 and 52) tobacco and cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco for the 1961-62 marketing year among farms and for determining normal yields. Section 723.1229 is included for the purpose of showing (a) how farm preliminary allotments for 1962 and subsequent years and (b) how farm tobacco acreage history for 1960 and subsequent years, will

be determined. Prior to preparing the regulations in §§ 723.1211 to 723.1229, public notice (25 F.R. 4996) was given in accordance with the Administrative Procedure Act (5 U.S.C. 1003). The date, views, and recommendations pertaining to the regulations in §§ 723.1211 to 723.1229 which were submitted have been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended.

§ 723.1212 Definitions.

As used in §§ 723.1211 to 723.1229, and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires.

(a) The following terms shall have the meanings assigned to them in Part 719 of this chapter: "Allotment," "combination," "community committee," "county committee," "State committee," "county," "county office manager," "cropland," "current year," "Department," "Deputy Administrator," "division," "farm," "farm serial number," "field," "history acreage," "operator," "person," "photograph number," "preceding year," "producer," "reconstitution," "Secretary," "Soil Bank Contract," "State administrative officer," and "subdivision."

(b) "Director" means the Director, or Acting Director, Tobacco Division, Commodity Stabilization Service, United States Department of Agriculture.

(c) "Base period" for the 1961-62 marketing year means the five years 1956-60.

(d) "New farm" means a farm on which there is no tobacco acreage history since 1955. If in accordance with applicable law and regulations, no 1956, 1957, 1958, 1959, or 1960 tobacco acreage allotment was determined for the farm, any production of tobacco in 1956, 1957, 1958, 1959, or 1960, respectively, shall not be considered in determining whether the farm is a new farm. The term "tobacco acreage history" as used in this paragraph shall be as defined and explained in § 723.1229.

(e) "Old farm" means a farm on which there is tobacco acreage history in one or more of the five years 1956 through 1960. If in accordance with applicable law and regulations, no 1956, 1957, 1958, 1959, or 1960 tobacco acreage allotment was determined for the farm, any production of tobacco in 1956, 1957, 1958, 1959, or 1960 respectively, shall not be considered in determining whether the farm is an old farm. The term "tobacco acreage history" as used in this paragraph shall be as defined and explained in § 723.1229.

(f) "Tobacco" means:

(1) Type 43 tobacco, that type of cigar-leaf tobacco commonly known as Gebhardt, Ohio Seedleaf, or Ohio Broadleaf, produced principally in the Miami Valley section of Ohio and extending into Indiana;

(2) Type 43 tobacco, that type of cigar-leaf tobacco commonly known as Zimmer, Spanish, or Zimmer Spanish, produced principally in the Miami Valley

section of Ohio and extending into Indiana;

(3) Type 44 tobacco, that type of cigar-leaf tobacco commonly known as Dutch, Shoestring Dutch, or Little Dutch, produced principally in the Miami Valley section of Ohio;

(4) Type 51 tobacco, that type of cigar-leaf tobacco commonly known as Connecticut Valley Broadleaf or Connecticut Broadleaf, produced primarily in the Valley area of Connecticut;

(5) Type 52 tobacco, that type of cigar-leaf tobacco commonly known as Connecticut Valley Havana Seed, or Havana Seed of Connecticut and Massachusetts, produced primarily in the Connecticut Valley area of Massachusetts and Connecticut;

(6) Type 53 tobacco, that type of cigar-leaf tobacco commonly known as York State Tobacco, or Havana Seed of New York and Pennsylvania, produced principally in the Big Flats section of New York, extending into Pennsylvania and in the Onondaga section of New York State;

(7) Type 54 tobacco, that type of cigar-leaf tobacco commonly known as southern Wisconsin cigar-leaf or southern Wisconsin binder type, produced principally south and east of the Wisconsin River; or

(8) Type 55 tobacco, that type of cigar-leaf tobacco commonly known as Northern Wisconsin cigar-leaf or Northern Wisconsin binder type, produced principally north and west of the Wisconsin River, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the Bureau of Agricultural Economics of the United States Department of Agriculture, or all such types of tobacco as indicated by the context. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco. The term "tobacco" shall include all leaves harvested, including trash.

§ 723.1213 Extent of calculations and rule of fractions.

All acreage allotments shall be rounded to the nearest one-hundredth acre. Computations shall be carried two decimal places beyond the required number of decimal places. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by "1." For example, 10.5536 would be 10.55; 10.5550 would be 10.55; 10.5551 would be 10.56; and 10.5582 would be 10.56.

§ 723.1214 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions for internal management as are necessary for carrying out §§ 723.1211 to 723.1229. The forms and instructions shall be approved by, and the instructions shall be issued by, the Deputy Administrator for Production Adjustment, Commodity Stabilization Service.

§ 723.1215 Applicability of §§ 723.1211 to 723.1229.

Sections 723.1211 to 723.1228, and § 723.1229 to the extent indicated therein, govern the establishment of farm acreage allotments and normal yields in connection with the 1961 crop of tobacco.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR OLD FARMS

§ 723.1216 Determination of 1961 preliminary acreage allotments for old farms.

(a) The 1961 preliminary acreage allotment for an old tobacco farm shall be the 1960 farm acreage allotment established for such farm, prior to any reduction for violation of the tobacco marketing quota regulations.

(b) Notwithstanding the foregoing provision of paragraph (a) of this section, no 1961 preliminary allotment or 1961 farm tobacco acreage allotment shall be determined for any land which is devoted to commercial or residential development or other non-agricultural purposes, which was not acquired by an agency having the right of eminent domain and which could not have been acquired under right of eminent domain by the person or agency that did acquire it, and which the county committee and a representative of the State committee determine is retired from agricultural production: *Provided*, That this paragraph shall not preclude the determination of a preliminary acreage allotment or allotment for an old farm returned to agricultural production, or for a farm for which an acreage allotment may be determined under the provisions of § 723.1220.

§ 723.1217 1961 old farm tobacco acreage allotment.

The preliminary allotments calculated for all old farms in the State pursuant to § 723.1216 shall be adjusted uniformly so that the total of such allotments plus the acreage available for adjusting acreage allotments for old farms, correction of errors, and for allotments for overlooked old farms pursuant to § 723.1218 shall not exceed the State acreage allotment.

§ 723.1218 Adjustment of acreage allotments for old farms, correction of errors, and allotments for overlooked old farms.

Notwithstanding the limitations contained in § 723.1216, the individual 1961 farm acreage allotment heretofore established for an old farm may be increased if the county committee justifies such increase to the satisfaction of a representative of the State committee as being necessary to establish an allotment for such farm which is fair and equitable in relation to the allotments for other old farms in the county, on the basis of the past acreage of tobacco, making due allowances for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The acreage available in the State for increasing

allotments as above described under this section, correction of errors, and providing acreage allotments for overlooked farms shall not exceed in the case of cigar-binder (types 51 & 52) tobacco one percent of the total acreage allotted to all farms in the State for the production of such kind of tobacco for the 1960-61 marketing year, and shall not exceed in the case of cigar-filler and binder (types 42, 43, 44, 53, 54 & 55) tobacco 4 percent of the total acreage allotted to all farms in the State for the production of such kind of tobacco for the 1960-61 marketing year. The allotment for a farm under a conservation reserve contract shall be given the same consideration as the allotments for other similar farms under this section.

§ 723.1219 Reductions of acreage allotment for violation of the marketing quota regulations for a prior marketing year.

(a) If tobacco was marketed or was permitted to be marketed in the 1960-61 or a prior marketing year as having been produced on the acreage allotment for any farm which in fact was produced on a different farm, the acreage allotments established for both such farms for 1961 shall be reduced as provided in this section, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing, provided the marketing shall be construed as intentional unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the current year caused, aided, or acquiesced in such marketing;

(b) If complete and accurate proof of the disposition of all tobacco produced on the farm in 1960 or a prior year is not furnished in the manner and within the time prescribed by the marketing quota regulations for the crop involved, the 1961 acreage allotment for the farm shall be reduced as provided in this section for the failure to furnish such proof except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition, provided such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made or (2) no person connected with such farm for the current year caused, aided or acquiesced in the failure to furnish such proof;

(c) If any producer files, aids, or acquiesces in the filing of, a false report with respect to the acreage of tobacco grown on the farm in 1960 or a prior year, the 1961 acreage allotment for the farm shall be reduced as provided in this section except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1)

the filing of, aiding, or acquiescing in the filing of, such false report was not intentional on the part of any producer on the farm and that no producer on the farm could reasonably have been expected to know that the report was false, provided the filing of the report will be construed as intentional unless the report is corrected and the payment of all additional penalty is made, or (2) no person connected with such farm for the current year caused, aided, or acquiesced in the filing of, the false acreage report.

(d) If in the calendar year 1958 or a subsequent year more than one crop of tobacco was grown from (1) the same tobacco plants, or (2) different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested. In case the allotment is transferred through a pool to another farm under § 723.1220 before the allotment reduction can be made effective on the farm on which the tobacco was grown, the allotment first established for the farm to which it is so transferred shall be reduced as described above in this paragraph.

(e) Any reduction made with respect to a farm's 1961 acreage allotment for any of the reasons heretofore provided in this section shall be made no later than May 1, 1961. If the reduction cannot be made by such date, the reduction shall be made with respect to the acreage allotment next established for the farm but no later than by a corresponding date to be specified in a subsequent year: *Provided, however,* That no reduction shall be made under this section in the 1961 acreage allotment for any farm for a violation described in paragraph (a), (b), (c), or (d) of this section if the acreage allotment for such farm for any prior year was reduced on account of the same violation.

(f) The amount of reduction in the 1961 allotment for a violation described in paragraph (a), (b), or (c) of this section shall be that percentage which the amount of tobacco involved in the violation is of the respective farm marketing quota for the farm for the year in which the violation occurred. Where the amount of such tobacco involved in the violation equals or exceeds the amount of the farm marketing quota, the amount of reduction shall be 100 percent. The quantity of tobacco determined by the county committee to have been falsely identified, or produced on acreage falsely omitted from an acreage report as filed, or for which the county committee determines that proof of disposition has not been furnished, shall be considered as the amount of tobacco involved in the violation. If the actual quantity of tobacco falsely identified, or produced on acreage falsely omitted from an acreage report, or for which proof of disposition has not been furnished is known, such quantity shall be determined by the county committee to be the amount of tobacco involved in the violation. If the actual quantity of tobacco produced on acreage falsely

omitted from an acreage report or for which proof of disposition has not been furnished is not known, the county committee shall determine such quantity in the following manner, and if the actual total production of tobacco on the farm is not known, the county committee shall determine such total production and the farm marketing quota in the following manner. The yield per acre and the total production of tobacco on the farm shall be determined by taking into consideration the condition of the tobacco crop during production, if known, and the actual yield per acre of tobacco on other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar: *Provided,* That the determination of the total production of tobacco on the farm shall not exceed the harvested acreage of tobacco on the farm multiplied by the average actual yield on farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar. The yield per acre and the total production of tobacco for the farm as so determined by the county committee shall be deemed to be the actual yield per acre and the actual total production of tobacco for the farm. The actual yield per acre of tobacco on the farm as so determined by the county committee multiplied by the farm acreage allotment shall be deemed to be the actual production of the acreage allotment and the farm marketing quota. Where the actual quantity of tobacco for which proof of disposition has not been furnished is not known, such quantity shall be determined by the county committee to be the quantity of tobacco remaining after deducting from the total production of tobacco on the farm determined as aforesaid, the quantity of tobacco for which proof of disposition has been furnished. Where the actual quantity of tobacco produced on acreage falsely omitted from an acreage report is not known, such quantity shall be determined by the county committee to be the quantity resulting from multiplying the yield per acre for the farm determined as aforesaid by the acreage falsely omitted from the acreage report as filed.

(g) If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be applied as heretofore provided in this section to that portion of the allotment for which a reduction is required under paragraph (a), (b), (c) or (d) of this section.

(h) If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the allotments for the divided farms required to be reduced under paragraph (a), (b), (c) or (d) of this section.

(i) Producers of tobacco in the 1960-61 marketing year shall submit proof of disposition of tobacco and records and reports relative to the provisions of this section as set forth in § 723.1152 (Marketing Quota Regulations, 1960-61 Marketing Year, (Cigar-Binder and Cigar-Filler and Binder-60)) (25 F.R. 3927).

§ 723.1220 Reallocation of allotments determined for farms acquired by an agency having right of eminent domain or shifted from production of cigar-binder (types 51 and 52) tobacco and cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco to production of shade-grown cigar leaf (type 61) wrapper tobacco.

(a) The determination of allotments for farms acquired by an agency having the right of eminent domain, the transfer of such allotments to a pool, and reallocation from the pool shall be administered as provided in § 719.12 of this chapter. The normal yield for each farm to which a reallocation is made as provided in this paragraph shall be determined as provided in § 723.1222 for determining normal yields for old farms.

(b) The allotment determined or which would have been determined for any land which has been used for the production of cigar-binder (types 51 and 52) tobacco or cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco but which will be used in 1961 for the production of cigar wrapper (type 61) tobacco shall be placed in a State pool and shall be available to the State committee to establish allotments pursuant to § 723.1226(a).

§ 723.1221 Farms divided or combined.

Allotments for farms reconstituted for 1961 shall be determined in accordance with Part 719 of this chapter.

§ 723.1222 Determination of normal yields for old farms.

The normal yield for any old farm shall be that yield which the county committee determines is normal for the farm taking into consideration (a) the yields obtained on the farm during the five years 1955-59, (b) the soil and other physical factors affecting the production of tobacco on the farm, and (c) the yields obtained on other farms in the locality which are similar with respect to such factors.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS

§ 723.1223 Determination of acreage allotments for new farms.

(a) The acreage allotment, other than an allotment made under § 723.1220, for a new farm shall be that acreage which the county committee determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator, the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided,* That the acreage allotment so determined shall not exceed 75 percent of the average of acreage allotments established for two or more but not to exceed five old farms in the community which are similar with respect to land, labor and equipment available for the production of tobacco, crop rotation practices, and the soil and other physical factors affecting the production of tobacco: *And provided further,* That if the tobacco acreage on a new tobacco farm is less than the tobacco acreage

allotment otherwise established for the farm pursuant to this section, such allotment shall be automatically reduced to the tobacco acreage on the farm.

(b) Notwithstanding any other provisions of this section a tobacco acreage allotment shall not be established for any new farm unless each of the following conditions has been met:

(1) The farm operator shall have had experience in the kind of tobacco for which an allotment is requested and such experience shall consist of the preparation of the plant bed and extend through preparation of the tobacco for market: *Provided*, That production of tobacco on a farm in 1955 or a subsequent year for which in accordance with applicable law and regulations no tobacco acreage allotment for 1955 or respective subsequent year was determined shall not be deemed such experience for any producer.

(2) The farm covered by the application shall be the only farm owned or operated by the farm operator for which a cigar-binder (types 51 and 52) tobacco, or cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco acreage allotment is established for the 1961-62 marketing year.

(3) The farm operator shall receive 50 percent or more of his livelihood from the farm covered by the application.

(4) The farm or any portion thereof shall not have been a part of another farm during any of the five years 1956-60 for which an old farm tobacco acreage allotment was determined, except that this provision shall not of itself make a farm ineligible for a new farm allotment (i) if it is the same farm or a portion of the same farm for which an old farm allotment was cancelled since 1955 due to no tobacco history thereon for five years, or (ii) if it was a portion of an old farm during any of the years 1955-60 and at time of division of the farm contained cropland but received no part of the allotment due (a) to division of the allotment on a contribution basis, or (b) to agreement and approval of all interested parties as provided in regulations governing divisions and combinations of allotments.

(c) The acreage allotments established as provided in this section shall be subject to such downward adjustment as is necessary to bring such allotments in line with the total acreage available for allotment to all new farms. One percent of the 1961 national marketing quota shall, when converted to an acreage allotment by the use of the national average yield, be available for establishing allotments for new farms. The national average yield shall be the average of the several State yields used in converting the State marketing quotas into State acreage allotments.

(d) Any new farm allotment approved under §§ 723.1211 to 723.1229 which was determined by the county committee on the basis of incorrect information knowingly furnished the county committee by the applicant for the new farm allotment shall be canceled as of the date established.

§ 723.1224 Time for filing application.

An application for a new farm allotment shall be filed with the ASC county office not later than March 10, 1961, unless the farm operator was discharged from the armed services subsequent to December 31, 1960, in which case such application shall be filed within a reasonable period prior to planting tobacco on the farm.

§ 723.1225 Determination of normal yields for new farms.

The normal yield for a new farm shall be that yield per acre which the county committee determines is normal for the farm as compared with yields for other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar.

MISCELLANEOUS

§ 723.1226 Determination of acreage allotments and normal yields for farms shifted from production of shade-grown cigar-leaf (type 61) wrapper tobacco to production of cigar-binder (types 51 and 52) tobacco or cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco.

(a) Notwithstanding the foregoing provisions of §§ 723.1211 to 723.1225, an allotment may be established for a farm which in 1960 was producing shade-grown cigar-leaf (type 61) wrapper tobacco but on which cigar-binder (types 51 and 52) tobacco or cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco will be produced in 1961. The acreage used for such purpose will be limited to that placed in the State pool pursuant to § 723.1220(b). Any allotment established pursuant to this paragraph shall, to the extent of available acreage in such pool, be determined by the county committee so as to be fair and equitable in relation to the allotments for other old farms in the community, on the basis of the past acreage of tobacco, making due allowances for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Allotments established pursuant to this paragraph are eligible for consideration for adjustments under § 723.1218.

(b) The normal yield for any such farm under paragraph (a) of this section shall be that yield per acre which the county committee determines by appraisal, taking into consideration available yield data for the land involved and yields established as provided in § 723.1222 for similar farms in the community.

§ 723.1227 Approval of determinations made under §§ 723.1211 to 723.1226 and § 723.1229, and notices of farm acreage allotments.

(a) All farm acreage allotments and yields shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee.

The State committee may revise or require revision of any determinations made under §§ 723.1211 to 723.1226 and § 723.1229. All acreage allotments and yields shall be approved by a representative of the State committee and no official notice of acreage allotment shall be mailed to a grower until such allotment has been so approved, except that revised acreage allotment notices without such prior approval may be mailed in cases (1) resulting from reconstitutions that do not involve the use of additional acreage or (2) of allotment reductions due only to failure to return marketing cards (and disposition of tobacco is not otherwise furnished as provided in § 723.1219(b)).

(b) An official notice of the farm acreage allotment and marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to an allotment. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established. All such notices shall bear the actual or facsimile signature of a member of the county committee. The facsimile signature may be affixed by the county committeemen or an employee of the county office. Insofar as practical all allotment notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice, containing thereon the date of mailing, shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of such notice certified as true and correct shall be furnished without charge to any person interested in the farm in respect to which the allotment is established.

(c) If the records of the county committee indicate that the allotment established for any farm may be changed because of (1) a violation of the marketing quota regulations for a prior marketing year, (2) removal of the farm from agricultural production, (3) division of the farm, or (4) combination of the farm, the mailing of the notice of such allotment may be delayed: *Provided*, That the notice of allotment for any farm shall be mailed no later than May 1, 1961.

(d) If the county committee determines with the approval of the State administrative officer that the official written notice of the farm acreage allotment issued for any farm erroneously stated the acreage allotment to be larger than the correct allotment, and the county committee also determines that the error was not so gross as to place the operator on notice thereof, and that the operator, relying upon such notice and acting in good faith, planted an acreage of tobacco in excess of the correct farm acreage allotment, the acreage allotment shown on the erroneous notice shall be deemed to be the tobacco acreage allotment for the farm for all purposes in connection with the tobacco marketing quota program for the 1961-62 market-

ing year, except that in determining whether or not 75 percent of the allotment is planted the provisions of § 723.1229(f) shall be followed.

§ 723.1228 Application for review.

Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for his farm may, within fifteen days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the ASC county office to have such allotment reviewed by a review committee. The procedure governing the review of farm acreage allotments and marketing quotas are contained in the regulations issued by the Secretary (Part 711 of this chapter) which are available at the ASC county office.

§ 723.1229 Determination of preliminary allotments for 1962 and subsequent years, and tobacco acreage history for 1960 and subsequent years.

(a) The preliminary acreage allotment for an old farm for 1962 and subsequent years shall be the farm acreage allotment for the immediately preceding year prior to any reduction for violation of the tobacco marketing quota regulations, except that if the tobacco acreage history in at least one of the immediately preceding two years is not as much as 75 percent of the farm allotment (after any reduction for violation) for such year, the preliminary allotment shall be the larger of (1) the largest tobacco acreage history in the past two years or (2) the average tobacco acreage history for the past five years.

(b) Notwithstanding the provisions of paragraph (a) of this section, no 1962 preliminary allotment or 1962 farm allotment shall be determined for any land which is devoted to commercial or residential development or other nonagricultural purposes, which was not acquired by an agency having the right of eminent domain and which could not have been acquired under right of eminent domain by the person or agency that did acquire it, and which the county committee and a representative of the State committee determine is retired from agricultural production: *Provided*, That this paragraph shall not preclude the determination of a preliminary allotment or allotment for an old farm returned to agricultural production, or for a farm for which an acreage allotment may be determined under the provisions of § 723.1220.

(c) For each of the years 1957, 1958 and 1959, the tobacco acreage history shall be the same as the farm allotment for each such respective year, prior to any reduction for violation. For 1960, and for each subsequent year, the tobacco acreage history shall be the same as the farm allotment (prior to any reduction for violation) for such year, if

(1) The farm consists of Federally owned land, or

(2) The final tobacco acreage determined for the farm is as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such year, or

(3) The final tobacco acreage determined for the farm plus the acreage regarded as planted to tobacco under the Soil Bank Act is as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such year, or

(4) The final tobacco acreage determined for the farm plus the acreage regarded as planted to tobacco under the Soil Bank Act for at least one of the two immediately preceding years was as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such respective year.

(d) If for 1960 or for any subsequent year, the county committee determines that the final tobacco acreage determined for the farm plus the acreage regarded as planted to tobacco under the Soil Bank Act is not as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such year because of abnormal weather or disease, the tobacco acreage history for such particular year shall be adjusted to become the smaller of (1) the allotment (prior to any reduction for violation) or (2) the final tobacco acreage determined for the farm, plus the additional acreage which the county committee determines, with approval of a representative of the State committee, would have been included in the final tobacco acreage except for abnormal weather or disease, plus the acreage regarded as planted to tobacco under the Soil Bank Act, and plus the amount of any reduction for violation. However, in such a case, the farm allotment for such year shall still be considered less than 75 percent planted or regarded as planted in connection with determining the tobacco acreage history for one or both of the next two succeeding years. No adjustment for abnormal weather or disease shall be made unless the farm operator requests an adjustment in writing by October 1 of the crop year involved.

(e) If the tobacco acreage history for 1960 or any subsequent year cannot be considered to be the same as the farm allotment under the provisions of paragraph (c) or (d) of this section, it shall be the final tobacco acreage determined for the farm, plus the acreage regarded as planted to tobacco under the Soil Bank Act, plus the acreage by which the farm allotment was reduced for violation, and plus the additional acreage which the county committee determines, with approval of a representative of the State committee, would have been included in the final tobacco acreage except for abnormal weather or disease, not to exceed the tobacco acreage allotment prior to any reduction for violation.

(f) In applying the provisions of paragraphs (c), (d), and (e) of this section, the tobacco acreage history for any year shall not be larger than the allotment prior to any reduction for violation. For any year for which the allotment was reduced for violation (but not reduced to zero), the reduced allotment shall be used in determining whether the allotment was 75 percent planted or regarded as planted. For any year for which an allotment of zero was established (or no allotment was established),

any acreage planted to tobacco on the farm in such year shall not be taken into account in determining whether at least 75 percent of the allotment for 1960 or any subsequent year was or is planted or is to be regarded as planted. In the event of planting pursuant to an erroneous notice of allotment for any year, the smaller of (1) the allotment shown on the erroneous notice or (2) the correct allotment that should have been shown on the notice will be used in determining whether the allotment was 75 percent planted or regarded as planted: Except that, if the correct notice is zero, any acreage planted to tobacco on the farm in such year shall not be taken into account in determining whether at least 75 percent of the allotment for 1960 or any subsequent year was or is planted or is to be regarded as planted.

(g) The 1956 tobacco acreage history shall not exceed the 1956 allotment, and shall include the tobacco acreage harvested on the farm in 1956, the tobacco acreage devoted in 1956 to the acreage reserve program, the tobacco acreage devoted in 1956 to the conservation reserve program, and the 1956 tobacco acreage preserved pursuant to a request of the owner or operator of the farm, as provided in § 723.816(b) of the tobacco marketing quota regulations for the 1957-58 marketing year (21 F.R. 7202, 9398; 22 F.R. 368).

(h) Notwithstanding the foregoing provisions of this section, a farm shall be construed to have no tobacco acreage history during the base period, and shall therefore not be considered an old farm, if the only tobacco acreage history computed for the farm during the base period consists of acreage history restored pursuant to reduction(s) of the allotment for violation(s) of the tobacco marketing quota regulations.

(i) As used in this section, the following terms shall have the meanings described as follows:

(1) "Federally owned land" means land owned by the Federal Government or any department, bureau or agency thereof, or by any corporation all of the stock of which is owned by the Federal Government.

(2) "Final tobacco acreage" means the acreage determined under the provisions of Part 718 of this chapter, Determination of Acreage and Performance, and any amendments thereto, to be the final acreage of tobacco on the farm. Any acreage that may have been planted in any year on a farm for which a zero allotment was established or for which no allotment was established shall not be taken into account in determining whether at least 75 percent of the farm allotment for 1960 or any subsequent year was planted.

(3) "Acreage regarded as planted to tobacco under the Soil Bank Act" means: For 1960 and any subsequent crop year, if the tobacco allotment is the only commodity acreage allotment for the farm, the acreage placed in the conservation reserve at the regular rate, not to exceed the amount by which the farm tobacco acreage allotment, after any reduction for violation, exceeds the final tobacco acreage shall be regarded as planted to

tobacco under the Soil Bank Act. In the event the farm has two or more commodity allotments for which the final acreage is less than the respective allotment, and the acreage placed in the conservation reserve at the regular rate on the farm is less than the sum of the amounts by which such respective allotments (after release and before reapportionment) exceed the respective final acreages of such crops on the farm, the acreage placed in the conservation reserve at the regular rate shall be prorated and credited to each such allotment commodity. To prorate this acreage, the sum of the amounts by which the respective allotments for those crops for which the final acreage is less than the respective allotment (after release and before reapportionment) exceed the respective final acreage for such allotment crops on the farm shall be obtained. This total shall then be divided into the amount by which each such allotment (after release and before reapportionment) exceeds the final acreage. The percentage thus obtained for each such commodity shall be applied to the acreage on the farm under a conservation contract at the regular rate. The result shall be the acreage considered planted to such commodity on the farm under a conservation reserve contract. Where it is necessary to determine the acreage regarded as planted to tobacco under the Soil Bank Act in 1959 or 1958, the provisions of this paragraph shall be followed in making such determination. For 1958, the acreage entered on the acreage reserve agreement shall be included in the acreage regarded as planted under the Soil Bank Act, and shall be added to the final acreage in determining whether, and the extent to which, the commodity is entitled to share in the conservation reserve credit for the farm. As used in this paragraph (i) (3), the term "allotment" means the allotment after any reduction for violation in the case of tobacco and peanuts.

NOTE: The record keeping and reporting requirements of these regulations have been approved by and subsequent reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued at Washington, D.C., this 11th day of July 1960.

CLARENCE D. PALMBY,
Associate Administrator,
Commodity Stabilization Service.

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PART 725—BURLEY, FLUE-CURED, FIRE-CURED, DARK AIR-CURED, AND VIRGINIA SUN-CURED TO- BACCO

Marketing Quota Regulations 1961-62 Marketing Year

GENERAL

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725.1213 Extent of calculations and rule of fractions.
725.1214 Instructions and forms.

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ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR OLD FARMS

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ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS

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- 725.1226 Approval of determinations made under §§ 725.1211 to 725.1225 and § 725.1228 and notices of farm acreage allotments.
725.1227 Application for review.
725.1228 Determination of farm preliminary allotments for 1962 and subsequent years, and tobacco acreage history for 1960 and subsequent years.

AUTHORITY: §§ 725.1211 to 725.1228 issued under secs. 301, 313, 315, 363, 375, 378, 52 Stat. 38, as amended, 47, as amended, 63, as amended, 66, as amended, 66 Stat. 597, 72 Stat. 703, 995, as amended, secs. 106, 112, 377, 70 Stat. 191, 195, 206, as amended; 7 U.S.C. 1301, 1313, 1314a, 1315, 1363, 1375, 1377, 1378, 1824, 1836.

GENERAL

§ 725.1211 Basis and purpose.

The regulations contained in §§ 725.1211 to 725.1227 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the establishment of 1961 farm acreage allotments and normal yields for burley, flue-cured, fire-cured, dark air-cured, and Virginia sun-cured tobacco. The purpose of the regulations in §§ 725.1211 to 725.1227 is to provide the procedure for allocating, on an acreage basis, the national marketing quota for burley, flue-cured, fire-cured, dark air-cured, and Virginia sun-cured tobacco for the 1961-62 marketing year among farms and for determining normal yields. § 725.1228 is included for the purpose of showing (a) how farm preliminary allotments for 1962 and subsequent years and (b) how farm tobacco acreage history for 1960 and subsequent years, will be determined. Prior to preparing the regulations in §§ 725.1211 to 725.1228, public notice (25 F.R. 4996) was given in accordance with the Administrative Procedure Act (5 U.S.C. 1003). The data views, and recommendations pertaining to the regulations in §§ 725.1211 to 725.1228, which were submitted have

been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended.

§ 725.1212 Definitions.

As used in §§ 725.1211 to 725.1228, and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires.

(a) The following terms shall have the meanings assigned to them in Part 719 of this chapter: "Allotment", "combination", "community committee", "county committee", "State committee", "county", "county office manager", "cropland", "current year", "Department", "Deputy Administrator", "division", "farm", "farm serial number", "field", "history acreage", "operator", "person", "photograph number", "preceding year", "producer", "reconstitution", "Secretary", "Soil Bank Contract", "State administrative officer", and "subdivision".

(b) "Director" means the Director, or Acting Director, Tobacco Division, Commodity Stabilization Service, United States Department of Agriculture.

(c) "Base period" for the 1961-62 marketing years means the five years 1956-60.

(d) "New farm" means a farm on which there is no tobacco acreage history since 1955. If in accordance with applicable law and regulations, no 1956, 1957, 1958, 1959 or 1960 tobacco acreage allotment was determined for the farm, any production of tobacco in 1956, 1957, 1958, 1959 or 1960, respectively, shall not be considered in determining whether the farm is a new farm. The term "tobacco acreage history" as used in this paragraph shall be as defined and explained in § 725.1228.

(e) "Old farm" means a farm on which there is tobacco acreage history in one or more of the five years 1956 through 1960. If in accordance with applicable law and regulations, no 1956, 1957, 1958, 1959 or 1960 tobacco acreage allotment was determined for the farm, any production of tobacco in 1956, 1957, 1958, 1959, or 1960, respectively, shall not be considered in determining whether the farm is an old farm. The term "tobacco acreage history" as used in this paragraph shall be as defined and explained in § 725.1228.

(f) "Tobacco" means:

(1) Burley tobacco type 31; flue-cured tobacco types 11, 12, 13, and 14; fire-cured tobacco type 21, fire-cured tobacco types 22, 23, and 24; dark air-cured tobacco types 35 and 36; or Virginia sun-cured tobacco type 37, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the Bureau of Agricultural Economics of the United States Department of Agriculture, or all, as indicated by the context.

(2) Any tobacco that has the same characteristics, and corresponding qualities, colors, and lengths as either burley, flue-cured, fire-cured type 21, fire-cured types 22, 23 and 24, dark air-cured or Virginia sun-cured tobacco shall be considered respectively either burley, flue-

cured, fire-cured type 21, fire-cured types 22, 23, and 24, dark air-cured or Virginia sun-cured tobacco regardless of any factors of historical or geographical nature which cannot be determined by examination of the tobacco.

§ 725.1213 Extent of calculations and rule of fractions.

All acreage allotments shall be rounded to the nearest one-hundredth acre. Computations shall be carried two places beyond the required number of decimal places. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by "1". For example, 10.5536 would be 10.55; 10.5550 would be 10.55; 10.5551 would be 10.56; and 10.5582 would be 10.56.

§ 725.1214 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by, the Deputy Administrator for Production Adjustment of the Commodity Stabilization Service.

§ 725.1215 Applicability of §§ 725.1211 to 725.1228.

Sections 725.1211 to 725.1227 and § 725.1228 to the extent indicated therein, govern the establishment of farm acreage allotments and normal yields for tobacco in connection with farm marketing quotas for the marketing year beginning October 1, 1961, in the case of burley, fire-cured, dark air-cured, and Virginia sun-cured tobacco, and July 1, 1961, in the case of flue-cured tobacco.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR OLD FARMS

§ 725.1216 Determination of 1961 preliminary acreage allotments for old farms.

(a) The 1961 preliminary acreage allotment for an old tobacco farm shall be the 1960 farm acreage allotment established for such farm, prior to any reduction for violation of tobacco marketing quota regulations.

(b) Notwithstanding the provision of paragraph (a) of this section, no 1961 preliminary allotment or 1961 farm tobacco acreage allotment shall be determined for any land which is devoted to commercial or residential development or other non-agricultural purposes, which was not acquired by an agency having the right of eminent domain, and which could not have been acquired under right of eminent domain by the person or agency that did acquire it, and which the county committee and a representative of the State committee determine is retired from agricultural production: *Provided*, That this paragraph shall not preclude the determination of a preliminary acreage allotment or allotment for an old farm returned to agricultural production, or for a farm for which an acreage allotment may be

determined under the provisions of § 725.1220.

§ 725.1217 1961 old farm tobacco acreage allotment.

The preliminary allotments calculated for all old farms in the State pursuant to § 725.1216 shall be adjusted uniformly so that the total of such allotments for old farms plus the acreage available for adjusting acreage allotments for old farms, correction of errors, and for allotments for overlooked old farms pursuant to § 725.1218 shall not exceed the State acreage allotment: *Provided*, That in the case of burley tobacco the farm acreage allotment shall not be less than the smallest of (a) the 1960 allotment, (b) fifty-hundredths of an acre, or (c) 10 percent of the cropland in the farm: *Provided further*, That no 1960 burley tobacco allotment of seventy-hundredths of an acre or less shall be reduced more than one-tenth of an acre, and no 1960 burley tobacco farm acreage allotment of more than seventy-hundredths of an acre will be reduced to less than six-tenths of an acre.

§ 725.1218 Adjustment of acreage allotments for old farms, correction of errors, and allotments for overlooked old farms.

Notwithstanding the limitations contained in § 725.1216, the individual 1961 farm acreage allotment heretofore established for an old farm may be increased if the county committee justifies such increase to the satisfaction of a representative of the State committee as being necessary to establish an allotment for such farm which is fair and equitable in relation to the allotments for other old farms in the county, on the basis of the past acreage of tobacco, making due allowances for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The acreage available in the State for increasing allotments as above described under this section, correction of errors, and providing acreage allotments for overlooked farms shall not exceed one-tenth of one percent of the total acreage allotted to all tobacco farms in the State for the 1960-61 marketing year. The allotment for a farm under a conservation reserve contract shall be given the same consideration as the allotments for other similar farms under this section.

§ 725.1219 Reductions of acreage allotment for violation of the marketing quota regulations for a prior marketing year.

(a) If tobacco was marketed or was permitted to be marketed in the 1960-61 or a prior marketing year as having been produced on the acreage allotment for any farm which in fact was produced on a different farm, the acreage allotments established for both such farms for 1961 shall be reduced as provided in this section, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the

county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing, provided the marketing shall be construed as intentional unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the current year caused, aided, or acquiesced in such marketing;

(b) If complete and accurate proof of the disposition of all tobacco produced on the farm in 1960 or a prior year is not furnished in the manner and within the time prescribed by the marketing quota regulations for the crop involved, the 1961 acreage allotment for the farm shall be reduced as provided in this section for the failure to furnish such proof except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition, provided such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (2) no person connected with such farm for the current year caused, aided or acquiesced in the failure to furnish such proof;

(c) If any producer files, aids, or acquiesces in the filing of, a false report with respect to the acreage of tobacco grown on the farm in 1960 or a prior year, the 1961 acreage allotment for the farm shall be reduced as provided in this section except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) the filing of, aiding, or acquiescing in the filing of, such false report was not intentional on the part of any producer on the farm and that no producer on the farm could reasonably have been expected to know that the report was false, provided the filing of the report will be construed as intentional unless the report is corrected and the payment of all additional penalty is made, or (2) no person connected with such farm for the current year caused, aided, or acquiesced in the filing of, the false acreage report.

(d) If in the calendar year 1958 or in a subsequent year, more than one crop of tobacco was grown from (1) the same tobacco plants, or (2) different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested. In case the allotment is transferred through a pool to another farm under § 725.1220 before the allotment reduction can be made effective on the farm on which the tobacco was grown, the allotment first established for the farm to which it is so transferred shall be reduced as described above in this paragraph.

(e) Any reduction made with respect to a farm's 1961 acreage allotment for

any of the reasons heretofore provided in this section shall be made no later than (1) April 1, 1961, in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia or (2) May 1, 1961, in all other States; otherwise, if the reduction cannot be made by such dates, the reduction shall be made with respect to the acreage allotment next established for the farm but no later than by corresponding dates to be specified in a subsequent year; *Provided, however,* That no reduction shall be made under this section in the 1961 acreage allotment for any farm for a violation described in paragraph (a), (b), (c), or (d) of this section if the acreage allotment for such farm for any prior year was reduced on account of the same violation.

(f) The amount of reduction in the 1961 allotment for a violation described in paragraph (a), (b), or (c) of this section shall be that percentage which the amount of tobacco involved in the violation is of the respective farm marketing quota for the farm for the year in which the violation occurred. Where the amount of such tobacco involved in the violation equals or exceeds the amount of the farm marketing quota, the amount of reduction shall be 100 percent. The quantity of tobacco determined by the county committee to have been falsely identified, or produced on acreage falsely omitted from an acreage report as filed, or for which the county committee determines that proof of disposition has not been furnished, shall be considered as the amount of tobacco involved in the violation. If the actual quantity of tobacco falsely identified, or produced on acreage falsely omitted from an acreage report, or for which proof of disposition has not been furnished is known, such quantity shall be determined by the county committee to be the amount of tobacco involved in the violation. If the actual quantity of tobacco produced on acreage falsely omitted from an acreage report or for which proof of disposition has not been furnished is not known, the county committee shall determine such quantity in the following manner, and if the actual total production of tobacco on the farm is not known, the county committee shall determine such total production and the farm marketing quota in the following manner. The yield per acre and the total production of tobacco on the farm shall be determined by taking into consideration the condition of the tobacco crop during production, if known, and the actual yield per acre of tobacco on other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar: *Provided,* That the determination of the total production of tobacco on the farm shall not exceed the harvested acreage of tobacco on the farm multiplied by the average actual yield on farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar. The yield per acre and the total production of tobacco for the farm as so determined by the county committee shall be deemed to be the actual yield per acre, and the actual total production of tobacco for the farm. The actual yield per acre of

tobacco on the farm as so determined by the county committee multiplied by the farm acreage allotment shall be deemed to be the actual production of the acreage allotment and the farm marketing quota. Where the actual quantity of tobacco for which proof of disposition has not been furnished is not known, such quantity shall be determined by the county committee to be the quantity of tobacco remaining after deducting from the total production of tobacco on the farm determined as aforesaid, the quantity of tobacco for which proof of disposition has been furnished. Where the actual quantity of tobacco produced on acreage falsely omitted from an acreage report is not known, such quantity shall be determined by the county committee to be the quantity resulting from multiplying the yield per acre for the farm determined as aforesaid by the acreage falsely omitted from the acreage report as filed.

(g) If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be applied as heretofore provided in this section to that portion of the allotment for which a reduction is required under paragraph (a), (b), (c), or (d) of this section.

(h) If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the allotments for the divided farms required to be reduced under paragraph (a), (b), (c), or (d) of this section.

(i) Producers of tobacco in the 1960-61 marketing year shall submit proof of disposition of tobacco and records and reports relative to the provisions of this section as set forth in § 725.1152 (Marketing Quota Regulations, 1960-61 Marketing Year, Burley, Flue, Fire, Air and Sun-60) (25 F.R. 3935).

§ 725.1220 Reallocation of allotments determined for farms acquired by an agency having right of eminent domain.

The determination of allotments for farms acquired by an agency having the right of eminent domain, the transfer of such allotments to a pool, and reallocation from the pool shall be administered as provided in § 719.12 of this chapter. The normal yield for each farm to which a reallocation is made as provided in this paragraph shall be determined as provided in § 725.1222 for determining normal yields for old farms.

§ 725.1221 Farms divided or combined.

(a) Allotments for farms reconstituted for 1961 shall be determined in accordance with Part 719 of this chapter except as otherwise provided in paragraphs (b) and (c) of this section.

(b) If after 1961 farm tobacco acreage allotments have been determined, one or more farms having a 1961 fire-cured (type 21) tobacco acreage allotment is combined with another or more farms having a 1961 Virginia sun-cured (type 37) tobacco acreage allotment, or if before 1961 farm tobacco acreage allotments have been established, one or more farms for which a 1960 fire-cured (type 21) tobacco acreage allotment had been established is combined with another or more farms for which a 1960 Virginia

sun-cured (type 37) tobacco acreage allotment had been established and a single combined 1960 acreage allotment has not been established for such combined farm, a single combined acreage allotment for the 1961-62 marketing year designated for either fire-cured (type 21) tobacco or Virginia sun-cured (type 37) tobacco shall be established for the combined farm. Such single combined acreage allotment shall be equal to the total acreage of and be in place of the 1960 acreage allotments for fire-cured (type 21) tobacco and Virginia sun-cured (type 37) tobacco which have either previously been established for the farms comprising the combined farm, or which shall be computed and established for the farms comprising the combined farm in accordance with the provisions of §§ 725.1216 to 725.1219 solely for the purpose of enabling a single combined 1961 acreage allotment to be determined and established for the combined farm. The county committee shall give written notification to the owner or owners of such combined farm that the owner or his representative may designate, or if there is more than one owner of the land comprising the farm that the representative of all such owners may designate, a single combined 1961 acreage allotment for the combined farm either for fire-cured (type 21) tobacco or for Virginia sun-cured (type 37) tobacco by submitting his choice to the local county committee within 15 days following the date of mailing of such notification, or within such extended period of time thereafter as the county committee in any case may fix and notify the owner or owners of such extension; and that if within such time the county committee is not notified that a choice has been made as heretofore provided, the county committee, with approval of a representative of the State committee, shall designate the 1961 single combined acreage allotment for the farm as either for fire-cured (type 21) tobacco or Virginia sun-cured (type 37) tobacco on the basis of the prevalent kind of tobacco grown in the area in which such farm is located, the curing facilities on such farm, and the proximity and nature of markets. The occurrence on the same farm of concurrent acreage allotments for fire-cured (type 21) tobacco and Virginia sun-cured (type 37) tobacco pursuant to the provisions of § 725.1220 shall be deemed to be of the same effect, for the purposes of and in applying the provisions of this paragraph, as a combination of farms described in this paragraph.

(c) For the purposes of this paragraph and paragraph (b) of this section, the term "representative" shall mean the person named and authorized by the owner of a farm to act for him, or if there are two or more owners of the land comprising a farm, the person named and authorized by such owners to act for all of them in designating or choosing for the farm a single combined acreage allotment for either fire-cured (type 21) tobacco or Virginia sun-cured (type 37) tobacco. The county committee may require any person to furnish to it such evidence as it may require to reasonably establish such person as an owner or representative of an owner or owners.

§ 725.1222 Determination of normal yields for old farms.

The normal yield for any old farm shall be that yield which the county committee determines is normal for the farm taking into consideration (a) the yields obtained on the farm during the five years 1955-59, (b) the soil and other physical factors affecting the production of tobacco on the farm, and (c) the yields obtained on other farms in the locality which are similar with respect to such factors.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS**§ 725.1223 Determination of acreage allotments for new farms.**

(a) The acreage allotment, other than an allotment made under § 725.1220, for a new farm shall be that acreage which the county committee with the approval of the State committee determines is fair and reasonable for the farm taking into consideration the past tobacco experience of the farm operator, the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That the acreage allotment so determined shall not exceed 50 percent of the average of the acreage allotments established for two or more but not more than five old tobacco farms which are similar with respect to land, labor, and equipment available for the production of tobacco, crop rotation practices, and the soil and other physical factors affecting the production of tobacco: *And provided further*, That if the tobacco acreage on a new tobacco farm is less than the tobacco acreage allotment otherwise established for the farm pursuant to this section, such allotment shall be automatically reduced to the tobacco acreage on the farm.

(b) Notwithstanding any other provisions of this section, a tobacco acreage allotment shall not be established for any new farm unless each of the following conditions has been met:

(1) The farm operator shall have had experience in growing the kind of tobacco for which an allotment is requested either as a share cropper, tenant, or as a farm operator during two of the past five years; *Provided*, That a farm operator who was in the armed services after September 16, 1940, shall be deemed to have met the requirements of this subparagraph if he has had such experience during one year either within the five years immediately prior to his entry into the armed services or within the five years immediately following his discharge from the armed services and if he files an application for an allotment within five crop years from the date of discharge: *And provided further*, That production of tobacco on a farm in 1955 or a subsequent year, for which, in accordance with applicable law and regulations no tobacco acreage allotment for 1955 or respective subsequent year was determined, shall not be deemed such experience for any producer.

(2) The farm operator shall live on and obtain 50 percent or more of his

livelihood from the farm covered by the application.

(3) The farm covered by the application shall be the only farm owned or operated by the farm operator for which a burley, flue-cured, fire-cured, dark air-cured, or Virginia sun-cured tobacco allotment is established for the 1961-62 marketing year.

(4) The farm shall be operated by the owner thereof.

(5) The farm or any portion thereof shall not have been a part of another farm during any of the five years 1956-60 for which an old farm tobacco acreage allotment was determined, except that this provision shall not of itself make a farm ineligible for a new farm allotment (i) if it is the same farm or a portion of the same farm for which an old farm allotment was cancelled since 1955 due to no tobacco history thereon for five years, or (ii) if it was a portion of an old farm during any of the years 1955-60 and at time of division of the farm contained cropland but received no part of the allotment due to division of the allotment on a contribution basis.

(c) The acreage allotments established as provided in this section shall be subject to such downward adjustment as is necessary to bring such allotments in line with the total acreage available for allotment to all new farms. One-fourth of one percent of the 1961 national marketing quota shall, when converted to an acreage allotment by the use of the national average yield, be available for establishing allotments for new farms. The national average yield shall be the average of the several State yields used in converting the State marketing quotas into State acreage allotments.

(d) Any new farm allotment approved under §§ 725.1211 to 725.1228, which was determined by the county committee on the basis of incorrect information knowingly furnished the county committee by the applicant for the new farm allotment shall be cancelled as of the date established.

§ 725.1224 Time for filing application.

An application for a new farm allotment shall be filed with the ASC county office prior to February 16, 1961, unless the farm operator was discharged from the armed services subsequent to December 31, 1960, in which case such application shall be filed within a reasonable period prior to planting tobacco on the farm.

§ 725.1225 Determination of normal yields for new farms.

The normal yield for a new farm shall be that yield per acre which the county committee determines is normal for the farm as compared with yields for other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar.

MISCELLANEOUS**§ 725.1226 Approval of determinations made under §§ 725.1211 to 725.1225 and § 725.1228, and notices of farm acreage allotments.**

(a) All farm acreage allotments and yields shall be determined by the county

committee of the county in which the farm is located and shall be reviewed by a representative of the State committee. The State committee may revise or require revision of any determinations made under §§ 725.1211 to 725.1225 and § 725.1228. All acreage allotments and yields shall be approved by a representative of the State committee, and no official notice of acreage allotment shall be mailed to a farm operator until such allotment has been so approved, except that revised acreage allotment notices without such prior approval may be mailed in cases (1) resulting from reconstitutions that do not involve the use of additional acreage, or (2) of allotment reductions due only to failure to return marketing cards, and disposition of tobacco is not otherwise furnished as provided in § 725.1219(b).

(b) An official notice of the farm acreage allotment and marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to an allotment. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or share-cropper are interested in the farm for which the allotment is established. All such notices shall bear the actual or facsimile signature of a member of the county committee. The facsimile signature may be affixed by the county committeeman or an employee of the county office. Insofar as practical, all allotment notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice containing thereon the date of mailing, shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of such notice certified as true and correct shall be furnished without charge to any person interested in the farm in respect to which the allotment is established.

(c) If the records of the county committee indicate that the allotment established for any farm may be changed because of (1) a violation of the marketing quota regulations for a prior marketing year (2) removal of the farm from agricultural production, (3) division of the farm, or (4) combination of the farm, the mailing of the notice of such allotment may be delayed: *Provided*, That the notice of allotment for any farm shall be mailed no later than (i) April 1, 1961, in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, or (ii) May 1, 1961, in all other States.

(d) If the county committee determines with the approval of the State administrative officer that the official written notice of the farm acreage allotment issued for any farm erroneously stated the acreage allotment to be larger than the correct allotment, and the county committee also determines that the error was not so gross as to place the operator on notice thereof, and that the operator, relying upon such notice and acting in good faith, planted an acreage of tobacco in excess of the correct farm

acreage allotment, the acreage allotment shown on the erroneous notice shall be deemed to be the tobacco acreage allotment for the farm for all purposes in connection with the tobacco marketing quota program for the 1961-62 marketing year, except that in determining whether or not 75 percent of the allotment is planted, the provisions of § 725.1228(f) shall be followed.

§ 725.1227 Application for review.

Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for his farm, may, within fifteen days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the ASC county office to have such allotment reviewed by a review committee. This procedure governing the review of farm acreage allotments and marketing quotas is contained in Part 711 of this chapter, which is available at the ASC county office.

§ 725.1228 Determination of preliminary allotments for 1962 and subsequent years, and tobacco acreage history for 1960 and subsequent years.

(a) The preliminary acreage allotment for an old farm for 1962 and subsequent years shall be the farm acreage allotment for the immediately preceding year prior to any reduction for violation of the tobacco marketing quota regulations, except that if the tobacco acreage history in at least one of the immediately preceding two years is not as much as 75 percent of the farm allotment (after any reduction for violation) for such year, the preliminary allotment shall be the larger of (1) the largest tobacco acreage history in the past two years or (2) the average tobacco acreage history for the past five years.

(b) Notwithstanding the provisions of paragraph (a) of this section, no 1962 preliminary allotment or 1962 farm allotment shall be determined for any land which is devoted to commercial or residential development or other non-agricultural purposes, which was not acquired by an agency having the right of eminent domain and which could not have been acquired under right of eminent domain by the person or agency that did acquire it, and which the county committee and a representative of the State committee determine is retired from agricultural production: *Provided*, That this paragraph shall not preclude the determination of a preliminary allotment or allotment for an old farm returned to agricultural production, or for a farm for which an acreage allotment may be determined under the provisions of § 725.1220.

(c) For each of the years 1957, 1958 and 1959, the tobacco acreage history shall be the same as the farm allotment for each such respective year, prior to any reduction for violation. For 1960, and for each subsequent year, the tobacco acreage history shall be the same as the farm allotment (prior to any reduction for violation) for such year, if

(1) The farm consists of Federally owned land, or

(2) The final tobacco acreage determined for the farm is as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such year, or

(3) The final tobacco acreage determined for the farm plus the acreage regarded as planted to tobacco under the Soil Bank Act is as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such year, or

(4) The final tobacco acreage determined for the farm plus the acreage regarded as planted to tobacco under the Soil Bank Act for at least one of the two immediately preceding years was as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such respective year.

(d) If for 1960 or for any subsequent year, the county committee determines that the final tobacco acreage determined for the farm plus the acreage regarded as planted to tobacco under the Soil Bank Act is not as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such year because of abnormal weather or disease, the tobacco acreage history for such particular year shall be adjusted to become the smaller of (1) the allotment (prior to any reduction for violation) or (2) the final tobacco acreage determined for the farm, plus the additional acreage which the county committee determines, with approval of a representative of the State committee, would have been included in the final tobacco acreage except for abnormal weather or disease, plus the acreage regarded as planted to tobacco under the Soil Bank Act, and plus the amount of any reduction for violation. However, in such a case, the farm allotment for such year shall still be considered less than 75 percent planted or regarded as planted in connection with determining the tobacco acreage history for one or both of the next two succeeding years. No adjustment for abnormal weather or disease shall be made unless the farm operator requests an adjustment in writing by October 1 of the crop year involved.

(e) If the tobacco acreage history for 1960 or any subsequent year cannot be considered to be the same as the farm allotment under the provisions of paragraph (c) or (d) of this section, it shall be the final tobacco acreage determined for the farm, plus the acreage regarded as planted to tobacco under the Soil Bank Act, plus the acreage by which the farm allotment was reduced for violation, and plus the additional acreage which the county committee determines, with approval of a representative of the State committee, would have been included in the final tobacco acreage except for abnormal weather or disease, not to exceed the tobacco acreage allotment prior to any reduction for violation.

(f) In applying the provisions of paragraphs (c), (d), and (e) of this section, the tobacco acreage history for any year shall not be larger than the allotment prior to any reduction for violation. For any year for which the allotment was reduced for violation (but not reduced to zero), the reduced allotment shall be

used in determining whether the allotment was 75 percent planted or regarded as planted. For any year for which an allotment of zero was established (or no allotment was established), any acreage planted to tobacco on the farm in such year shall not be taken into account in determining whether at least 75 percent of the allotment for 1960 or any subsequent year was or is planted or is to be regarded as planted. In the event of planting pursuant to an erroneous notice of allotment for any year, the smaller of (1) the allotment shown on the erroneous notice or (2) the correct allotment that should have been shown on the notice will be used in determining whether the allotment was 75 percent planted or regarded as planted; except that, if the correct notice is zero, any acreage planted to tobacco on the farm in such year shall not be taken into account in determining whether at least 75 percent of the allotment for 1960 or any subsequent year was or is planted or is to be regarded as planted.

(g) The 1956 tobacco acreage history shall not exceed the 1956 allotment, and shall include the tobacco acreage harvested on the farm in 1956, the tobacco acreage devoted in 1956 to the acreage reserve program, the tobacco acreage devoted in 1956 to the conservation reserve program, and, excepting flue-cured tobacco, the 1956 tobacco acreage preserved pursuant to a request of the owner or operator of the farm, as provided in § 725.816(c) of the tobacco marketing quota regulations for the 1957-58 marketing year (21 F.R. 6803, 9398).

(h) Notwithstanding the foregoing provisions of this section, a farm shall be construed to have no tobacco acreage history during the base period, and shall therefore not be considered an old farm, if the only tobacco acreage history computed for the farm during the base period consists of acreage history restored pursuant to reduction(s) of the allotment for violation(s) of the tobacco marketing quota regulations.

(i) As used in this section, the following terms shall have the meanings described as follows:

(1) "Federally owned land" means land owned by the Federal Government or any department, bureau or agency thereof, or by any corporation all of the stock of which is owned by the Federal Government.

(2) "Final tobacco acreage" means the acreage determined under the provisions of part 718 of this chapter, Determination of Acreage and Performance, and any amendments thereto, to be the final acreage of tobacco on the farm. Any acreage that may have been planted in any year on a farm for which a zero allotment was established or for which no allotment was established shall not be taken into account in determining whether at least 75 percent of the farm allotment for 1960 or any subsequent year was planted.

(3) "Acreage regarded as planted to tobacco under the Soil Bank Act" means: For 1960 and any subsequent crop year, if the tobacco allotment is the only commodity acreage allotment for the farm, the acreage placed in the conservation

reserve at the regular rate, not to exceed the amount by which the farm tobacco acreage allotment, after any reduction for violation, exceeds the final tobacco acreage shall be regarded as planted to tobacco under the Soil Bank Act. In the event the farm has two or more commodity allotments for which the final acreage is less than the respective allotment, and the acreage placed in the conservation reserve at the regular rate on the farm is less than the sum of the amounts by which such respective allotments (after release and before reapportionment) exceed the respective final acreages of such crops on the farm, the acreage placed in the conservation reserve at the regular rate shall be prorated and credited to each such allotment commodity. To prorate this acreage, the sum of the amounts by which the respective allotments for those crops for which the final acreage is less than the respective allotment (after release and before reapportionment) exceed the respective final acreage for such allotment crops on the farm shall be obtained. This total shall then be divided into the amount by which each such allotment (after release and before reapportionment) exceeds the final acreage. The percentage thus obtained for each such commodity shall be applied to the acreage on the farm under a conservation contract at the regular rate. The result shall be the acreage considered planted to such commodity on the farm under a conservation reserve contract. Where it is necessary to determine the acreage regarded as planted to tobacco under the Soil Bank Act in 1959 or 1958, the provisions of this paragraph shall be followed in making such determination. For 1958, the acreage entered on the acreage reserve agreement shall be included in the acreage regarded as planted under the Soil Bank Act, and shall be added to the final acreage in determining whether, and the extent to which, the commodity is entitled to share in the conservation reserve credit for the farm. As used in this paragraph (i) (3), the term "allotment" means the allotment after any reduction for violation in the case of tobacco and peanuts.

Note: The record keeping and reporting requirements of these regulations have been approved by and subsequent reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued at Washington, D.C., this 11th day of July 1960.

CLARENCE D. PALMBY,
Associate Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60-6591; Filed, July 14, 1960;
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PART 727—MARYLAND TOBACCO Marketing Quota Regulations, 1961-62 Marketing Year

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AUTHORITY: §§ 727.1211 to 727.1228 issued under secs. 301, 313, 363, 375, 378, 52 Stat. 38, as amended, 47, as amended, 63, as amended, 66, as amended, 72 Stat. 995, as amended, secs. 106, 112, 377, 70 Stat. 191, 195, 206, as amended; 7 U.S.C. 1301, 1313, 1363, 1375, 1377, 1378, 1824, 1836.

GENERAL

§ 727.1211 Basis and purpose.

(a) The regulations contained in §§ 727.1211 to 727.1227 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the establishment of 1961 farm acreage allotments and normal yields for Maryland tobacco. The purpose of the regulations in §§ 727.1211 to 727.1227 is to provide the procedure for allocating on an acreage basis, the national marketing quota for Maryland tobacco for the 1961-62 marketing year among farms and for determining normal yields. § 727.1228 is included for the purpose of showing (1) how farm preliminary allotments for 1962 and subsequent years and (2) how farm tobacco acreage history for 1960 and subsequent years will be determined. Prior to preparing the regulations in §§ 727.1211 to 727.1228, public notice (25 F.R. 4996) was given in accordance with the Administrative Procedure Act (5 U.S.C. 1003). The data, views, and recommendations pertaining to the regulations in §§ 727.1211 to 727.1228 which were submitted have been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended.

§ 727.1212 Definitions.

As used in §§ 727.1211 to 727.1228 and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires.

(a) The following terms shall have the meanings assigned to them in Part 719 of this chapter: "Allotment", "combination", "community committee", "county committee", "State committee", "county", "county office manager", "cropland", "current year", "Department", "Deputy Administrator", "division", "farm", "farm serial number", "field", "history acreage", "operator", "person", "photograph number", "preceding year", "producer", "reconstitution", "Secretary", "Soil Bank Contract", "State administrative officer", and "subdivision".

(b) "Director" means the Director, or Acting Director, Tobacco Division, Commodity Stabilization Service, United States Department of Agriculture.

(c) "Base period" for the 1961-62 marketing year means the five years 1956-60.

(d) "New farm" means a farm on which there is no tobacco acreage history since 1955. If, in accordance with applicable law and regulations, no 1956, 1957, 1958, 1959 or 1960 tobacco acreage allotment was determined for the farm, any production of tobacco in 1956, 1957, 1958, 1959 or 1960, respectively, shall not be considered in determining whether the farm is a new farm. The term "tobacco acreage history" as used in this paragraph shall be as defined and explained in § 727.1228.

(e) "Old farm" means a farm on which there is tobacco acreage history in one or more of the five years 1956 through 1960. If in accordance with applicable law and regulations, no 1956, 1957, 1958, 1959 or 1960 tobacco acreage allotment was determined for the farm, any production of tobacco in 1956, 1957, 1958, 1959 or 1960, respectively, shall not be considered in determining whether the farm is an old farm. The term "tobacco acreage history" as used in this paragraph shall be as defined and explained in § 727.1228.

(f) "Tobacco" means Maryland tobacco, type 32, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the Bureau of Agricultural Economics of the United States Department of Agriculture. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths, shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco.

§ 727.1213 Extent of calculations and rule of fractions.

All acreage allotments shall be rounded to the nearest one-hundredth acre. Computations shall be carried two places beyond the required number of decimal places. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by "1". For ex-

ample, 10.5536 would be 10.55; 10.5550 would be 10.55; 10.5551 would be 10.56; and 10.5582 would be 10.56.

§ 727.1214 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions for internal management as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by, the Deputy Administrator for Production Adjustment of the Commodity Stabilization Service.

§ 727.1215 Applicability of §§ 727.1211 to 727.1228.

Sections 727.1211 to 727.1227, and § 727.1228 to the extent indicated therein, govern the establishment of farm acreage allotments and normal yields in connection with the 1961 crop of tobacco.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR OLD FARMS

§ 727.1216 Determination of 1961 preliminary acreage allotments for old farms.

(a) The 1961 preliminary acreage allotment for an old tobacco farm shall be the 1960 farm acreage allotment established for such farm, prior to any reduction for violation of the tobacco marketing quota regulations.

(b) Notwithstanding the foregoing provisions of paragraph (a) of this section, no 1961 preliminary allotment or 1961 farm tobacco acreage allotment shall be determined for any land which is devoted to commercial or residential development or other non-agricultural purposes, which was not acquired by an agency having the right of eminent domain and which could not have been acquired under right of eminent domain by the person or agency that did acquire it, and which the county committee and a representative of the State committee, determine is retired from agricultural production: *Provided*, That this paragraph shall not preclude the determination of a preliminary acreage allotment or allotment for an old farm returned to agricultural production, or for a farm for which an acreage allotment may be determined under the provisions of § 727.1220.

§ 727.1217 1961 old farm tobacco acreage allotment.

The preliminary allotments calculated for all old farms in the State pursuant to § 727.1216 shall be adjusted uniformly so that the total of such allotments plus the acreage available for adjusting acreage allotments for old farms, correction of errors made in old farm allotments, and allotments for overlooked old farms pursuant to § 727.1218 shall not exceed the State acreage allotment.

§ 727.1218 Adjustment of acreage allotments for old farms, correction of errors made in old farm allotments and allotments for overlooked old farms.

Notwithstanding the limitations contained in § 727.1216, the farm acreage allotment for an old farm may be in-

creased if the county committee justifies such increase to the satisfaction of a representative of the State committee as being necessary to establish an allotment for such farm which is fair and equitable in relation to the allotments for other old farms in the county, on the basis of the past acreage of tobacco, making due allowances for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The acreage available for increasing allotments under this section, correction of errors made in old farm allotments, and allotments for overlooked old farms shall not exceed four percent of the total acreage allotted to all tobacco farms in the State for the 1960-61 marketing year. The allotment for a farm under a conservation reserve contract shall be given the same consideration as the allotments for other similar farms under this section.

§ 727.1219 Reductions of acreage allotment for violation of the marketing quota regulations for a prior marketing year.

(a) If tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on the acreage allotment for any farm for the 1960-61 or a prior marketing year which in fact was produced on a different farm, the acreage allotments established for both such farms for 1961 shall be reduced as provided in this section, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing, provided the marketing shall be construed as intentional unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the current year caused, aided, or acquiesced in such marketing;

(b) If complete and accurate proof of the disposition of all tobacco produced on the farm in 1960 or a prior year is not furnished in the manner and within the time prescribed by the marketing quota regulations for the crop involved, the 1961 acreage allotment for the farm shall be reduced as provided in this section for the failure to furnish such proof except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition, provided such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (2) no person connected with such farm for the current year caused, aided or acquiesced in the failure to furnish such proof;

(c) If any producer files, aids or acquiesces in the filing of, a false acreage

report with respect to the acreage of tobacco grown on the farm in 1960 or a prior year, the 1961 acreage allotment for the farm shall be reduced as provided in this section except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) the filing of, aiding or acquiescing in the filing of, such false report was not intentional on the part of any producer on the farm and that no producer on the farm could reasonably have been expected to know that the report was false, provided the filing of the report will be construed as intentional unless the report is corrected and the payment of all additional penalty is made, or (2) no person connected with such farm for the current year caused, aided or acquiesced in the filing of, the false acreage report.

(d) If in the calendar year 1958 or in a subsequent year, more than one crop of tobacco was grown from (1) the same tobacco plants, or (2) different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested. In case the allotment is transferred through a pool to another farm under § 727.1220 before the allotment reduction can be made effective on the farm on which the tobacco was grown, the allotment first established for the farm to which it is so transferred shall be reduced as described above in this paragraph.

(e) Any reduction made with respect to a farm's 1961 acreage allotment for any of the reasons heretofore provided in this section shall be made no later than May 1, 1961. If the reduction cannot be made by such date, the reduction shall be made with respect to the acreage allotment next established for the farm but no later than by a corresponding date to be specified in a subsequent year: *Provided, however*, That no reduction shall be made under this section in the 1961 acreage allotment for any farm for a violation described in paragraph (a), (b), (c) or (d) of this section if the acreage allotment for such farm for any prior year was reduced on account of the same violation.

(f) The amount of reduction in the 1961 allotment for a violation described in paragraph (a), (b), or (c) of this section shall be that percentage which the amount of tobacco involved in the violation is of the respective farm marketing quota for the farm for the year in which the violation occurred. Where the amount of such tobacco involved in the violation equals or exceeds the amount of the farm marketing quota, the amount of reduction shall be 100 percent. The quantity of tobacco determined by the county committee to have been falsely identified, or produced on acreage falsely omitted from an acreage report as filed, or for which the county committee determines that proof of disposition has not been furnished, shall be considered as the amount of tobacco involved in the violation. If the actual quantity of tobacco falsely identified, or

produced on acreage falsely omitted from an acreage report, or for which proof of disposition has not been furnished is known, such quantity shall be determined by the county committee to be the amount of tobacco involved in the violation. If the actual quantity of tobacco produced on acreage falsely omitted from an acreage report or for which proof of disposition has not been furnished is not known, the county committee shall determine such quantity in the following manner, and if the actual total production of tobacco on the farm is not known, the county committee shall determine such total production and the farm marketing quota in the following manner. The yield per acre and the total production of tobacco on the farm shall be determined by taking into consideration the condition of the tobacco crop during production, if known, and the actual yield per acre of tobacco on other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar: *Provided*, That the determination of the total production of tobacco on the farm shall not exceed the harvested acreage of tobacco on the farm multiplied by the average actual yield on farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar. The yield per acre and the total production of tobacco for the farm as so determined by the county committee shall be deemed to be the actual yield per acre and the actual total production of tobacco for the farm. The actual yield per acre of tobacco on the farm as so determined by the county committee multiplied by the farm acreage allotment shall be deemed to be the actual production of the acreage allotment and the farm marketing quota. Where the actual quantity of tobacco for which proof of disposition has not been furnished is not known, such quantity shall be determined by the county committee to be the quantity of tobacco remaining after deducting from the total production of tobacco on the farm determined as aforesaid, the quantity of tobacco for which proof of disposition has been furnished. Where the actual quantity of tobacco produced on acreage falsely omitted from an acreage report is not known, such quantity shall be determined by the county committee to be the quantity resulting from multiplying the yield per acre for the farm determined as aforesaid by the acreage falsely omitted from the acreage report as filed.

(g) If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be applied as heretofore provided in this section to that portion of the allotment for which a reduction is required under paragraph (a), (b), (c) or (d) of this section.

(h) If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the allotments for the divided farms required to be reduced under paragraph (a), (b), (c) or (d) of this section.

(i) Producers of tobacco in the 1960-61 marketing year shall submit

proof of disposition of tobacco and records and reports relative to the provisions of this section as set forth in § 727.1152 of this part (Marketing Quota Regulations, 1960-61 Marketing Year, Maryland-60 (to be issued before October 1, 1960)).

§ 727.1220 Reallocation of allotments determined for farms acquired by an agency having right of eminent domain.

The determination of allotments for farms acquired by an agency having the right of eminent domain, the transfer of such allotments to a pool, and reallocation from the pool shall be administered as provided in § 719.12 of this chapter. The normal yield for each farm to which a reallocation is made as provided in this paragraph shall be determined as provided in § 727.1222 for determining normal yields for old farms.

§ 727.1221 Farms divided or combined.

Allotments for farms reconstituted for 1961 shall be determined in accordance with Part 719 of this chapter.

§ 727.1222 Determination of normal yields for old farms.

The normal yield for any old farm shall be that yield which the county committee determines is normal for the farm taking into consideration (a) the yields obtained on the farm during the five years 1955-59, (b) the soil and other physical factors affecting the production of tobacco on the farm, and (c) the yields obtained on other farms in the locality which are similar with respect to such factors.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS

§ 727.1223 Determination of acreage allotments for new farms.

(a) The acreage allotment, other than an allotment made under § 727.1220, for a new farm shall be that acreage which the county committee determines is fair and reasonable for the farm taking into consideration the past tobacco experience of the farm operator, the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That the acreage allotment so determined shall not exceed 50 percent of the average of the acreage allotments established for two or more, but not more than five, old tobacco farms which are similar with respect to land, labor, and equipment available for the production of tobacco, crop rotation practices, and the soil and other physical factors affecting the production of tobacco: *And provided further*, That if the tobacco acreage on a new tobacco farm is less than the tobacco acreage allotment otherwise established for the farm pursuant to this section, such allotment shall be automatically reduced to the tobacco acreage on the farm.

(b) Notwithstanding any other provisions of this section, a tobacco acreage allotment shall not be established for any new farm unless each of the following conditions has been met:

(1) The farm operator shall have had experience during two of the past five years in Maryland tobacco and such experience shall have been for the entire crop year beginning with the preparation of the plant bed and extending through preparation of the tobacco for market: *Provided*, That a farm operator who was in the armed services after September 16, 1940, shall be deemed to have met the requirements of this subparagraph if he has had such experience during one year either within the five years immediately prior to his entry into the armed services or within the five years immediately following his discharge from the armed services and if he files an application for an allotment within five crop years from date of discharge: *And provided further*, That production of tobacco on a farm in 1955 or a subsequent year for which in accordance with applicable law and regulations no tobacco acreage allotment for 1955 or respective subsequent year was determined, shall not be deemed such experience for any producer.

(2) The farm operator shall live on and receive 50 percent or more of his livelihood from the farm covered by the application.

(3) The farm shall not have a 1961 allotment for any kind of tobacco other than that for which application is made under this part.

(4) The farm covered by the application shall be the only farm owned or operated by the farm operator for which a Maryland tobacco acreage allotment is established for the 1961-62 marketing year.

(5) The farm shall be operated by the owner thereof.

(6) The farm or any portion thereof shall not have been a part of another farm during any of the five years 1956-60 for which an old farm tobacco acreage allotment was determined except that this provision shall not of itself make a farm ineligible for a new farm allotment (i) if it is the same farm or a portion of the same farm for which an old farm allotment was cancelled since 1955 due to no tobacco history thereon for five years, or (ii) if it was a portion of an old farm during any of the years 1955-60 and at time of division of the farm contained cropland but received no part of the allotment due to division of the allotment on a contribution basis.

(c) The acreage allotments established as provided in this section shall be subject to such downward adjustment as is necessary to bring such allotments in line with the total acreage available for allotment to all new farms. One-eighth of one percent of the 1961 national marketing quota shall, when converted to an acreage allotment by use of the national average yield be available for establishing allotments for new farms. The national average yield shall be the average of the several State yields used in converting the State marketing quota into State acreage allotments.

(d) Any new farm allotment approved under §§ 727.1211 to 727.1228 which was determined by the county committee on the basis of incorrect information knowingly furnished the county committee by the applicant for the new farm allotment

shall be cancelled as of the date established.

§ 727.1224 Time for filing application.

An application for a new farm allotment shall be filed with the ASC county office no later than February 15, 1961, unless the farm operator was discharged from the armed services subsequent to December 31, 1960, in which case such application shall be filed within a reasonable period prior to planting tobacco on the farm.

§ 727.1225 Determination of normal yields for new farms.

The normal yield for a new farm shall be that yield per acre which the county committee determines is normal for the farm as compared with yields for other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar.

MISCELLANEOUS

§ 727.1226 Approval of determinations made under §§ 727.1211 to 727.1225 and § 727.1228, and notices of farm acreage allotments.

(a) All farm acreage allotments and yields shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee. The State committee may revise or require revision of any determinations made under §§ 727.1211 to 727.1225 and § 727.1228. All acreage allotments and yields shall be approved by a representative of the State committee, and no official notice of acreage allotment shall be mailed to a grower until such allotment has been so approved, except that revised acreage allotment notices without such prior approval may be mailed in cases (1) resulting from reconstitutions that do not involve the use of additional acreage or (2) of allotment reductions due only to failure to return marketing cards (and disposition of tobacco is not otherwise furnished as provided in § 727.1219(b)).

(b) An official notice of the farm acreage allotment and marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to an allotment. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established. All such notices shall bear the actual or facsimile signature of a member of the county committee. The facsimile signature may be affixed by the county committeemen or an employee of the county office. Insofar as practicable all allotment notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice, containing thereon the date of mailing, shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of such notice certified as true and correct shall be furnished without charge to any person interested in the

farm in respect to which the allotment is established.

(c) If the records of the county committee indicate that the allotment established for any farm may be changed because of (1) a violation of the marketing quota regulations for a prior marketing year, (2) removal of the farm from agricultural production, (3) division of the farm, or (4) combination of the farm, the mailing of the notice of such allotment may be delayed: *Provided*, That the notice of allotment for any farm shall be mailed no later than May 1, 1961.

(d) If the county committee determines with the approval of the State administrative officer that the official written notice of the farm acreage allotment issued for any farm erroneously stated the acreage allotment to be larger than the correct allotment, and the county committee also determines that the error was not so gross as to place the operator on notice thereof, and that the operator relying upon such notice and acting in good faith, planted an acreage of tobacco in excess of the correct farm acreage allotment, the acreage allotment shown on the erroneous notice shall be deemed to be the tobacco acreage allotment for the farm for all purposes in connection with the tobacco marketing quota program for the 1961-62 marketing year, except that in determining whether or not 75 percent of the allotment is planted, the provisions of § 727.1228(f) shall be followed.

§ 727.1227 Application for review.

Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for his farm, may, within fifteen days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the ASC county office to have such allotment reviewed by a review committee. The procedures governing the review of farm acreage allotments and marketing quotas is contained in Part 711 of this chapter, which is available at the ASC county office.

§ 727.1228 Determination of preliminary allotments for 1962 and subsequent years, and tobacco acreage history for 1960 and subsequent years.

(a) The preliminary acreage allotment for an old farm for 1962 and subsequent years shall be the farm acreage allotment for the immediately preceding year prior to any reduction for violation of the tobacco marketing quota regulations, except that if the tobacco acreage history in at least one of the immediately preceding two years is not as much as 75 percent of the farm allotment (after any reduction for violation) for such year, the preliminary allotment shall be the larger of (1) the largest tobacco acreage history in the past two years or (2) the average tobacco acreage history for the past five years.

(b) Notwithstanding the provisions of paragraph (a) of this section, no 1962 preliminary allotment or 1962 farm allotment shall be determined for any land which is devoted to commercial or residential development or other non-agricultural purposes, which was not ac-

quired by an agency having the right of eminent domain and which could not have been acquired under right of eminent domain by the person, or agency that did acquire it, and which the county committee and a representative of the State committee determine is retired from agricultural production: *Provided*, That this paragraph shall not preclude the determination of a preliminary allotment or allotment for an old farm returned to agricultural production, or for a farm for which an acreage allotment may be determined under the provisions of § 727.1220.

(c) For each of the years 1957, 1958 and 1959, the tobacco acreage history shall be the same as the farm allotment for each such respective year, prior to any reduction for violation. For 1960, and for each subsequent year, the tobacco acreage history shall be the same as the farm allotment (prior to any reduction for violation) for such year, if

(1) The farm consists of Federally owned land, OR

(2) The final tobacco acreage determined for the farm is as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such year, OR

(3) The final tobacco acreage determined for the farm plus the acreage regarded as planted to tobacco under the Soil Bank Act is as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such year, OR

(4) The final tobacco acreage determined for the farm plus the acreage regarded as planted to tobacco under the Soil Bank Act for at least one of the two immediately preceding years was as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such respective year.

(d) If for 1960 or for any subsequent year, the county committee determines that the final tobacco acreage determined for the farm plus the acreage regarded as planted to tobacco under the Soil Bank Act is not as much as 75 percent of the farm tobacco acreage allotment (after any reduction for violation) for such year because of abnormal weather or disease, the tobacco acreage history for such particular year shall be adjusted to become the smaller of (1) the allotment (prior to any reduction for violation) or (2) the final tobacco acreage determined for the farm, plus the additional acreage which the county committee determines, with approval of a representative of the State committee, would have been included in the final tobacco acreage except for abnormal weather or disease, plus the acreage regarded as planted to tobacco under the Soil Bank Act, and plus the amount of any reduction for violation. However, in such a case, the farm allotment for such year shall still be considered less than 75 percent planted or regarded as planted in connection with determining the tobacco acreage history for one or both of the next two succeeding years. No adjustment for abnormal weather or disease shall be made unless the farm operator requests an adjustment in writing by October 1 of the crop year involved.

(e) If the tobacco acreage history for 1960 or any subsequent year cannot be considered to be the same as the farm allotment under the provisions of paragraph (c) or (d) of this section, it shall be the final tobacco acreage determined for the farm, plus the acreage regarded as planted to tobacco under the Soil Bank Act, plus the acreage by which the farm allotment was reduced for violation, and plus the additional acreage which the county committee determines, with approval of a representative of the State committee, would have been included in the final tobacco acreage except for abnormal weather or disease, not to exceed the tobacco acreage allotment prior to any reduction for violation.

(f) In applying the provisions of paragraphs (c), (d), and (e) of this section, the tobacco acreage history for any year shall not be larger than the allotment prior to any reduction for violation. For any year for which the allotment was reduced for violation (but not reduced to zero), the reduced allotment shall be used in determining whether the allotment was 75 percent planted or regarded as planted. For any year for which an allotment of zero was established (or no allotment was established), any acreage planted to tobacco on the farm in such year shall not be taken into account in determining whether at least 75 percent of the allotment for 1960 or any subsequent year was or is planted or is to be regarded as planted. In the event of planting pursuant to an erroneous notice of allotment for any year, the smaller of (1) the allotment shown on the erroneous notice or (2) the correct allotment that should have been shown on the notice will be used in determining whether the allotment was 75 percent planted or regarded as planted: except that, if the correct notice is zero, any acreage planted to tobacco on the farm in such year shall not be taken into account in determining whether at least 75 percent of the allotment for 1960 or any subsequent year was or is planted or is to be regarded as planted.

(g) The 1956 tobacco acreage history shall not exceed the 1956 allotment, and shall include the tobacco acreage harvested on the farm in 1956, the tobacco acreage devoted in 1956 to the acreage reserve program, the tobacco acreage devoted in 1956 to the conservation reserve program, and the 1956 tobacco acreage preserved pursuant to a request of the owner or operator of the farm, as provided in § 727.816(b) of the tobacco marketing quota regulations for the 1957-58 marketing year (21 F.R. 6832, 8423, 9398).

(h) Notwithstanding the foregoing provisions of this section, a farm shall be construed to have no tobacco acreage history during the base period, and shall therefore not be considered an old farm, if the only tobacco acreage history computed for the farm during the base period consists of acreage history restored pursuant to reduction(s) of the allotment for violation(s) of the tobacco marketing quota regulations.

(i) As used in this section, the following terms shall have the meanings described as follows:

(1) "Federally owned land" means land owned by the Federal Government or any department, bureau or agency thereof, or by any corporation all of the stock of which is owned by the Federal Government.

(2) "Final tobacco acreage" means the acreage determined under the provisions of Part 718 of this chapter, Determination of Acreage and Performance, and any amendments thereto, to be the final acreage of tobacco on the farm. Any acreage that may have been planted in any year on a farm for which a zero allotment was established or for which no allotment was established shall not be taken into account in determining whether at least 75 percent of the farm allotment for 1960 or any subsequent year was planted.

(3) "Acreage regarded as planted to tobacco under the Soil Bank Act" means: For 1960 and any subsequent crop year, if the tobacco allotment is the only commodity acreage allotment for the farm, the acreage placed in the conservation reserve at the regular rate, not to exceed the amount by which the farm tobacco acreage allotment, after any reduction for violation, exceeds the final tobacco acreage shall be regarded as planted to tobacco under the Soil Bank Act. In the event the farm has two or more commodity allotments for which the final acreage is less than the respective allotment, and the acreage placed in the conservation reserve at the regular rate on the farm is less than the sum of the amounts by which such respective allotments (after release and before reapportionment) exceed the respective final acreages of such crops on the farm, the acreage placed in the conservation reserve at the regular rate shall be prorated and credited to each such allotment commodity. To prorate this acreage, the sum of the amounts by which the respective allotments for those crops for which the final acreage is less than the respective allotment (after release and before reapportionment) exceed the respective final acreage for such allotment crops on the farm shall be obtained. This total shall then be divided into the amount by which each such allotment (after release and before reapportionment) exceeds the final acreage. The percentage thus obtained for each such commodity shall be applied to the acreage on the farm under a conservation contract at the regular rate. The result shall be the acreage considered planted to such commodity on the farm under a conservation reserve contract. Where it is necessary to determine the acreage regarded as planted to tobacco under the Soil Bank Act in 1959 or 1958, the provisions of this paragraph shall be followed in making such determination. For 1958, the acreage entered on the acreage reserve agreement shall be included in the acreage regarded as planted under the Soil Bank Act, and shall be added to the final acreage in determining whether, and the extent to which, the commodity is entitled to share in the conservation reserve credit for the farm. As used in this paragraph (i) (3), the term "allotment" means the allot-

ment after any reduction for violation in the case of tobacco and peanuts.

NOTE: The record keeping and reporting requirements of these regulations have been approved by and subsequent reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued at Washington, D.C., this 11th day of July 1960.

CLARENCE D. PALMBY,
Associate Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60-6601; Filed, July 14, 1960;
8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Reg. Docket No. 446; Supp. No. 8]

PART 24—MECHANIC AND REPAIRMAN CERTIFICATES

Qualifying Experience for Mechanic Inspection Authorization

Part 24 of the Civil Air Regulations presently contains the requirements for issuance of mechanic and repairman certificates, including the issuance of inspection authorizations to certificated mechanics holding both airframe and powerplant ratings and having such other qualifications as the Administrator may deem appropriate. Section 24.43-1 (a) (2) specifies, in part, the qualifying experience for issuance of an inspection authorization and requires the applicant for such authorization to have been actively engaged in the inspection, maintenance, and repair of U.S. civil aircraft and engines for at least 2 years immediately preceding the date of application.

Many Federal, state, and local government agencies operate aircraft which, by definition, are public aircraft, but many of these agencies have established policies requiring such aircraft to be certificated, maintained, and operated in accordance with the certification and airworthiness requirements of the Civil Air Regulations. In order to maintain these aircraft as required by the regulations, it is necessary for such governmental agencies to have their aircraft inspected periodically by persons holding an inspection authorization. However, under the provisions of present § 24.43-1 (a) (2), otherwise qualified certificated mechanic personnel of these government agencies cannot obtain an inspection authorization, since they have not been engaged for the preceding 2 years in the maintenance of "U.S. civil aircraft."

The experience acquired by certificated mechanics performing inspection, maintenance, and repair operations on public aircraft, certificated and maintained in accordance with the Civil Air Regulations, is equivalent to the experience acquired on "U.S. civil aircraft." It is deemed appropriate that such mechanics, if otherwise qualified, should be considered eligible to apply for an inspection authorization.

Since this amendment relieves certain mechanics of a technical restriction and does not place any additional burden on anyone, notice and public procedure hereon are unnecessary, and it may be made effective on less than 30 days' notice.

In consideration of the foregoing, § 24.43-1(a) (2) of the Civil Air Regulations (14 CFR Part 24), is hereby amended as follows effective July 15, 1960:

§ 24.43-1 Inspection authorization (FAA rules which apply to § 24.43).

(a) Qualifications. * * *

(2) He has been actively engaged for at least 2 years, immediately preceding the date of application, in the inspection, maintenance, and repair of aircraft certificated and maintained in accordance with the provisions of the Civil Air Regulations.

(Secs. 313(a), 601, 72 Stat. 752, 775; 49 U.S.C. 1354(a), 1421)

Issued in Washington, D.C., on July 11, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-6584; Filed, July 14, 1960; 8:47 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 445; Amdt. 179]

PART 507—AIRWORTHINESS DIRECTIVES

Bell Helicopters

Amendment 146, 25 F.R. 4132, required inspection and modification of scissors pivot bolts and bolt holes on certain Bell helicopter models to correct an unsafe condition. Some military 47E and 47K models which have been released as surplus have been converted and certificated. Therefore, Amendment 146 is being amended to include these models.

In the interest of safety the Administrator finds that notice and public procedure hereon are unnecessary and the amendment may be made effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing § 507.10(a) (14 CFR Part 507) is amended as follows:

Amendment 146, Bell Helicopters, as it appeared in 25 F.R. 4132 is amended:

1. By changing the applicability statement to read "Applies to all helicopter models: 47B, 47B3, 47D, 47D-1, 47-G, and 47H-1, all Serial Numbers: 47G-2 Serial Numbers 1327 through 2450, 2453 through 2456, and 2458; 47J Serial Numbers 1420 through 1776 (except for helicopters on which Kit No. 47-3410-1 (333SI) has been installed); 47E and 47K."

2. By changing the first sentence in paragraph (a) to read "Prior to June 30, 1960, except 47E and 47K as to which

compliance is required prior to August 15, 1960, inspect the scissor lever pivot bolts, AN 174-31, and bolt holes in the brackets of the collective pitch sleeve weld assembly, P/N 47-150-117-5 for wear."

This amendment shall become effective upon the date of its publication in the FEDERAL REGISTER.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on July 11, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-6566; Filed, July 14, 1960; 8:45 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 59-WA-297]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification; Change of Effective Date

On June 10, 1960, there was published in the FEDERAL REGISTER (25 F.R. 5179) an amendment to §§ 600.6007 and 600.6124 of the regulations of the Administrator. This amendment, to be effective October 20, 1960, modified VOR Federal airway No. 7 from Lewis, Ind., to Westpoint, Ind.; modified Victor 7 west from Evansville, Ind., to Terre Haute, Ind.; revoked Victor 7 west from Terre Haute to Westpoint; and realigned Victor 124 from Terre Haute to Shelbyville, Ind., concurrently with the commissioning of the Terre Haute, Ind., VOR at a new location.

The commissioning date of the relocated Terre Haute VOR has been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendments until November 17, 1960.

Since this action does not impose a burden on the public, compliance with the notice, public procedure and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59-WA-297 is hereby modified as follows: "effective 0001 e.s.t. October 20, 1960." is deleted and "effective 0001 e.s.t. November 17, 1960." is substituted therefor.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 8, 1960.

GEORGE S. CASSADY,
Brigadier General, U.S. Air
Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-6568; Filed, July 14, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-71]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEGMENTS

Modification of Federal Airways and Associated Control Areas

On April 2, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 2804) stating that the Federal Aviation Agency was considering amendments to §§ 600.6066 and 600.6208 of the regulations of the Administrator which would modify VOR Federal airway No. 66 between the San Diego, Calif., VOR and the El Centro, Calif., VOR by extending the airway from the Campo, Calif., intersection to the San Diego VOR and designating it direct from San Diego to El Centro, and modify the segment of VOR Federal airway No. 208 between the Oceanside, Calif., VOR and the Thermal, Calif., VOR by designating the airway via the intersection of the Oceanside VOR 101° True and the San Diego VOR 046° True radials. Subsequent to the closing date, a modification of the proposal was published on April 26, 1960 in the FEDERAL REGISTER (25 F.R. 3597) amending the original proposal by designating the segment of Victor 208 between Oceanside and Thermal via the Julian, Calif., VOR. In addition, it was proposed to designate VOR Federal airway No. 460 from Julian to Blythe, Calif., via the Julian VOR 055° True and the Blythe VOR 272° True radials and VOR Federal airway No. 458 from Julian to El Centro via the Julian VOR 130° True and the El Centro VOR 271° True radials.

Three comments were received in response to the proposal. The Air Transport Association concurred in the modification of the airways. The Department of the Air Force objected to the proposals because they believe that en route aircraft flying along the airways based on the Julian VOR will cause delays to March Air Force Base, Calif., arrival and departure procedures using the Julian VOR. March AFB arrival and departure procedures have recently been transferred from the Thermal VOR to the Julian VOR. This provides a straight-in approach to March AFB. This change in procedures also provides an unrestricted preferential departure route on Victor 64 between Long Beach, Calif., and Thermal for eastbound departures from Los Angeles, Calif. Victor 208 between Oceanside and Thermal, via Julian, will not be a preferential departure route from Los Angeles. Aircraft using this airway and the other airways based on the Julian VOR will generally be low altitude and

short haul flights. The Federal Aviation Agency anticipates no conflict between en route traffic and March AFB arrival and departures that cannot be handled procedurally by the Air Route Traffic Control Center concerned. The Department of the Navy offered no objections to the proposal; however, they point out that the designation of Victor 458 between Julian and the Coyote Wells, Calif., intersection will underlie the airspace utilized for the Miramar Naval Air Station high altitude TACAN instrument approach procedure and holding pattern. In this instance, the approach and the holding pattern altitude in the airspace occupied by Victor 458 is at 20,000 feet or above, therefore, this should not cause any conflict in traffic that cannot be handled procedurally.

No other comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

§ 600.6066 [Amendment]

1. In the text of § 600.6066 (24 F.R. 10512) "From the INT of a line bearing 345° toward the Julian, Calif., RBN with the El Centro VOR 265° radial via the El Centro, Calif., VOR;" is deleted and "From the San Diego, Calif., VOR, via the El Centro, Calif., VOR;" is substituted therefor.

2. Section 600.6208 (24 F.R. 10522) is amended to read:

§ 600.6208 VOR Federal airway No. 208
(Los Angeles, Calif., to Peach Springs, Ariz.).

From the Los Angeles, Calif., VOR via the INT of the Los Angeles VOR 185° True and the Oceanside VORTAC 280° True radials; Oceanside, Calif., VORTAC; Julian, Calif., VOR; Thermal, Calif., VORTAC; Twentynine Palms, Calif., VOR; Needles, Calif., VORTAC; to the Peach Springs, Ariz., VORTAC. The portions of this airway which lie within the geographical limits of, and between the designated altitudes of, the Camp Pendleton Restricted Area (R-294) are excluded during the designated time of this restricted area.

3. Part 600 (24 F.R. 10487) is amended by adding the following:

§ 600.6458 VOR Federal airway No. 458
(Julian, Calif., to El Centro, Calif.).

From the Julian, Calif., VOR via the INT of the Julian VOR 130° True and the El Centro VOR 271° True radials, to the El Centro, Calif., VOR.

§ 600.6460 VOR Federal airway No. 460
(Julian, Calif., to Blythe, Calif.).

From the Julian, Calif., VOR via the INT of the Julian VOR 055° True and the Blythe VOR 272° True radials, to the Blythe, Calif., VOR.

4. Part 601 (24 F.R. 10530) is amended by adding the following:

§ 601.6458 VOR Federal airway No. 458
control areas (Julian, Calif., to El Centro, Calif.).

All of VOR Federal airway No. 458.

§ 601.6460 VOR Federal airway No. 460
control areas (Julian, Calif., to Blythe, Calif.).

All of VOR Federal airway No. 460.

These amendments shall become effective 0001 e.s.t., September 22, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 8, 1960.

GEORGE S. CASSADY,
Brigadier General, U.S. Air
Force, Acting Director, Bu-
reau of Air Traffic Manage-
ment.

[F.R. Doc. 60-6567; Filed, July 14, 1960;
8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Extension of Effective Date of Public Law 86-139 as It Affects Section 408 of the Federal Food, Drug, and Cosmetic Act

Under the authority provided in Public Law 86-139 (73 Stat. 388, 7 U.S.C. 135 et seq.), the Commissioner of Food Drugs has extended the effective date of this statute as it affects section 408 of the Federal Food, Drug, and Cosmetic Act for certain specified uses of nematocides, plant regulators, defoliant, or desiccants (25 F.R. 2836, 3351, 4864, 5878). The lists previously published in § 120.35 are amended by adding thereto the following items:

§ 120.35 Extension of effective date of Public Law 86-139 as it affects section 408 of the Federal Food, Drug, and Cosmetic Act.

Sodium chlorate with added sodium metaborate-----	On tomatoes as a defoliant. On rice and sorghum (milo) as a desiccant.
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Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since extensions of time, under certain conditions, for the effective date of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 were contemplated by the statute as a relief of restrictions on the agricultural industry.

Effective date. This order shall become effective on the date of signature.

(Sec. 701(a), 52 Stat. 1055, as amended; 21 U.S.C. 371(a). Applies sec. 3(b), Public Law 86-139 (73 Stat. 288; 7 U.S.C. 135, et seq.)

Dated: July 8, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-6578; Filed, July 14, 1960;
8:47 a.m.]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

PART 45—INTERPRETATIONS; TITLE II, FEDERAL COAL MINE SAFETY ACT

Underground Structures

Section 45.48-1, is amended to read as follows:

§ 45.48-1 Underground structures.

Section 209(g)(5) means that all underground surfaces, including roof and rib supports, enclosing such underground installations as transformer stations, battery-charging stations, substations, permanent pump rooms, etc., shall be fire-proof, unless the equipment enclosed consists only of dry-type transformers, transformers filled with nonflammable fluid or inert gas, or equipment manufactured as package units and fully enclosed in fire-proof housings, such as mercury-arc rectifiers.

MARLING J. ANKENY,
Director, Bureau of Mines.

[F.R. Doc. 60-6574; Filed, July 14, 1960;
8:46 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 3—Department of Health, Education, and Welfare

PART 3-75—DELEGATIONS OF AUTHORITY

Subpart B—Delegates and Specific Limitations

DIVISION OF INDIAN HEALTH, BUREAU OF MEDICAL SERVICES

The following subsection is added following § 3-75.6:

§ 3-75.6-1 Division of Indian Health, Bureau of Medical Services.

Officials occupying the following positions in the Area Offices of the Division of Indian Health, Bureau of Medical Services, are authorized, pursuant to section 7(a)(1) of Public Law 86-121 and section 4-5 of the PHS Manual of Organization and Functions, to negotiate and award contracts for architectural-engineer services for bridges, roads, sidewalks, sewers, mains, or similar items, regardless of construction costs, and for any public building or public improvement when the construction cost is estimated to be less than \$200,000; and to advertise and award contracts for construction of Indian Health sanitation facilities, subject to the contracting pro-

visions of Chapter 7-100 of the HEW Procurement Manual, including PHS supplements thereto, and PHS Administrative Services Memorandum No. 51 (March 27, 1958), as amended:

Medical Officer in Charge.
Deputy and/or Assistant Medical Officer in Charge.
Executive or Administrative Officer.
General Services Officer.

This authority may not be redelegated. It may be exercised without regard to the exclusion in section 2-10-40 B4 of the HEW Procurement Manual.

[SEAL] PAUL A. CAULK,
Executive Officer,
Public Health Service.

APRIL 15, 1960.

[F.R. Doc. 60-6463; Filed, July 14, 1960;
8:45 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 13475; FCC 60-818]

PART 10—PUBLIC SAFETY RADIO SERVICES

Special Emergency Split Channels

In the matter of amendment of § 10.462(f) (15) of Part 10 of the Commission's rules to permit assignment of special emergency split channels without a showing of co-channel coordination, Docket No. 13475.

1. As a result of a request for waiver filed by Dr. Charles A. Baldwin, d/b as Lakeview Animal Clinic, P.O. Box 851, Lake City, Florida, the Commission issued a notice of proposed rule making in the above-entitled matter. This notice was duly published in the FEDERAL REGISTER, April 20, 1960 (25 F.R. 3427), and invited interested parties to submit comments in support of, or in opposition to, the proposal by June 1, 1960. This date having passed, the only comment received was that of the petitioner who in essence reiterated the arguments advanced in his original petition.

2. The Commission stated in paragraph 6 of the notice of proposed rule making that removal of the requirement that Special Emergency applicants must obtain co-channel coordination on the frequencies 45.92 Mc, 45.96 Mc, 46.00 Mc, and 46.04 Mc would serve to bring licensees in this service into parity. Similarly, since such applicants must still coordinate with existing users within 75 miles and within ± 30 kc, except for co-channel users, present stations operating on these adjacent frequencies will be afforded adequate protection.

3. No evidence has been submitted in this proceeding nor has any other information come to the Commission's attention which would warrant a different conclusion. It should be noted that after November 1, 1963, all licensees must comply in full with the new narrow-band technical standards.

4. Authority for this amendment of Part 10 of the Commission's rules

ordered hereby is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

5. Therefore, Part 10 of the Commission's rules is amended by the changing of the provisions of § 10.462(f) (15) as set forth below, effective August 15, 1960.

Adopted: July 7, 1960.

Released: July 12, 1960.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

Part 10 of the Commission's rules is amended as follows:

Section 10.462(f) (15) is amended to read as follows:

§ 10.462 Frequencies available to the Special Emergency Radio Service.

* * * * *

(f) * * *

(15) Available for assignment: *Provided*, That prior to November 1, 1963, application is accompanied by a statement under oath that the licensees of all stations located within a radius of 75 miles of the proposed location and authorized to operate on a frequency 30 kc or less removed, except those authorized to operate on the frequency requested, have concurred with such assignment or is accompanied by an acceptable engineering report indicating that harmful interference to the operation of existing stations will not be caused.

[F.R. Doc. 60-6594; Filed, July 14, 1960;
8:43 a.m.]

[Docket No. 13080; FCC 60-781]

PART 45—PRESERVATION OF RECORDS OF TELEPHONE CARRIERS

PART 46—PRESERVATION OF RECORDS OF WIRE-TELEGRAPH, OCEAN-CABLE AND RADIOTELEGRAPH CARRIERS

Retention Periods For Payroll, Employee Service, Mortality, and Related Records

In the matter of amendment of Parts 45, Preservation of Records of Telephone Carriers, and 46, Preservation of Records of Wire-Telegraph, Ocean-Cable and Radiotelegraph Carriers, of the Commission's rules and regulations to reduce the retention periods for payroll, employee service, mortality, and related records, and to combine into one Part the present two parts, Docket No. 13080.

1. On July 29, 1959, the Commission adopted a Notice of Proposed Rule Making in the above-entitled matter, which was published in the FEDERAL REGISTER on August 5, 1959 (24 F.R. 6271) in accordance with section 4(a) of the Administrative Procedure Act. This Notice presented for comment, on or before September 14, 1959 (with allowance for reply comments within twenty days thereafter), a proposal of the American Telephone and Telegraph Company (AT&T),

made on behalf of itself and the Bell System companies, that Part 45 of the Rules be amended in such manner that the permanent retention periods prescribed for employees' service records; mortality, service retirement and other statistical data either used or useful in the computation of annual pension accrual rates; and pension or annuity payrolls be reduced to six years after termination of employment for employees' service records, be continued for permanent retention as to the mortality, etc. data but with a more restricted definition of what is comprehended in such data, and be reduced to six years for pension or annuity payrolls. It was also proposed that the retention period for employee payrolls be reduced from ten years to six years and that certain other related changes be made. The Commission proposed that any amendments adopted for Part 45 should also be adopted for Part 46, with the exception that the retention period for item 21-d relating to employees' service records in Part 46 would not be increased from 3 years after termination of employment. The Commission also asked for comments and suggestions on its own proposal to consolidate Parts 45 and 46 into a single part.

2. Timely comments were received from The Western Union Telegraph Company (WU), AT&T, the United States Independent Telephone Association (USITA), The General Services Administration (GSA) representing the consumer interest of the executive agencies of the United States in public utility rate proceedings before Federal and State regulatory bodies, the Communications Workers of America (CWA), the Chicago Telephone Traffic Union (CTTU), and the Maryland Telephone Union, Inc. (MTU). Reply comments were received from AT&T in answer to the comments of GSA and the telephone unions. No one requested a public hearing or oral argument.

3. WU, AT&T and USITA favored the proposed amendments and AT&T, in addition, suggested that, should Parts 45 and 46 be consolidated, the item numbers in the combined Part which pertain to the records of telephone carriers be kept the same, wherever possible, as the numbers for corresponding items in Part 45.

4. CWA agreed that the permanent retention period for individual employee records (items 21-d-1 and 21-j) should be reduced and pointed out that the permanent retention of certain records is an unnecessary and costly practice which, in the final analysis, is paid for by the telephone users. The main concern expressed by all the unions was the problem of determining previous service of employees when they are rehired if the pertinent records are not required to be retained for an adequate period. CTTU and MTU also urged that six years after termination of employment is too short a retention period for regular day-to-day personnel administration. This opposition was apparently based upon a mistaken interpretation that the six-year period begins to run whenever an employee is promoted or transferred. This is not the case. The period begins only when an employee terminates his

active service by other than retirement on an annuity, or upon the death of an annuitant. CTTU and MTU suggested a retention period of 25 years after termination of employment for individual employee records covered by present item 21-d-1 and a continuance of the present permanent retention period for records covered by item 21-j(2). They also stated that, if "6 years after termination of employment" is intended to include retirement, the permanent retention period for cards, lists, or other records of earnings for individual employees used in computing pensions or annuities (item 21-j(1)) should be retained in order to be available for the purpose of computation of the beneficiary payments made upon the death of a retired employee. CWA did not specify a retention period for any of these records other than stating that they should be retained for a reasonable length of time during the employee's potential reemployment period.

5. GSA stated that should the proposed amendments be adopted, many important records which support the actuarial and experience basis on which pension fund accruals are charged to operating expenses would no longer be available. While the companies may consider these records no longer useful for their own purposes, it is GSA's opinion that these records are of importance to the telephone customers who are affected by the charges to operating expenses based on the past experience represented by these records. GSA further stated that even though such data is not being currently used by the Bell companies under their present method of calculating pension accrual rates, it is possible that such data could and should be used if a more proper method were devised. GSA felt that, unless such data is retained, it cannot be satisfactorily determined whether there is a better and more appropriate formula for determining the Bell companies' pension accrual rates. GSA also maintained that, so far as can be ascertained, the Commission has never formally approved the present method of computing pension accruals and these employee records therefore are potentially useful to the Commission as well as to other parties. Regarding AT&T's statement in its original proposal that the permanent retention of these records results in voluminous files which are seldom referred to and which are retained at a substantial expense, GSA suggested that since the Rules permit microfilming of all records, it does not believe that voluminous files will be required to be retained. In connection with the consolidation of Parts 45 and 46, GSA stated that it had interpreted the Commission's intent in this regard to be dependent on adoption of the proposal for amendment of retention periods for employee records and, for that reason, was opposed to the consolidation.

6. AT&T in its reply comments stated that GSA's statement is based on the premise that all records "potentially useful" to customers and others should be kept in perpetuity and on the erroneous belief that permanent retention of

the specific records in question may be necessary for checking pension accruals. AT&T stated that item 19-j (for which no change is proposed) requires permanent retention of all actuarial computations or studies determining pension accruals. AT&T further stated that, since group methods are used in computing the accrual rates of the Bell System companies (and such methods are universally accepted by actuaries), only employee census summaries are used, and after the summaries are compiled and their accuracy verified, no further reference to individual employee records is required. AT&T also stated that the Bell System actuarial assumptions and methods have been brought in issue by non-actuarial witnesses in some post-war rate cases before State regulatory commissions, but in no case has a commission disallowed any pension expense claimed by a Bell System company on the basis of rejection of actuarial methods. In fact, the principal opposition actuary in those cases has consistently used the Bell System's basic actuarial methods. AT&T felt that GSA's criterion of retaining "potentially useful" records permanently, if applied generally, could lead to permanent retention of practically all telephone company records. AT&T submitted that such a standard is at variance with GSA's own standards for retention of records by agencies of the United States Government. AT&T believed that GSA's suggestion that microfilming be used to reduce the volume of records is impractical due to the physical nature of certain of the records. The cost of microfilming these records would presently be out of proportion to storage cost.

7. With respect to the comments filed by the unions, AT&T in its reply stated that the Bell System companies will retain records used in the determination of pensions, benefits, net credited service, etc., for individual former employees as long as may be necessary to cover their potential reemployment. In addition, records of retired employees covering their entire period of active employment will be retained until at least 6 years after their pensions are terminated (which would be upon death of the retired employee). It is AT&T's belief that "6 years after termination of employment" should be interpreted to apply to retired as well as to active employees. AT&T further pointed out that the Plan for Employees' Pensions, Disability Benefits and Death Benefits of each of the Bell System companies provides that decisions made under this plan with respect to service on or after June 1, 1914 shall be based strictly upon the facts in the case as shown by the records of the company. AT&T argued that there is a clear distinction between retention periods required for regulatory purposes and for other purposes such as statutory requirements and administrative needs. It suggested that this concept is recognized in Section 45.1(c) of our Rules where it is stated that the records retention periods shall not be construed as excusing compliance with any other lawful requirement for the preservation of records for periods longer than those prescribed in the Rules. Such other longer retention

periods are observed by the telephone companies incorporating such periods in their own routines and instructions. In the instant case AT&T, as noted, believed it would be impractical to set an exact longer period than the 6 years after termination of employment proposed and it urged that the companies should be permitted to follow their own administrative requirements based on the needs for the records in question.

8. It appears that the arguments made by GSA are essentially the same as those which prompted the Commission to adopt (subject to further consideration) the stringent requirements for retention of employee service records and mortality data in Part 45 in 1950. At that time it was felt that the question of the need for permanent retention of these records might be resolved at a later date. Even though the Commission has periodically reviewed Bell Company actuarial computations used in determining pension accrual rates, there has been no occasion for it to use individual employee data or mortality data beyond those used by the companies. It also appears that State regulatory bodies have not had occasion to use old employee service records and mortality data which would cease being required to be retained permanently if the changes in retention periods proposed are adopted. Consequently, the arguments of GSA are not persuasive to us.

9. We believe there is merit in the contentions of the employee organizations as to the necessity of retaining individual employee service records for the purpose of establishing prior service and salaries and wages upon reemployment. This necessity is not, however, for regulatory purposes. Even so, we are not prepared to go all the way and say that we will adopt records retention requirements with an eye only on regulatory needs. Our solution is to follow a path between the two extremes. We do not believe we should adopt a method of insuring the availability of a relatively few individual employee service records which inevitably requires the long-time retention of all such records. The solution we have determined upon is to reduce the retention periods as proposed in the notice of proposed rule making but to append to the critical sections of the rules in Part 45 a note which is designed to make it clear that it is the responsibility of each telephone company, regardless of fixed-number-of-years retention periods, to retain in some form such service and salary data as may be necessary to meet all reasonable future calls for individual records. Such note will be found in the amendments appendix attached. We realize that for the present it may not be found worthwhile to screen the employee service records in order to pull those which can be destroyed. Our rules should, however, be flexible and designed where possible to anticipate the future. We have in mind the possibility that new methods of record keeping may be developed in the future which will make it completely feasible to screen the files and remove on a selective basis those which may be destroyed. When that time comes the rules as being amended will be so adaptable to new

conditions that full advantage may be taken of new developments in the art of record keeping without further amendment of the rules.

10. Even though we agree with AT&T that the interpretation of proposed item 21-d should be that "6 years after termination of employment" is to be construed as applying to retired as well as to active employees, it appears that the language is susceptible of improvement in the interests of clarity. Accordingly, proposed item 21-d and item 21-j(1) of Part 45 are being amended to specifically require the records described therein to be retained until 6 years after termination of pensions. Items 21-d and 21-j(1) of Part 46 are being similarly amended to require the retention of the records covered by those items until 3 and 6 years, respectively, after termination of pensions as a clarifying change to the retention periods.

11. The notice of proposed rule making in this matter stated that it was not proposed to increase the retention period of 3 years after termination of employment for item 21-d of Part 46 and none of the comments suggested any other retention period for that item. Therefore, the retention period for item 21-d of Part 46 is not being amended in this proceeding except for the minor clarifying change discussed in paragraph 10, above.

12. The indicator (M), to designate records which are permitted to be micro-filmed and preserved in that form in lieu of the original records, appeared in the notice of proposed rule making herein. This indicator does not appear in the amendments being adopted herein for the reason that since the Notice was issued both Parts 45 and 46 of our rules have been amended to permit microfilming of any and all records at any time (Docket No. 12639, Final Report and Order adopted October 7, 1959, 24 F.R. 8379).

13. There are at present, and there will continue to be under the Rules amendments adopted herein, differences in prescribed retention periods for the same or similar records contained in Parts 45 and 46 of our Rules. These differences had their origin for the most part in the rule making proceeding finalized in 1950 which led to the adoption of the Parts referred to. The differences were dictated by the asserted differing needs of regulatory bodies for information as to telephone companies, on the one hand, and as to wire-telegraph, ocean-cable and radiotelegraph companies on the other. Most of the differences are being eliminated by the amendments ordered herein. There is one new difference being created, however, that deserves mention. This is the note that is being added at the end of item 21 in Part 45 but is not being added in the corresponding place in Part 46. The principal reason for not making the addition in Part 46 is that it would represent a new requirement which has not been submitted to rule making comment. This is a basic difference from the Part 45 change which grew directly out of rule making comments. We do not, however, intend to initiate further rule making in Part 46

at this time to add the note to item 21 therein.

14. It should be noted that wire-telegraph, ocean-cable and radiotelegraph companies stand in quite a different position with respect to the Commission in the matter of regulation than do telephone companies. Whereas the former are regulated wholly or at least primarily by the Commission, state commissions have a large share of the regulatory responsibility in connection with nearly all telephone companies. There are probably hundreds of telephone companies subject to sections 201-205 of the Communications Act but which voluntarily use Part 45 of our rules as a guide to their preservation of records practices. We believe we should consider these companies as well as those over whose practices we have full jurisdiction. This situation has no counterpart in the application of Part 46. We do intend, however, to make individual inquiry of the relatively few telegraph and cable companies as to their practices in this regard and, upon completion of such inquiry, will take such action on the matter as appears appropriate.

15. With respect to the consolidation of Parts 45 and 46 of the rules, the Commission believes that these parts should be combined as proposed in the notice of proposed rule making. However, the consolidation is not being made a part of this First Order. It is contemplated that the consolidation will be promulgated in a future order of the Commission. Such consolidation, being nonsubstantive and editorial in nature, may be accomplished by action of the Secretary of the Commission under authority delegated by section 0.341(a) of our rules. Specific authority to the Secretary to take this action is also conferred by this First Order.

It appearing that the proposed rule making proceeding in this matter has indicated the desirability of amendment of Parts 45 and 46 of the Commission's rules and regulations with respect to the

retention periods for payroll, employee service, mortality, and related records;

It further appearing that Parts 45 and 46 should be amended in the manner proposed in the notice of proposed rule making with the variations indicated in paragraphs 9 and 10 herein;

It further appearing that Parts 45 and 46 should be consolidated into a single new part of our rules.

It is ordered, That under authority contained in sections 4(i) and 220 of the Communications Act of 1934, as amended, Part 45 (Preservation of Records of Telephone Carriers) and Part 46 (Preservation of Records of Wire-Telegraph, Ocean-Cable and Radiotelegraph Carriers) are hereby amended as set forth below.

It is further ordered, That Parts 45 and 46 of our rules should be consolidated into a single new part, and that such consolidation shall be accomplished at a later date by an Order issued by the Secretary of the Commission under delegated authority;

It is further ordered, That the amendments ordered and set forth below, be effective August 1, 1960.

Adopted: July 7, 1960.

Released: July 12, 1960.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 220, 48 Stat. 1078; 47 U.S.C. 220)

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

I. Part 45—Preservation of Records of Telephone Carriers is amended as follows:

In § 45.8, item 21 is amended by revising sub-items a, b, d, j, k, and l, and by adding a note at the end of the item; and item 22 is amended by adding new sub-item j, as follows:

§ 45.8 List of records.

* * * * *

Item No.	Description of records	Period to be retained
21	Payroll records:	
	a. Payroll sheets, registers, lists, ledgers, and other basic records of salaries and wages earned by and payments to individual employees for each payroll period.	6 years.
	b. Payroll change reports or other approved applications or authorities for establishing and changing salary and wage rates of individual employees and for making other changes in employees' service records and in pension or other payrolls.	3 years.
	d. Service records of individual employees consisting of names, sex, salary and wage rates, occupational classifications, and similar data, together with changes therein. (See item 22-b.)	6 years after termination of employment or pension. (See, however, note at end of item 21.)
	j. Cards, lists, or other records of earnings for individual employees:	
	(1) Used in computing pensions or annuities.....	6 years after termination of employment or pension. (See, however, note at end of item 21.)
	(2) Used for current payroll record purposes.....	6 years. (See, however, note at end of item 21.)
	k. Authorizations, case records, special payrolls, or other records of sickness and accident disability and other benefits to employees and their beneficiaries. (See items 13-a and 22-1.)	6 years.
	l. Pension or annuity payrolls.....	Do.
	NOTE: Particularly in connection with items 21-d and 21-j, it should be noted that while minimum retention periods are given, those parts of the payroll records (or extracts therefrom) necessary to establish complete service and salary records shall be retained for whatever periods are necessary to insure that no reasonable call for the establishment of such records will fail of fulfillment by the carrier.	
22	Personnel records:	
	j. Annual employee census summaries, and supplemental summaries in connection therewith, not used in the computation of annual pension accrual rates. (See item 19-1.)	10 years.

II. Part 46—Preservation of Records of Wire-Telegraph, Ocean-Cable, and Radiotelegraph Carriers is amended as follows:

In § 46.9, item 21 is amended by revising sub-items a, b, d, j, k, and l; and item 22 is amended by adding a new sub-item j, as follows:

§ 46.9 List of records.

Item No.	Description of records	Period to be retained
21	Payroll records:	
	a. Payroll sheets, registers, lists, ledgers, and other basic records of salaries and wages earned by and payments to individual employees for each payroll period.	6 years.
	b. Payroll change reports or other approved applications or authorities for establishing and changing salary and wage rates of individual employees and for making other changes in employees' service records and in pension or other payrolls.	3 years.
	d. Service records of individual employees consisting of names, sex, salary and wage rates, occupational classifications, and similar data, together with changes therein. (See item 22-b.)	3 years after termination of employment or pension.
	j. Cards, lists, or other records or earnings for individual employees:	
	(1) Used in computing pensions or annuities.	6 years after termination of employment or pension.
	(2) Used for current payroll record purposes.	6 years.
	k. Authorizations, case records, special payrolls, or other records of sickness and accident disability and other benefits to employees and their beneficiaries. (See items 13-a and 22-l.)	Do.
	l. Pension or annuity payrolls.	Do.
22	Personnel records:	
	j. Annual employee census summaries, and supplemental summaries in connection therewith, not used in the computation of annual pension accrual rates. (See item 19-j.)	10 years.

[F.R. Doc. 60-6595; Filed, July 14, 1960; 8:48 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Parts 19, 24]

SERVICES AND EXPENSES OF CUSTOMS EMPLOYEES

Reimbursement of Charges

Notice is hereby given pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 1003), that under the authority of R.S. 161, as amended, 251, sec. 501, 65 Stat. 290, secs. 555, 624, 46 Stat. 743, 759 (5 U.S.C. 22, 140; 19 U.S.C. 66, 1555, 1624), it is proposed to amend §§ 19.5 and 24.17(c) of the Customs Regulations.

At present, misinterpretation is possible as to when a proprietor of a bonded warehouse is required to reimburse the Government for the transportation expenses and any authorized per diem expenses of customs employees assigned to perform services at a bonded warehouse. In order to eliminate this possibility and to make it specifically clear when such expenses incurred by any customs employee so assigned must be reimbursed by the warehouse proprietor, it is proposed to amend §§ 19.5 and 24.17(c) of the Customs Regulations as tentatively set forth below:

1. Section 19.5(c) is amended to read as follows:

(c) The necessary transportation expenses and any authorized per diem expenses of a customs employee assigned to perform services at a warehouse at which he is not regularly assigned shall be reimbursed by the warehouse proprietor.

2. Section 19.5(d) is amended to read as follows:

(d) When a customs officer is regularly assigned to duty at more than one warehouse, the charge for his compensation and transportation expenses in going from one bonded warehouse to another shall be equitably apportioned among the respective warehouse proprietors concerned. However, no charge shall be made for transportation expenses when a customs employee is reporting to as a first assignment, or leaving from as a last assignment, the place where he is regularly assigned to duty.

3. Section 24.17(c) is amended to read as follows:

(c) The charge for any service enumerated in this section for which expenses are required to be reimbursed shall include actual transportation expenses and any authorized per diem expenses of a customs employee whether the services are performed within or without the port limits, except that no charge shall be made for transportation expenses when a customs employee is reporting to, as a first assignment, or

leaving from as a last assignment, the place where he is regularly assigned to duty.

Prior to the issuance of the proposed amendment, consideration will be given to any relevant data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Customs, Bureau of Customs, Washington 25, D.C., and received not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL]

RALPH KELLY,
Commissioner of Customs.

Approved: July 7, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60-6602; Filed, July 14, 1960;
8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 993]

[Docket No. AO-201-A4]

HANDLING OF DRIED PRUNES PRODUCED IN CALIFORNIA

Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect to Proposed Amendment of Amended Marketing Agreement and Order

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk, United States Department of Agriculture, of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to the proposed amendment of Marketing Agreement No. 110, as amended, and Order No. 93, as amended (7 CFR Part 993), regulating the handling of dried prunes produced in California (hereinafter referred to collectively as the "order"). The order is effective pursuant to provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674), hereinafter referred to as the "act", and any amendment which may be promulgated as a result of this proceeding also will be effective pursuant to the act. Interested parties may file written exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, 25, D.C., not later than the close of business on the 15th day after publication of this recommended decision in the FEDERAL REGIS-

TER. Exceptions should be filed in quadruplicate.

Preliminary statement. The public hearing on the record of which the proposed amendment of the order is formulated was held in San Francisco, California, on April 18, 1960, pursuant to a notice thereof which was published in the FEDERAL REGISTER on April 7, 1960 (25 F.R. 2996). The notice of the hearing included proposals submitted by the Prune Administrative Committee (hereinafter referred to as the "committee")—the agency established pursuant to the order to administer the terms and provisions thereof—and one proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture.

Material issues. The material issues presented on the record of the hearing involve amendatory proposals relating to:

(1) The definition of the terms "area," "non-French prunes," "prunes," "processed prunes," "handle," "size," "domestic," and "proper storage";

(2) The composition of the committee from the standpoint of "cooperative handler," "independent handler," "cooperative producer," and "independent producer" membership, together with allocation of the membership;

(3) The provisions pertaining to the selection by the Secretary of Agriculture (hereinafter referred to as the "Secretary") of committee members and alternate members;

(4) The provisions pertaining to the eligibility of individuals (including agents of handlers) to serve on the committee as members or alternate members;

(5) Authority of the committee, with the approval of the Secretary, to divide the area into election districts (not exceeding seven in number) for the purpose of nominations of independent producer members and alternate members;

(6) Allocation among independent handlers of representation on the committee on the basis of the relative tonnages handled by the various independent handlers as the first handlers thereof;

(7) The procedures pertaining to nominations;

(8) Vacancies on the committee;

(9) Permitting a cooperative marketing association to recommend to the Secretary the removal from the committee of its producer or handler member or alternate member;

(10) The deletion of § 993.33 *Obligations*;

(11) Modification of present § 993.34 (the committee's voting procedure and the verbatim record requirement provisions) by removing the 75 percent vote requirement and the requirement for the submission to the Secretary of a verbatim record in connection with certain actions and reports on voting in particular instances;

(12) The committee's duty as to audit reports;

(13) The various provisions dealing with marketing policy by eliminating the provisions applicable to salable and surplus tonnage (volume) regulations, and by simplifying and combining under the same section, the remainder of such provisions;

(14) The provisions pertaining to handlers' receipts of natural condition prunes, deletion of the provisions pertaining to volume regulation, and the imposition of a special grade regulation on lots containing certain defects in excess of tolerances;

(15) The provisions pertaining to grade and size regulations of prunes (including non-French prunes) subsequent to their receipt by handlers and size regulation of non-French prunes for consumption as prunes and, a restriction on the use of descriptive terms in effect pursuant to the order;

(16) Deletion of the provisions pertaining to volume regulation;

(17) The provisions pertaining to the expenses of the committee and assessments;

(18) Authorization to the committee to establish marketing research and development projects;

(19) The inclusion of a provision regarding the rights of the Secretary; and

(20) Making such changes in the order as may be necessary to bring the entire order, as amended, into conformity with the amendatory action resulting from the hearing.

Findings and conclusions. The findings and conclusions on the material issues, all of which are based upon the evidence adduced at the hearing and the record thereof, are as follows:

(1) The order should be amended with respect to certain definitions currently therein and for the inclusion therein of two new definitions.

A new term "area" should be defined to mean the State of California. This term would thus readily identify the State of California and obviate the need for three words where a single word would suffice when referring to the State of California.

Another term—"non-French prunes"—should be defined, as hereinafter set forth, to mean prunes produced from the following varieties of plums or from such other varieties of plums as the committee, with the approval of the Secretary, may, from time to time, specify: Imperial, Sugar, Robe de Sargent, Burton, Standard, Jefferson, Fellenberg, Italian, President, Giant, and Hungarian (Gross). Prunes produced from the listed plum varieties are commonly referred to by the name of the particular plum variety from which produced. The smaller sizes of the prunes covered by the defined term manifest deficiencies in flavor and texture which have an adverse effect on consumer acceptance. If a new prune variety should be developed, the committee should be authorized to specify, with the approval of the Secretary, whether such variety should, for purposes of regulation under this program, be included within the definition of the term non-French prunes. This

definition is needed to describe the various prunes with respect to which regulations are to be made applicable as discussed in material issue numbered (15). This term, however, should not mean those prunes which are included within the term "French prunes," as hereinafter defined.

The record shows that the order, as amended, should specifically provide for the regulation of certain prunes other than non-French prunes. These prunes include prune varieties such as French (Prune d'Agén, Petite Prune d'Agén), Coates (Cox, Double X, Saratoga), and other prune varieties which possess taste, flesh texture, and other characteristics similar to those of the prunes previously enumerated in this paragraph. To facilitate reference to these prunes, they should be described as "French prunes," as hereinafter set forth.

The present definition of "prunes" (§ 993.4) should be revised by: (1) Substituting the defined term "area" for "State of California," (2) inserting the term "material" before the phrase "deterioration or spoilage" wherever it appears in the definition, and (3) deleting therefrom the provisions of (c). Although prunes may be dried to a point where they can be satisfactorily stored without the use of refrigeration or an artificial preservative, it does not necessarily follow that such prunes will not undergo some minor degree of deterioration or spoilage when stored in accordance with normal industry practices. For this reason, the term "material" should be included in the definition of "prunes" as indicated, so as to allow such minor tolerance and thereby recognize such insignificant changes in stored prunes. The provisions in (c) of the definition pertain to an exception (present § 993.62) to the definition of prunes and should be deleted inasmuch as the provisions of such section will not be carried over into the order, as proposed to be amended (material issue numbered (16)).

The definition of "processed prunes" should be revised so as to state expressly that the term applies only to such prunes as a handler cleans, or treats with water or steam. This change would simplify the wording of the current definition (§ 993.6) of that term while at the same time continue in effect the exemption expressed in the proviso to the present § 993.6 that the term does not cover prunes that have been cleaned, or treated with water or steam, by a producer or dehydrator in the course of preparing them for delivery to a producer, dehydrator, or handler. The revised definition of the term processed prunes would, therefore, reflect the way in which such term has been construed prior to the proposed amendatory action.

The definition of "handle" should be amended to read as hereinafter set forth. This amendatory change is designed to clarify the definition of the term as it now appears in § 993.10 of the order by making explicit that which has been, and currently is, implicit therein. This section currently specifies that the various acts of handling prunes are directly related to the

placing of prunes in the current of the commerce within the area or from such area to points outside the area, "whatever may be the destination or end use of the prunes." Since the quoted language is of no significance in the determination of whether "handling" has occurred, there appears to be no reason to carry such language over into the proposed version of the definition.

However, the scope of the order should be continued in effect, as asserted at the hearing, to regulate prunes placed in intrastate as well as interstate and foreign commerce. At the time the order was promulgated, a finding was made that the intrastate handling of prunes directly burdens, obstructs, and affects the interstate and foreign handling of prunes to such an extent that the interstate and foreign handling may not be regulated effectively without also regulating the intrastate handling of prunes. Deletion of the volume regulation provisions from the order (as discussed in material issue numbered (16)) would remove a part of the original justification for the regulation of intrastate handling of prunes. However, the order, as proposed to be amended, would still impose certain grade regulations on prunes at the time they are received by handlers from producers, and would also provide authority for the establishment of size regulations on such receipts. Since handlers normally do not know the current of commerce within which they will make final disposition of prunes at the time they receive them, and since the marketing of prunes within the area does not differ from the marketing of prunes outside the area, the applicable regulations, and any size regulations which may be established, must be applied uniformly to all prunes received by handlers from producers or dehydrators. Regulation of the intrastate handling of prunes is also necessary in order to prevent individuals from circumventing the provisions of the order. That is, in the absence of regulation of intrastate handling, a handler would be able to sell, consign, ship, etc. prunes to an individual within the area, other than a handler, and he, in turn, could dispose of such prunes in interstate or foreign commerce as if the prunes were free from any restrictions under the order because the committee would have lost surveillance and control of the prunes. In view of the foregoing, the order should continue to be applicable to prunes in intrastate as well as interstate and foreign commerce.

The term "process," which is contained in present § 993.10 as one of the acts of handling, should be omitted. This term refers to an act between that of receiving prunes and of disposing of prunes the regulation of which is not essential to the purposes of the program; and there is no need to classify a person as a handler solely on the basis of the single act of "processing" prunes. Accordingly, the term "process" should not be carried over into the proposed revised definition of handle. In addition, the concluding clause of the definition (i.e., the provisions in § 993.10(c)) has been changed as to wording to more directly state the

exemption and to make specific reference to proposed § 993.50(f). However, there is no intent to change the coverage of present § 993.10(c).

The definition of the term "size" should be recast so as more clearly to indicate the intent of present § 993.16, especially regarding the various groupings by size ranges of counts of prunes per pound. The proposed amended § 993.16, as hereinafter set forth, simplifies the current definition of the term "size" by expressly referring to size ranges. It is not intended to change the intent and coverage of the current definition.

Since Alaska and Hawaii have been admitted as States of the Union, the definition of the term "domestic" (§ 993.18) should be revised to read as hereinafter set forth, omitting the specific references to Alaska and Hawaii.

The term "proper storage" (§ 993.19) in the order is used in conjunction with certain provisions (hereinafter proposed to be omitted from the order, as amended) pertaining to the volume regulation of prunes which is discussed in material issue numbered (16). Since volume regulation would not be carried over into the order as proposed to be amended, the need for the term "proper storage" will no longer continue. Therefore, this section should be deleted.

(2) Section 993.24 should be amended to set forth in one section the number of members on the committee and the composition of the committee including the allocation of the members as between cooperative handlers, independent handlers, independent producers, and cooperative producers. Section 993.24 of the order currently provides for a 21-member Prune Administrative Committee to administer the terms and provisions of the order and all rules, regulations, and supplementary orders issued thereunder. This section further provides an alternate for each member, and that 14 members (with their alternates) represent producers and seven members (with their alternates) represent handlers. Section 993.28 allocates the producer membership between producers whose prune production is handled by cooperative marketing associations handling prunes on behalf of their members (hereinafter referred to as "cooperative producers") and other producers (independent producers), and the handler membership between handlers who are cooperative marketing associations handling prunes and other handlers (independent handlers).

It is not proposed to change the committee membership of 21, the number (i.e., 14) of members to represent producers, the number (i.e., 7) of members to represent handlers, or the base period governing eligibility (the crop year preceding the year in which nominations are made) currently specified in the order. However, it is proposed that the order, as amended, should expressly provide that three handler members are to represent cooperative marketing associations handling prunes (so referred to in the present order and referred to hereinafter as "cooperative handlers"), three members are to represent independent handlers (referred to as such in

the present order), and one additional member (i.e., the remaining member) to represent cooperative handlers or independent handlers whichever group of such handlers handled as first handlers more than 50 percent of the prunes handled during the aforesaid base period.

Under present § 993.28, the number of members to represent a particular one of the two groups of handlers is required to be, as near as practicable, in the same proportion to seven members as the tonnage of prunes handled by the handlers in such group as first handlers is to the total tonnage handled as first handlers by handlers in both groups during the base period. This method currently results (as it has with respect to allocations during the past several years) in the allocation of four members to independent handlers and three members to cooperative handlers. The method requires that biennial determinations and announcements of the allocations be made by the Secretary. These determinations, which have been published in the FEDERAL REGISTER, show a fairly gradual change in the quantities of prunes handled by each of the two groups of handlers (viz., the quantity of prunes handled by the sole cooperative handler has increased) and that the respective quantities are becoming nearly comparable in size. According to testimony in the record, it appears unlikely that the handlers in either of the groups would in the foreseeable future handle in excess of 64 percent of the aggregate tonnage handled and thereby become entitled to an allocation of more than four members. The change in the number of members to be allocated to a particular group that has a possibility of occurring would be from three members to four members, with an inverse change in the number of members (four to three) for the other group. An express allocation in the order (as proposed to be amended) of three members to each of the groups with an additional member (i.e., the seventh member) allocated to the group which handled a majority of the tonnage would presently yield results consistent with the allocation method in the current order, would recognize the foreseeable limitations as to membership changes, and would obviate the need for any determination of tonnages handled prior to allocation of members to each of the handler groups. The requirement for such determination and its announcement should, therefore, not be carried over into the order as proposed to be amended.

In view of the trend in the quantity of prunes handled by the sole cooperative handler, it is necessary to modify the current method of allocating the producer membership of the committee between cooperative producers and independent producers. Currently, § 993.28 (a) provides that independent producers in each of seven election districts prescribed in the order shall submit nominations for seven members as representatives of independent producers to serve on the committee. In the event the number of such independent and cooperative producer member nominees

does not equal 14, the independent producer member nominees nominate the necessary number of member nominees so that the total number of producer member nominees equals 14. Under this procedure, it is apparent that so long as the number of producer members to represent cooperative producers (by virtue of the volume handled by the cooperative handler) does not exceed seven, there should be no problem of electing seven independent producer members from the prescribed seven districts. However, in order to avoid selection problems which could occur in the event the cooperative handler tonnage exceeds independent handler tonnage, and in order that the methods for allocating the producer membership may be based on the same common denominator, the order should be amended, as hereinafter set forth, to clearly permit, under possible future volumes handled, the number of members allocable to represent the respective producer groups to be based upon the respective quantities handled by the various handler groups.

The method for the allocation of members to the producer groups requires a slight variation from the method for the allocation of members to the handler groups. Under the proposed plan, a particular handler group would be allocated a minimum of three members on the committee and would be entitled to the additional member only if the group handled more than 50 percent of the total tonnage handled by all handlers in the two groups. In allocating seven positions, each represents about 14.29 percent of the total, three represent 42.86 percent, four represent 57.14 percent and the half way mark, past which one group has majority claim on the position, occurs at 50 percent. On the other hand, applying the same principle of passing the half way mark to membership for a particular producer group, where the total is 14 (twice the number of handler positions), means that each producer group would be entitled to an allocation of seven members when the applicable handler group handled 50 percent of the total tonnage handled, and eight members should be allocated to a producer group when such handler group handled in excess of the half way mark between 50 percent and 57.14 percent.

The two-year term of office of the incumbent members (and alternates) of the committee began on June 1, 1960. These members were selected pursuant to the provisions of the current order. As discussed heretofore, the number of members which would be allocable to the respective industry groups under the order as proposed to be amended would be the same as those currently serving on the committee. In this regard, therefore, there is no need to cause selection of a new committee upon the amendments herein proposed being made effective. The testimony at the hearing was to the effect that the amended provisions should first become applicable to the term of office beginning June 1, 1962 and the order should be amended accordingly. Nominations to fill any vacancy which may arise before June 1, 1962 should therefore be made

in accordance with the provisions in effect at the time the present members of the committee were nominated and selected.

(3) Section 993.26 pertaining to the selection of committee members and alternate members should be revised, as hereinafter set forth, to simplify the language of that section and to make conforming changes by deleting reference to § 993.28 as it will no longer prescribe the classes or the proportions of member representation.

(4) The provisions of § 993.27 pertaining to the eligibility of persons to serve on the committee as members and alternate members should be amended as hereinafter set forth, to adopt conforming changes and to simplify the language. The reference to handler eligibility should be amended by adopting those positions in handler firms which make producers ineligible to serve as producers (director, officer or employee of a handler) as positions of handler eligibility and by deleting the term "agent". The later term would permit a person with little direct interest in, or knowledge about, the receiving, packaging or disposition of prunes, to be a handler member of the committee. It is the intent, as expressed at the hearing, that a person should have a direct interest in handling and derive a portion of his income from this source in order to be eligible to represent handlers.

(5) Section 993.28, for reasons discussed in connection with material issue numbered (2), should be amended to delete the seven election districts and to authorize the committee to recommend the establishment of election districts, or any changes therein, for the purpose of obtaining nominations for independent producer members and their alternates. In addition provisions should be worded as hereinafter set forth, in the interest of simplification and clarity.

In view of the possible future changes which may occur in the allocation of producer membership between cooperative producers and independent producers, it is necessary that the number and areas of election districts be permitted to reflect such changes. The present provision does not indicate that the number of districts could be less than seven and it authorizes changes in the districts on the basis of number of producers and production of prunes by all producers without distinguishing between independent producers and cooperative producers and the tonnages produced by each group. It was testified at the hearing that the present provisions work inequities in that a relatively few independent producers with a relatively small production could be in a district with a heavy cooperative producer population producing the bulk of the prunes and this inequity of representation should be corrected. The responsibility for initiating the redelineation of election districts should be shifted from the Secretary to the committee. The committee is more immediately aware of the number of independent producers in each district, the tonnages of prunes produced by each and the shifts in number of producers and production from

one district to another. Although the proponents indicated that other items, such as differences in cultural practices, should have a bearing on decisions to redelineate districts, no measures of such practices were described nor was amendment language proposed for inclusion in the order. Since such considerations are less measurable than the two factors indicated and could cause administrative difficulties, they are not recommended herein. In conjunction with this amendment, the committee should review the status of the election districts, to consider whether any changes need be made in the district boundaries, at the time it formulates its plans to hold nominations for all independent producer positions. This should not be done when the committee schedules a nomination to fill a vacancy occurring during a term of office as this would upset other representation.

Changes in district boundaries should be submitted to the Secretary for establishment by rule making procedures and thereby avoid the expressed concern about vesting in the committee the power to determine districts. However, this requires that the Secretary be given sufficient time in which to carry out the several steps involved in the rule making procedure. Furthermore, the committee will need time to advise independent producers of the district boundaries. Since the committee will base such recommendations on data accumulated during the crop year preceding the election year, it is reasonable to require submission to the Secretary of districting proposals by January 31 of each election year and this is required in the proposed amendment.

(6) Section 993.28 should be amended further to give independent handlers a definite share of the independent handler representation by providing that the handlers handling the two largest percentages of the prune tonnage handled by independent handlers shall each nominate one member and one alternate, the handlers of the next three largest percentages shall nominate one member and one alternate and all other handlers shall nominate one member and one alternate. However, if the independent handler representation is ever reduced to three, the latter two groups should together nominate a member and alternate.

Section 993.28 presently provides that 40 percent of the independent handler nominees shall be apportioned to the large handlers (i.e., those handlers who handled as first handlers 17 or more percent of the total tonnage handled by all independent handlers as first handlers), 20 percent to medium handlers (i.e., those handlers who handled as first handlers eight or more percent but less than 17 percent of the total tonnage handled by all independent handlers as first handlers) and 40 percent to small handlers (i.e., those handlers who handled as first handlers less than eight percent of the total tonnage handled by all independent handlers as first handlers). However, if these proportions cannot be followed, at least one member nominee and one alternate member nominee shall be apportioned to each of the three size classes of independent handlers. Any remaining member and

alternate member nominees shall be apportioned to the size class or classes as determined at a general meeting of independent handlers. The percentage allocations (i.e., 40-20-40 percent) can be applied when five member and five alternate member positions are allocated to independent handlers and this was possible when the order was first promulgated. However, in each of the last five election years, four member and alternate member positions were allocated to independent handlers and it has been necessary to employ the alternative procedure in allocating the membership positions to the respective size classes. Because of their number, and the voting not being weighted by tonnage handled, small handlers have held the fourth member position and alternate member position in four of the five eligible terms, and the alternate member position in the other term. Evidence received at the hearing was to the effect that the two largest independent handlers in the industry recently handled approximately 55 percent of the total tonnage of prunes handled by all independent handlers. The present procedure has permitted the small handlers, although more numerous than handlers of the other two size classes, but with the smallest quantity of prunes handled, to obtain the most independent handler representation on the committee and thus a voice on the committee disproportionate to the tonnage handled.

The amendment would correct the foregoing by recognizing the tonnage differences among independent handlers and would be consistent with the basis for determining independent producer, cooperative producer, and cooperative handler representation on the committee. Consistent with their handling approximately 55 percent, the independent handlers who handled as first handlers the two largest quantities of prunes handled by all independent handlers should each nominate from his organization, one member and one alternate member; the independent handlers who handled as first handlers the next three largest tonnages, about 28 percent, should nominate from their organizations one member and one alternate member; and the handlers who handled the remaining tonnage should nominate one member and one alternate member. This procedure would also permit a possible future change from the existing situation of four independent handler members and four alternate members to one wherein they would hold three member and three alternate member positions. If in some future year, only three member and three alternate member positions are allocated to independent handlers, the independent handlers of the two largest tonnages should each continue to nominate one member and one alternate member from their organizations because it is not foreseen that their percentage of the independent tonnage would be less than 50 percent and by virtue of being past the half way mark between 33⅓ and 66⅔ percent, they would continue to be entitled to two positions. The remaining member and alternate member would be nominated by

all of the other independent handlers. It was proposed that in the latter case the nominee, while representing all handlers other than the two largest, must be from those handlers handling the next three largest tonnages of prunes. However, this casts doubt on whether the handlers of the smaller tonnages would be duly represented. Furthermore, if the nominee must be from the category of the next three largest handlers and these handlers agree on the nominee to the exclusion of all others, attendance of the handlers of the smaller tonnages at a nomination meeting could be of no effect. In lieu of limiting the nominee to the three largest handlers, which is a technique of having a nominee favored by a substantial tonnage, a similar result could be achieved by weighting the votes by the tonnages handled. At the same time a more favorable condition of nomination and representation would be created. Accordingly, the limitation as to the nominee should not be adopted and in lieu thereof, whenever three independent handlers are to be nominated, the nominee for categories (c) (2) and (3) of the proposed section should be chosen by weighting the votes of each handler by the tonnage handled.

(7) In order to permit a review of existing deadlines and procedures on nominations and balloting, relative to any amendments which are made effective, § 993.28 should be amended further by deleting from the provisions those administrative procedures not included in the amendments hereinafter set forth. The section should specify the basic objectives and should leave to adoption by rule making procedures, those actions which will most appropriately carry out the objectives. Thus it will be possible to make timely changes consistent with changed nominating situations or desirable to effectuate economies in application of the section. The committee should prepare and recommend detailed nomination procedures as to preparation of ballot forms, voting, and tabulation of votes, to the Secretary, consistent with amended objectives and for use when next nominations are to be conducted.

Section 993.28 should also be amended to provide that the committee shall submit independent producer nominees and independent handler nominees to the Secretary by April 16 of each election year, and that cooperative marketing associations shall submit their nominations for cooperative producer positions and cooperative handler positions by the same date. The appointment of a committee is a single administrative act and the present varying dates of submittal are inconsistent with the appointment action.

Section 993.29 *Alternates* should be amended by adding a new sentence to provide that the provisions of the order, and all rules, regulations, and supplementary orders, applicable to members should also be applicable to alternate members, except in those instances when certain provisions may apply solely to members. This sentence would make it unnecessary to include the terms "alternate members" or "their respective alternates" along with the term "mem-

bers" whenever that term is used in the order. However, such provisions would continue to apply to the alternate members of the committee, unless specifically excepted, with the same force and effect as if the term "alternate member" were included in the provision. This amendment would simplify the provisions of the order pertaining to committee membership without changing their import.

Section 993.30 should be revised to recognize the foregoing changes as to common date for submission of nominees, to delete the reference to § 993.28 as it no longer prescribes the basis for selection of committee members, and, without altering the intent, to simplify the language by limiting the Secretary's selection to an "eligible" individual.

(8) It was proposed that § 993.32 be amended by inserting the phrase "to accept such appointment or otherwise qualify" in lieu of "to qualify" in the first sentence. The proponents' intention was that this wording would prescribe a vacancy on the committee when (1) an eligible person is nominated and selected, but fails to accept his appointment, and (2) when an eligible person is nominated and selected but becomes ineligible to serve before accepting his appointment. However, it would not be consistent with the concept expressed in present § 993.25, which is not proposed to be amended, that an incumbent serve until his successor has qualified by accepting an appointment, to hold that a vacancy is created by failure of a new appointee to qualify. In such a case, if a committee action were to be taken, the hold-over member would be eligible to serve in the member position. A vacancy does not exist in fact until a new appointee qualifies (thereby terminating the incumbent's term). Accordingly, the proposal should not be adopted but the provision should be reworded, as hereinafter set forth, to recognize the practical aspects of a failure to qualify.

(9) It was proposed that § 993.32 be amended further by the addition of a sentence permitting a cooperative marketing association, at its discretion, to submit its recommendation to the Secretary for the removal of a member or alternate member representing such association on the committee. It was contended that this provision would clarify that which has been understood to be permissible. Its need was justified on the basis that since the internal organization of a cooperative association could change from year to year, presence of the particular person on the committee as a representative of the association could be contrary to the internal policies and operations of the association. This recommendation would not be submitted to the committee as the order presently provides for the cooperative to make such submittals directly to the Secretary.

A provision of similar import was not introduced on behalf of independent producers and independent handlers although the right of independent producers and independent handlers also to recommend changes in their representation was not denied. However, testimony indicated that recommendations for such changes should be sub-

mitted to the committee, accompanied by reasons showing good cause why the particular person should be removed.

Since the proposal does not cover the matter of the Secretary's actions upon receiving such a recommendation, it would not introduce into the program any procedural changes. No restraint is now being placed on any group of nominators requesting the Secretary to replace their incumbent representative. However, before such action should be taken on such a request, the Secretary should have reason to believe that good cause exists for the replacement in terms of the marketing order program. Good cause relative to the order is not necessarily related to the internal policies or operations of any group or association nor could the Secretary so find unless he were in the unlikely position of having detailed knowledge of them. Accordingly, the proposal should not be adopted.

(10) Section 993.33, pertaining to obligations of committee members and alternate members, should be deleted. The provisions of that section are not applicable to the committee's operational practices since individual members and alternate members function as part of a policy group and do not have committee property in their individual custody or possession. Title to the committee's property is in the committee as a unit, with custody in the committee management. In the event that property ever came into the possession of an individual member or alternate member and was not returned to the custody of the management, there would be nothing to stop the committee from reclaiming its property when and as it concluded that it should.

(11) Section 993.34 should be amended as hereinafter set forth. It presently provides that any recommendation submitted to the Secretary by the committee and pertaining to marketing policy, grade and size regulations, pack specifications as to size, and volume regulations shall be on the basis of an affirmative vote of at least 75 percent of the members present with the further requirement that at least 11 members (a majority of the total committee of 21) vote affirmatively on any such recommendation. For the reasons in the discussion of material issue numbered (16), volume regulations should be deleted from the order. This deletion would remove from the program the principal matter of controversy within the committee and the principal area wherein the high vote requirement has affected committee policy. The 75 percent affirmative vote requirement permits a minority of six members of the committee to prevent adoption of measures favored by more than a simple majority and its retention in the proposed amended order would perpetuate a requirement the like of which is not common to this type of marketing order program. Opponents of the deletion indicated an affirmative vote of less than 16 would permit a majority to adopt measures of benefit to them but adversely affecting a large segment of the industry. However, this contention is at variance with the very nature of marketing order

activity as neither the benefits nor the burdens are peculiar to one group or faction in an industry. It is concluded that the proposed amendment is reasonable and therefore should be adopted.

Section 993.34 contains a requirement that the committee file a verbatim record along with its recommendations with the Secretary on its deliberations pertaining to marketing policy, grade and size regulations, pack specifications as to size, and volume regulations. This should no longer be a mandatory requirement in view of the proposed deletion of volume regulation, the accompanying modifications to marketing policy (material issue numbered (13)) and the likelihood that grade and size regulations will not be changed annually. Deletion of the mandatory requirement would result in a considerable saving of expense to the committee. Furthermore, the Secretary will still be sufficiently apprised of the committee's deliberations because as one of its duties, the committee is required to submit to the Secretary such available information with respect to prunes as the committee may deem appropriate or as the Secretary may request, minutes of each committee meeting are prepared and submitted to the Secretary, and representatives of the Department regularly attend committee meetings and submit their reports to the Secretary on committee deliberations.

For the reasons already indicated that the proposed revised program will contain less controversial features than at present and the Secretary will have committee and Department representative reports on committee deliberations, the provision in § 993.34 requiring the committee to report promptly on the individual votes cast on any recommendation to the Secretary, or on any other matter on which there is a roll call vote, should be deleted so that such reporting may be permissive or upon request in lieu of mandatory.

The committee should be permitted to continue its past practice relative to a vote on any proposition by mail or telegram, in that one dissenting vote would prevent adoption of the proposition. It has been the practice that a failure to vote does not constitute a dissenting vote and since this has been satisfactory within the industry, the practice should be permitted to continue. However, at least eleven affirmative votes, the same as for deliberations on marketing policy matters, grade and size regulations, and pack specifications as to size, should be required for the adoption of a proposition voted on by mail or telegram.

(12) The changes proposed in material issue numbered (16) relative to deletion of volume regulations, require that paragraph (h) under present § 993.37, should be made to conform by deleting the phrase "exclusive of surplus tonnage operations" therefrom, and by deleting paragraph (i) in its entirety.

Present paragraph (j) should be amended by deleting the sentence that reads "Such report shall show, among other things, the receipt and expenditure of funds." Since the audit report is on the committee's financial transactions, it of necessity, includes information on the committee's receipt and

expenditure of funds. Therefore, a provision in the order specifying that the audit report shall show the receipt and expenditure of funds is unnecessary. This paragraph should be amended further to provide that the copy of the audit report which shall be available for inspection at the offices of the committee, by producers, dehydrators, and handlers should not contain confidential information. When the books and records of the committee are audited, the auditor prepares a schedule showing the tonnage of prunes handled by each handler, each handler's assessment payments, and the excess assessment funds to be refunded to handlers. The schedule is confidential in that it reveals the position of each handler in relation to other handlers on the tonnage handled during the crop year. This schedule is attached as a supplement to the copies of the audit report submitted to the Secretary but because of its confidential nature should not be attached to the audit report made available for inspection by the industry.

(13) In view of the proposal in material issue numbered (16) to delete provisions for volume regulations, the items to be considered in marketing policy deliberations should be reduced to those pertinent to the proposed amended order. The detailed considerations formerly necessary to volume regulation should be reduced to general coverage of handler carryover, production, probable quality and prune sizes in the crop, demands in domestic and foreign markets, likely relation of producer prices to parity, probable assessable tonnage and such other factors as will have a bearing on prune marketing and the administration of the program. Present §§ 993.41 through 993.45, inclusive, should be amended by deleting therefrom all provisions promulgated initially to meet the problems of establishing volume regulations. Thus there should be deleted the necessity for two marketing policy meetings as now required and the provision for submission of the Secretary's tentative views to the committee.

The remaining provisions under the heading of marketing policy should be combined into one section. The committee should hold its marketing policy meeting, prior to the fourth Tuesday in July so that it can comply with the duty set forth in § 993.37(f) of submitting a budget by that date. The requirement that reasonable publicity be given to the committee's marketing policy, or any changes therein, should be incorporated in the proposed section. Handler carryover should be construed as the tonnage of prunes, sold and unsold, in the possession of handlers at the beginning of a crop year. In addition, the terms "production," "crop," "probable," and "prune size" and the like should be in reference to prunes, even though the physical state of the fruit is in plums at the time of the marketing policy meeting.

(14) The provisions relating to grade and size regulations on handlers' receipts should be amended, as hereinafter set forth, to delete provisions pertinent to volume regulations, to eliminate needless repetition of prohibitions or requirements within this issue and material

issue numbered (15), to more clearly distinguish between minimum standards and more restrictive size or grade regulations and to provide for improved regulations of prunes with defects of mold, imbedded dirt, insect infestation and decay. The proposed new provisions should retain the basic intent of present § 993.48 (a), (b), (c) and (d). The provisions of paragraph (e) of said section should be deleted as they were basically to implement the volume regulation provision herein proposed to be deleted. The provision for giving notice to the industry on grade or size recommendations submitted to the Secretary should be deleted as such recommendations should now be considered as marketing policy recommendations and governed by the notice requirements contained in said proposed section.

So that the goal to be achieved by existing minimum standards may be assured (i.e., the removal of defective prunes definitely objectionable to consumers), provision should be included for regulation of those lots of prunes received by handlers from producers or dehydrators which contain inedible defects (i.e., mold, imbedded dirt, insect infestation and decay) in excess of tolerances prescribed in § 993.97 (Exhibit A) of the order. On each incoming lot a determination should be made of any inedible defects in excess of tolerances and of the quantity of prunes with such defects which must be removed to bring the remainder of the lot within tolerance for inedible defects. This quantity should be a weight obligation on the handler in the sense of defective prunes to be removed in the course of his grading and processing operations and disposed of in non-human consumption outlets. The prunes so removed and disposed of should be representative of the sizes and conditions of prunes found defective on incoming inspection. Therefore, the inspection should not only ascertain the quantity of prunes containing inedible defects in excess of tolerances, but also the size ranges of the prunes with such inedible defects. This is necessary to insure that a handler would actually remove and dispose of prunes containing inedible defects as noted on inspection. It should also be recognized that a lot may contain such a large proportion of defective prunes that a sorting of such lot would not only be uneconomical, but normal sorting practices would not result in the removal of a sufficient quantity of defective prunes as would accomplish the intended purposes of this proposed regulation (i.e., the removal of defective prunes definitely objectionable to consumers). Therefore, any lot which contains such a proportion of prunes with inedible defects should be deemed unfit for human consumption in its entirety. A maximum tolerance for inedible prunes should be prescribed by the committee in its rules and regulations, with the approval of the Secretary. This would permit the tolerance to be adjusted from time to time as dictated by operating experience. Such adjustments could not be made readily if the tolerance were incorporated in the order.

As a practical and economic means of policing and enforcing this grade regulation, handlers should be permitted to dispose of defective prunes set aside in fulfillment of their obligation only in non-human consumption outlets under supervision of the committee. This would preclude the possibility that defective prunes would be blended back into good lots or utilized directly in outlets in which prunes lose their form. The only alternative would be the use of sufficient compliance personnel to watch all handler operations. This would be expensive as well as onerous and would imply that enforcement should include such measures despite there being available a simple, more acceptable method of enforcement. This regulation is considered incidental to, not inconsistent with, and necessary to effectuate the minimum standards.

In order to impose this grade regulation on the existing prune receiving and handling facilities, lots containing inedible defects in excess of the minimum standard tolerance (but not in excess of the maximum tolerance which would prohibit sorting) and lots meeting the minimums for these defects should be permitted to be received and graded, stored and processed simultaneously. In this process some commingling of lots may occur but the mandatory removal of the obligation weight of defective prunes should cause an industry-wide improvement in the quality of prunes handled. A handler should not be permitted to satisfy his defective prune obligation by setting aside, unsorted, a lot received as a sub-standard lot of prunes with inedible defects in excess of tolerances because this would render the regulation ineffective by permitting a handler to by-pass the actual removal of defective prunes. However, in the course of grading and sorting, a handler may remove prunes with other defects other than inedible. So that handlers need not segregate prunes containing inedible defects from those containing edible defects, the total quantity of prunes which a handler disposes of in fulfillment of his obligation should be permitted, by the committee, to be greater than his cumulative obligation so long as the quantity of prunes with inedible defects so disposed of is at least equal to his obligation.

The committee should recommend to the Secretary the issuance of rules and regulations necessary to administer these incoming regulations and to insure compliance therewith. These should require a handler, among other things, to maintain the physical identity of prunes with inedible defects, to hold such prunes separate and apart from other prunes in his possession, and to provide for such inspection and accounting controls as to insure disposition of such prunes in authorized (non-human consumption) outlets. To the extent practicable, handlers should be required to accumulate and dispose of their obligations within the crop year.

The proposed amendment would be in the public interest in that it would prevent a substantial volume of prunes with inedible defects from entering human

consumption outlets, irrespective of whether such consumption would be as prunes or as prune products. The regulation should improve the products offered consumers and assist the industry to comply with State and Federal Food and Drug regulations. In view of the nature of the regulation, it should remain in effect whether or not prices to producers exceed parity.

(15) Present §§ 993.49 and 993.50, pertaining to the regulation of the handling of prunes subsequent to their receipt by handlers, and applicable respectively when the estimated season average price to producers is below parity and in excess of parity should be amended as hereinafter set forth to delete provisions relating to volume regulations (material issue numbered (16)), eliminate needless repetition of prohibitions and requirements, protect the meaning of descriptive terms on pack specifications, and apply size regulations to non-French prunes. The proposed new provisions otherwise retain the basic intent of present §§ 993.49 and 993.50. As discussed in material issue numbered (14) the giving of notice to the industry of any recommendations to the Secretary should be deleted and treated in terms of marketing policy recommendations.

In addition to the existing authority to regulate in terms of minimum standards of quality or more restrictive grades or sizes, specific provision should be made to prohibit handlers from shipping or otherwise making final disposition of any lot of standard prunes or standard processed prunes of the non-French varieties or any lot which includes non-French prunes unless the average count of such non-French prunes is 50 or less per pound, or if the Robe de Sargent variety, 60 or less per pound. However, under proper safeguards to be established by the committee, such prunes should be permitted to be disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. This regulation on whole prunes should be adopted because prunes of the non-French varieties smaller than the foregoing sizes are not as palatable as, and do not compare in flavor and sweetness with, prunes of the French varieties and therefore damage the demand for prunes by consumers. Testimony was presented that such smaller prunes are not entirely suited for manufacture of prune juice or prune juice concentrate, although acceptable if used in small quantities in conjunction with other prunes. In the manufacture of other prune products, similar problems of flavor arise unless other ingredients, such as spices, are used to mask the flavor of the small sized non-French prunes. The regulation should not preclude the use of non-French prunes smaller than the size limitation in manufacturing outlets, as this would unduly deprive producers of returns on such prunes, but their disposition should be under proper safeguards established by the committee. This regulation would be in the public interest, the same as the existing restriction on placing French prunes smaller than 100 count average in consumer packages, and should there-

fore be adopted and remain in effect whether or not producer returns exceed parity.

In the normal harvesting, dehydrating and handling of prunes it is possible that prune varieties could be commingled. Consequently, if French prunes and non-French prunes are commingled in the same lot, separate determinations relative to the size limitations should be made for each type. Only in this manner can the purposes of this regulation be achieved and the public protected against unpalatable prunes.

Prunes in a lot do not all grade the same size. In view of this, a tolerance should be prescribed by rule making procedures for non-French prunes and Robe de Sargent prunes to permit a reasonable deviation of sizes from the average count. This deviation from the average count should be no greater than that being applied to French prunes under existing provisions of the order.

The present order contains a requirement that no handler shall ship or otherwise make final disposition of any lot of consumer packages of prunes unless the average count of the prunes in such lot is 100 or less per pound. However, since use of non-French prunes smaller than 50 per pound, or Robe de Sargent prunes smaller than 60 per pound, would be restricted under the present proposal to manufacturing purposes, such prunes would no longer appear in consumer packages. Therefore, it is necessary to amend the provision pertaining to the 100 count size limitation on prunes in consumer packages to refer specifically to French prunes.

It should also be provided that in order to effectuate such orderly marketing of prunes as will be in the public interest, no handler shall use descriptive terms in a manner inconsistent with those set forth in the order or any pack specifications or other regulation issued by the Secretary. This prohibition should apply whether prices to producers are above or below parity and is proposed in order to prevent handlers from confusing or taking advantage of consumers or members of the trade, whenever prices exceed parity, by the improper application of descriptive terms which may have been issued by the Secretary in connection with pack specifications. This prohibition is in the public interest and is necessary and incidental to effectuation of other grade regulation provisions.

The requirements as to inspection and certification contained in existing § 993.49 and largely repeated in existing § 993.50 should be embodied in a single section applicable to both handler receipts and shipments of prunes. The new section materially reduces the wording of the order while retaining existing requirements.

A further new section should be added to bring together in one place authorization to modify the minimum standards whether incoming or outgoing, the pack specifications and the size regulations on the basis of a recommendation of the committee. This avoids repeating this authority wherever the separate items appear in earlier portions of the order and does not revise the existing author-

ization. It was proposed that minimum standard modifications should only be toward making them more restrictive. However, while such may well be the general direction of modifications, in order to avoid a situation wherein a less restrictive application of one of the many criteria of grade would promote the objectives of the program, it is concluded that the proposal should not be adopted.

(16) Sections 993.59 through 993.64, inclusive, pertaining to volume regulation of prunes should be deleted and conforming changes made in the order to delete provisions incidental to volume regulation. The provisions which should be deleted are largely those included in the order at the time of its promulgation in 1949, and arising from conditions existing in the California prune industry at the time; namely, production considerably in excess of total trade disappearance and difficulties in regaining overseas markets. However, since the 1949-50 crop year, domestic consumption of prunes as prunes has declined, but in the 1957-58 season the quantities utilized in manufacturing outlets and shipped in export exceeded domestic consumption of prunes as prunes by approximately 20,000 tons. In the most recent five years, beginning with the 1955-56 crop year, volume regulations have been employed only once. In the remaining four seasons (including the incomplete 1959-60 season) estimated season average prices to producers exceeded parity in three years and in the fourth, a finding was made that if the volume regulations would be in effect, prices would exceed parity. In 1958 and 1959, California production of prunes was well below average and the industry encountered difficulties in satisfying demands domestically and abroad. If a relatively large production of prunes were now to occur, the present volume regulation provisions would be of questionable value because they are not designed to allocate supplies to present outlets and could actually interfere with proper utilization of the prunes.

The California prune industry has devoted considerable time and effort to a study of various methods of volume regulation but has been unable to agree as to the method best suited to the future needs of the industry. Some groups believe the present method of volume regulation could be made to work, some proposed different methods, and some favored abolition of all regulation. It is obvious that the industry is in a transitional period both as to the production and utilization of dried prunes. Production in ensuing years may again place the industry in a position where the volumes to be marketed create a disorderly marketing situation and substantially below parity returns to producers. However, the industry could at that time turn its attention to the development of volume regulations which would be applicable to the situation then existing.

In view of the change discussed in material issue numbered (16), §§ 993.73 and 993.74 of the present order, employed when volume regulations are in effect,

should, as a conforming change, be deleted.

(17) Section 993.80 which provides the committee with authority to incur expenses, should be amended by deleting the wording pertaining to volume regulation and by deleting the concluding sentence. Since present § 993.37(f) provides that the committee shall submit a budget of its anticipated expenditures and the recommended rate of assessment no later than the fourth Tuesday of July, repetition of this wording in § 993.80 is unnecessary and therefore should be deleted.

Section 993.81 pertaining to assessments should be amended by deleting all wording pertaining to volume regulation, by deleting provisions providing for a reduction in the rate of assessment once an assessment has been established by the Secretary, and by deleting the provisions pertaining to suits for collection of assessments in arrears. Paragraph (a) of that section should provide that each handler shall pay to the committee, upon demand, an assessment on all prunes received by him from producers and dehydrators. This has been the practical basis for collection of assessments in prior years and it was contended that it should be continued for the sake of consistency. The assessment rate should be applied to each ton of prunes only once and only on natural condition prunes at the time such prunes are received from producers and dehydrators. Prunes transferred to another handler on an inter-handler transfer should not be assessed since such prunes should already have been assessed at the time they were received by the transferring handler.

It was proposed that the term "budgeted" be inserted before "expense" in this paragraph so that it will be clear that the assessment rate reflects the handler's pro rata share of the estimated expenses set forth in the committee's budget as approved by the Secretary. However, the Secretary does not approve each individual item of expense in the committee's budget but rather approves total expenses. It is not unusual for approval to be given, in the course of a crop year, to expenses not specifically budgeted but which may be proper and for which funds may be available within the total budget. Therefore, the term "budgeted" should not be included in the paragraph to modify the word "expense."

In the present order, application of the assessment rate is provided for in § 993.81(a) when the estimated season average price to producers is below parity, and in § 993.50(e) when such prices exceed parity. Since volume regulation and present § 993.50 should be deleted, the matter of the assessment rate should be solely that in proposed § 993.81(a).

The provision for a reduction in the rate of assessment, once such rate has been established by the Secretary, should be deleted because in lieu of using such provision, excess funds have been retained for use in the early months of the subsequent season and upon new season funds being available, the excess

funds have been refunded or credited to handlers' accounts. This procedure is continued in § 993.81(c) pertaining to the use and refund of excess assessment funds but is amended to remove unnecessary wording and to state the requirement but not the specific application. There is added a proviso that at time of termination, to the extent practicable, unexpended funds shall be returned pro rata to the persons from whom such funds were collected. These changes are desirable from the standpoint that they would permit the committee to make an equitable distribution of excess or unexpended funds in a manner consistent with the stated objectives. A detailed description of methodology within an order has proven to be too complex to cover all the refunding problems caused by handlers having paid varying portions of their share.

Section 993.81(d) pertaining to suits for collection of assessments in arrears should be deleted. Section 10(b)(2)(iii) of the act provides authorization for such suits and it is unnecessary to incorporate such wording in the order. However, the established practice is for suits for collection of assessments to be processed through the Department of Justice in the same manner as are violations of other provisions of the order. The committee, therefore, need not undertake suits for collection.

Section 993.82 should be amended by removing the limitation that funds may be used solely for purposes authorized by the subpart so that expenditures may be governed by the part and the act. The matter of accounting in the manner provided in the subpart should also be deleted as this is actually covered by Department requirements issued for marketing orders.

(18) A new section should be included in the order to authorize the committee, with the approval of the Secretary, to establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of prunes. The expense of such projects should be paid from assessment funds collected pursuant to § 993.81. This would permit the prune industry to take advantage of authority added to the enabling legislation since the adoption of the prune order. Several areas of research and promotional activity, with primary emphasis on advertising, are currently undertaken pursuant to authority in the Marketing Order for California Dried Prunes, as amended, issued by the Director of Agriculture, State of California. Since the Federal enabling legislation does not authorize advertising or applied promotional activity, it would not be the purpose of the proposed amendment to supplant such activities conducted under the State program. Rather, the proposed amendment is to permit the committee to undertake research projects on problems arising under the Federal program or problems primarily of interest to handlers on whom all assessments are levied under the Federal order. In addition the industry would have an added source of

research funds on such projects as might be jointly financed by Federal and State programs.

(19) A new section defining the rights of the Secretary should be adopted so as to provide information to interested persons that the members of the committee, including any successors or alternates selected by the Secretary, and any agent or employee appointed or employed by the committee are subject to the removal or suspension by the Secretary in his discretion at any time. Also, each and every decision, determination, or other act of the committee is subject to the continuing right of the Secretary to disapprove at any time, and upon such disapproval, would be deemed null and void. The amendment does not alter or inject any new condition into the program because the matter set forth has prevailed throughout the life of the order. Since not defining the rights of the Secretary could, as a result of issues raised at the hearing, cast doubt upon whether such rights exist, and since they do exist, it is concluded they should be stated.

(20) The proposals for amendment heretofore recommended will make it necessary to make certain minor conforming changes in sections not specifically discussed in connection with the proposals and will also make it desirable to renumber most sections and rearrange some sections to achieve continuity and orderly arrangement of the provisions as proposed to be amended. All such changes should be incorporated in the proposed order. In addition, official notice is taken of there having been adopted by rule making procedures a limitation as to the need of handlers to retain records. Present § 993.76 has been amended, therefore, to incorporate this limitation in the order as hereinafter amended.

Rulings on proposed findings and conclusions. At the hearing, the Presiding Officer required the filing of briefs not later than May 9, 1960, by parties interested in filing briefs with respect to facts presented in evidence and the conclusions to be drawn therefrom. Briefs were filed on behalf of the: (1) Committee, by R. W. Jewell; (2) Northern California Prune Council, by W. L. Stile and J. Thomas Wallace, III; and (3) Tehama County Prune Growers, by Nelson Butler. The briefs contained proposed findings of fact, conclusions, and arguments with respect to the proposals presented at the hearing. Every point covered in these briefs has been considered carefully along with the evidence in the record in making the findings and reaching the conclusions herein set forth. To the extent that the suggested findings and conclusions contained in these briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings, or to reach such conclusions, is denied on the basis of the facts found and stated in connection with this recommended decision.

General findings. (a) The findings hereinafter set forth are supplementary and in addition to the findings and determinations which were made in connection with the original issuance of the marketing agreement and order (14 F.R.

5254) as from time to time amended (16 F.R. 8437); 19 F.R. 1301; 22 F.R. 5639). Except the finding as to the base period for the parity computation, and except insofar as such findings and determinations may be in conflict with the findings set forth herein, all of the said previous findings and determinations are hereby ratified and affirmed.

(b) The marketing agreement and order, as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(c) The marketing agreement and order, as hereby proposed to be further amended, regulate the handling of prunes produced in California, in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in the proposals upon which a hearing has been held;

(d) There are no differences in the production and marketing of dried prunes in the production area covered by this marketing agreement and order, as hereby proposed to be amended, which require the application of different terms or provisions to different parts of such area; and

(e) All handling of prunes produced in the designated area of production is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended amendments to the order. The following amendments to the amended marketing agreement and order are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Add new § 993.3a to read as follows:

§ 993.3a Area.

"Area" means the State of California.

2. Amend § 993.4 to read as follows:

§ 993.4 Prunes.

"Prunes" means and includes all sun-dried or artificially dehydrated plums, of any type or variety, produced from plums grown in the area, except: (a) Sulfur-bleached prunes which are produced from yellow varieties of plums and are commonly known as silver prunes; and (b) plums which have not been dried or dehydrated to a point where they are capable of being stored prior to packaging, without material deterioration or spoilage unless refrigeration or other artificial means of preservation are used, and so long as they are treated by a process which is in conformity with, or generally similar to, the processes for treatment of plums of that type which have been developed or recommended by the Food Technology Division, College of Agriculture, University of California, for the specialty pack known as "high moisture content prunes," but this exception shall not apply if and when such plums are dried to the point where they are capable of being stored without material deterioration or spoilage, refrigeration or other artificial means of preservation.

3. Add new § 993.4a to read as follows:

§ 993.4a Non-French prunes.

"Non-French prunes" means prunes commonly known as Imperial, Sugar, Robe de Sargent, Burton, Standard, Jefferson, Fellenberg, Italian, President, Giant, and Hungarian (Gross), produced from such varieties of plums. This definition may be modified by the committee with the approval of the Secretary.

4. Add new § 993.4b to read as follows:

§ 993.4b French prunes.

"French prunes" means: (a) Prunes produced from plums of the following varieties of plums: French (Prune d'Agen, Petite Prune d'Agen), Coates (Cox, Double X, Saratoga); and (b) any other prunes which possess taste, flesh texture, and other characteristics similar to those of the prunes named in this section.

5. Amend § 993.6 to read as follows:

§ 993.6 Processed prunes.

"Processed prunes" means prunes which have been cleaned, or treated with water or steam, by a handler.

6. Amend § 993.10 to read as follows:

§ 993.10 Handle.

"Handle" means to receive, package, sell, consign, transport, or ship (except as a carrier of prunes owned by another person), or in any other way to place prunes in the current of the commerce within the area or from such area to any point outside thereof: *Provided*, That this term shall not include: (a) Sales or deliveries of prunes by a producer or dehydrator to a producer, dehydrator, or handler within the area; (b) the receiving of prunes by a producer or dehydrator from a producer or dehydrator; and (c) receipts, sales, or shipments of prunes already handled by another person other than pursuant to § 993.50(f).

7. Amend § 993.16 to read as follows:

§ 993.16 Size.

"Size" means the number of prunes contained in a pound and may be referred to in terms of size ranges.

8. Amend § 993.18 to read as follows:

§ 993.18 Domestic.

"Domestic" means the United States, Canal Zone, Puerto Rico, Virgin Islands, and Canada.

§ 993.19 [Deletion]

9. Delete § 993.19.

10. Amend § 993.24 to read as follows:

§ 993.24 Establishment and membership.

A Prune Administrative Committee (hereinafter referred to as the "committee"), consisting of 21 members, with an alternate member for each such member, is hereby established to administer the terms and provisions of this part, of whom with their respective alternates, 14 shall represent producers and 7 shall represent handlers. For the term of office beginning June 1, 1960, the membership of the committee shall be as selected by the Secretary for such term in accordance with the provisions

of this part in effect on such date. The committee membership for subsequent terms of office shall be allocated in accordance with the following groupings, with the alternate member positions identically allocated:

(a) Three handler members to represent handlers who are cooperative marketing associations of producers (referred to in this part as "cooperative handlers");

(b) Three handler members to represent handlers other than cooperative handlers (referred to in this part as "independent handlers");

(c) One handler member to represent handlers who are cooperative handlers or independent handlers, whichever of such handlers handled as first handlers more than 50 percent of the prunes handled by all handlers during the crop year preceding the year in which nominations are made;

(d) Fourteen producer members to be selected from and to represent producers who are members of cooperative marketing associations (referred to in this part as "cooperative producers") and producers other than "cooperative producers" (referred to in this part as "independent producers"); the number of the producer members for the cooperative producer group or the independent producer group, as the case may be, shall be in the same proportion, as near as practicable, to the total of 14, as the tonnage of prunes handled by the respective group of cooperative handlers or independent handlers as first handlers during the crop year preceding the year in which nominations are made is to the total tonnage of prunes handled by all handlers as first handlers.

11. Amend § 993.26 to read as follows:
§ 993.26 Selection.

Selection of members of the committee, and their respective alternates, shall be made in the appropriate number specified in § 993.24, by the Secretary from nominees nominated pursuant to this part or, in the discretion of the Secretary, from other eligible persons.

12. Amend § 993.27 to read as follows:
§ 993.27 Eligibility.

Each producer member of the committee shall be at the time of his selection and during his term of office, a producer in the group, and if to represent a district also in the district, for which selected, and except for producer members representing cooperative producers, shall not be engaged in the handling of prunes either in a proprietary capacity or as a director, officer, or employee. Each handler member of the committee shall be a handler in the group he represents or a director, officer, or employee of such handler.

13. Amend § 993.28 to read as follows:
§ 993.28 Nominees.

(a) For the purpose of obtaining nominations for producer members to represent independent producers, the Committee shall, with the approval of the Secretary, divide the area into districts giving, insofar as practicable, equal

representation to numbers of independent producers and production of prune tonnage by such producers. The number of districts shall be equal to the number of such producer members or seven, whichever is the lesser. Candidates for nomination by independent producers from the various districts shall be obtained at meetings convened by the committee. Following such meetings, the committee shall prepare a separate ballot for each of the districts, or a joint ballot for two or more districts, containing (1) the names of the candidates for each district involved and (2) provision for write-in candidates. The ballot shall be mailed to each independent producer of record in each district. The voting procedure (including the casting of the ballot by mail addressed to the committee), and tabulation of votes shall be in accordance with rules and regulations prescribed by the committee, with the approval of the Secretary. Each voter shall be entitled to cast only one vote for a member nominee and only one vote for an alternate member nominee in a district in which he is a producer, and no voter shall vote for candidates in more than one district. In case he is a producer in more than one district, he shall elect in which of such districts he will vote and notify the committee as to his choice. Whenever the number of producer members to represent independent producers during the ensuing term of office is to exceed seven, one nominee shall be nominated by independent producers in each of the seven districts and an additional nominee for each member in excess of the seven members shall be nominated, without reference to districts, by such seven nominees. The committee shall recommend the establishment of districts, or any changes therein, to the Secretary prior to January 31 of each year in which nominations are made.

(b) Nominations of producer members to represent cooperative producers and handler members to represent cooperative handlers shall be submitted to the Secretary by cooperative marketing associations engaged in the handling of prunes before April 16 of each year in which nominations are made.

(c) In any year in which nominations are made following a crop year during which the tonnage of prunes handled by independent handlers as first handlers exceeded the tonnage of prunes handled by cooperative handlers as first handlers, nominees for member positions to represent independent handlers shall be nominated as follows:

(1) Each of the two independent handlers who handled during such preceding crop year, the two largest percentages of the prune tonnage handled by all independent handlers shall nominate from their respective organizations, one nominee for a handler member and one for an alternate member;

(2) Three independent handlers who handled during such preceding crop year the next three largest percentages of the prune tonnage handled by all independent handlers shall nominate from among their organizations, one nominee for a handler member and one for an alternate member;

(3) All other independent handlers who handled the remaining percentage of such prune tonnage shall nominate from their organizations, one nominee for a handler member and one for an alternate member.

In any year in which nominations are made following a crop year during which the tonnage of prunes handled by cooperative handlers as first handlers exceeded the tonnage of prunes handled by independent handlers as first handlers, nominees for two member and alternate positions to represent the independent handlers referred to in paragraph (c) (1) of this section shall be nominated in accordance with said paragraph (c) (1), and one nominee for the member and one for the alternate position to represent all other independent handlers shall be nominated by the handlers referred to in paragraph (c) (2) and (3) of this section and the votes of such handlers shall be weighted by the tonnage of prunes handled during the preceding crop year by the respective handlers.

(d) The committee shall establish, with the approval of the Secretary, the procedures by which such nominations, other than by cooperative marketing associations engaged in the handling of prunes, shall be obtained and shall submit such nominations to the Secretary before April 16 of the year in which nominations are made. In the event the committee determines that any nominating procedure specified in this section does not result in equitable representation, it may establish, with the prior approval of the Secretary, such modifications as will tend to assure such representation.

14. Amend § 993.29 to read as follows:
§ 993.29 Alternates.

An alternate for a member of the committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified. Except as otherwise specifically provided in this subpart, the provisions of this part applicable to members also apply to alternate members.

15. Amend § 993.30 to read as follows:
§ 993.30 Failure to nominate.

If a nomination for any position on the committee is not received by the Secretary by May 1, the Secretary may select an eligible individual without regard to nominations.

16. Amend § 993.32 to read as follows:
§ 993.32 Vacancies.

In the event of any committee vacancy occasioned by the removal, resignation, disqualification, or death of any member, or in the event of the failure of any person selected as a member or alternate member to qualify, a successor for the unexpired term shall be nominated within 60 calendar days thereof. Such nominations shall be made in the manner provided for in this subpart, insofar as applicable, except that nominations of

nominees for a producer member position to represent independent producers may, at the discretion of the committee, be made to the committee by the incumbent producer members of the committee who represent independent producers.

§ 993.33 [Deletion]

17. Delete §993.33.

18. Amend § 993.34 to read as follows:

§ 993.34 Voting procedure.

Decisions of the committee shall be by majority vote of the members present and voting and a quorum must be present: *Provided*, That decisions on marketing policy, grade or size regulations, or pack specifications shall require at least 11 affirmative votes. A quorum shall consist of at least 12 members of whom at least eight must be producer members and at least four must be handler members. Except in case of emergency, a minimum of five days' advance notice must be given with respect to any meeting of the committee. In case of an emergency, to be determined within the discretion of the chairman of the committee, as much advance notice of a meeting as is practicable in the circumstances shall be given. The committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When any proposition is submitted to be voted on by such method, one dissenting vote shall prevent its adoption and at least 11 affirmative votes shall be required for adoption.

19. Amend § 993.37 by deleting paragraph (i), and revising paragraphs (h) and (j) to read as follows:

§ 993.37 Duties.

* * * * *

(h) To prepare and submit to the Secretary monthly statements of the financial operations of the committee and to make such statements, together with the minutes of the meetings of said committee, available for inspection at the offices of the committee by producers, dehydrators, and handlers;

* * * * *

(j) To cause the books of the committee to be audited by a certified public accountant at least once each crop year, and at such other times as the committee may deem necessary or as the Secretary may request, and two copies of each such audit report shall be submitted to the Secretary and a copy which does not contain confidential data shall be available for inspection at the offices of the committee, by producers, dehydrators, and handlers;

20. Amend §§ 993.41, 993.42, 993.43, 993.44, and 993.45 to read as a single section as follows:

§ 993.41 Marketing policy.

Prior to the fourth Tuesday of each July, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy for the ensuing crop year. In the event it becomes advisable to modify such

policy, because of changed demand, supply or other conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the handler carryover, production, probable quality and prune sizes in the crop, demands in domestic and foreign markets, whether producer prices are likely to exceed parity and the probable assessable tonnage for the purposes of § 993.81 and such other factors as may have a bearing on the marketing of prunes or the administration of this part. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers, dehydrators and handlers.

21. Amend §§ 993.48, 993.49, and 993.50 to read as new §§ 993.48, 993.49, 993.50, 993.51, and 993.52 as follows:

§ 993.48 Regulation.

No handler shall handle prunes except in accordance with the provisions of this part.

§ 993.49 Incoming regulation.

(a) No handler shall receive prunes from producers or dehydrators, other than substandard prunes, unless such prunes meet the minimum standards for natural condition prunes set forth in § 993.97 (Exhibit A), or as such standards may be modified, or the more restrictive grade regulation established pursuant to this section, and then in effect: *Provided*, That no handler shall receive any prunes (including substandard prunes) from producers or dehydrators unless such prunes have been properly dried and cured in original natural condition, without the addition of water, and are free from active insect infestation, so that they are capable of being received, stored, and packed without material deterioration or spoilage. Any "high moisture content prunes," as described in the exception in § 993.4(b), in the possession of a handler, shall be held separate and apart from any prunes held by him. If such "high moisture content prunes" are dried or dehydrated to a point where they are capable of being stored, without material deterioration or spoilage, unrefrigerated or not otherwise artificially preserved, they shall be deemed, at that time, to have been received by such handler as prunes, and shall be subject to all of the conditions and restrictions of this subpart.

(b) The Secretary, on the basis of a recommendation of the committee or other information, may establish size regulations or more restrictive grade regulations with respect to prunes that may be received by a handler from producers and dehydrators whenever he finds that such action would tend to effectuate the declared policy of the act.

(c) When an inspection certificate shows that a lot of substandard prunes received by a handler from a producer or dehydrator contains prunes with defects in excess of those permitted in IC (1) or (2) of § 993.97 the quantity of prunes with such defects necessary to be removed from the lot in order that the balance of the lot would then be within

the tolerances for such defects shall be determined and the handler shall dispose of a like quantity of prunes affected by such defects in non-human consumption outlets: *Provided*, That the committee, by its rules and regulations, shall prescribe a maximum percentage of such defects in any lot received by a handler; and any lot so received which contains a greater percentage of such defects shall be disposed of in its entirety in non-human consumption outlets. In determining the defective prunes to be disposed of, consideration shall be given to the size ranges of their occurrence and variations in their condition. With the approval of the Secretary, the committee shall issue such rules and regulations (including the prescription of a maximum percentage) as may be necessary to administer the provisions of and to insure compliance with, this section.

§ 993.50 Outgoing regulation.

(a) Except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of prunes which fail to meet the applicable minimum standards set forth in § 993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes.

(b) The Secretary, on the basis of a recommendation of the committee or other information, may establish size regulations, pack specifications, or more restrictive grade regulations with respect to prunes that may be shipped or otherwise disposed of by a handler if such action would tend to effectuate the declared policy of the act. If a more restrictive grade regulation is established in connection with § 993.97 (Exhibit A) it shall insofar as practicable apply comparably to both natural condition prunes and processed prunes. When pack specifications are in effect, no handler shall ship prunes in consumer packages, unless such prunes are identified by an appropriate label, seal, stamp, or tag affixed to such container by the handler showing the size of prunes in the lot from which the container was packed. In order to effectuate such orderly marketing of prunes as will be in the public interest, whether prices are above or below parity, no handler shall use descriptive terms in a manner inconsistent with that set forth in this subpart or in any pack specifications or other regulation issued by the Secretary pursuant to this subpart.

(c) Non-French prunes: No handler shall ship or otherwise make final disposition of any lot of standard prunes or standard processed prunes of the non-French varieties or any lot which includes non-French prunes in excess of a tolerance to be prescribed by the Secretary on recommendation of the committee, unless the average count of such non-French prunes is 50 or less per pound, or if of the Robe de Sargent variety is 60 or less per pound. However, under safeguards to be established by the committee, such prunes may be shipped to or disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. A tolerance as to the permitted deviation of sizes about the aver-

age count shall be prescribed by the Secretary, upon recommendation of the committee.

(d) French prunes: No handler shall ship or otherwise make final disposition of any lot of consumer packages of French prunes unless the average count of such prunes contained in such lot is 100 or less per pound. In determining whether such lot of prunes conforms to this minimum size requirement, the following tolerance shall apply: In a sample of 100 ounces, the count per pound of 10 ounces of the smallest prunes shall not vary from the count per pound of 10 ounces of the largest prunes by more than 45 points. The Secretary may, upon the basis of the recommendation and information submitted by the committee and other available information, modify or change this tolerance for uniformity of size.

(e) No handler shall ship or otherwise make final disposition of any lot of sub-standard prunes except for use as prune products in which the prunes lose their form and character as prunes by conversion prior to consumption, or for use in non-human consumption outlets: *Provided*, That any such prunes which are shipped or otherwise disposed of for human consumption shall meet the minimum standards prescribed in II C (1), (2), and (3) of § 993.97 or as such standards as may pursuant to § 993.52 be modified. The committee shall issue any such rules and regulations as may be necessary to insure such uses.

(f) Notwithstanding the restrictions contained in this section, any handler may transfer prunes from one plant owned by him to another plant owned by him within the area without having an inspection made as provided for in § 993.51. Any handler may ship prunes from his plant to another handler's plant within the area without having an inspection made as provided for in § 993.51, but a report of such inter-handler transfer shall be made promptly by the transferring handler to the committee. The receiving handler shall, before shipping or otherwise making final disposition of such prunes, comply with the requirements of this section and of § 993.51.

§ 993.51 Inspection and certification.

Each handler shall at his own expense, before or upon the receiving, and before the shipping or disposing of prunes, cause an inspection to be made of such prunes to determine whether they meet the applicable grade and size requirements or the pack specifications, including labeling, effective pursuant to this part. Such handler shall obtain a certificate that such prunes meet the aforementioned applicable requirements and shall submit such certificate, or cause it to be submitted, to the committee. Acceptable certificates shall be those issued by inspectors of the Dried Fruit Association of California. The Secretary may designate another inspection agency in the event the services of the Association prove unsatisfactory.

§ 993.52 Modification.

Minimum standards, pack specifications or size regulations may be modified by the Secretary, on the basis of a recom-

mendation of the committee or other information, whenever he finds that such modification would tend to effectuate the declared policy of the act.

§ 993.53 Above parity situations.

The minimum standards, the minimum sizes, and the provisions of this part relating to administration shall continue in effect irrespective of whether the estimated season average price for prunes is in excess of the parity level specified in section 2(1) of the act.

§§ 993.59 to 993.64 [Deletions]

22. Delete §§ 993.59 through 993.64 together with the center heading for such sections.

§§ 993.73, 993.74 [Deletions]

23. Delete § 993.73 and § 993.74.

24. Amend § 993.76 to read as follows:

§ 993.76 Records.

Each handler shall maintain such records of prunes received, held and disposed of by him, as are prescribed by the committee and needed by it to perform its functions under this subpart. Such records shall be retained for at least two years beyond the crop year of their applicability.

25. Amend § 993.80 to read as follows:

§ 993.80 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate.

26. Amend § 993.81 by deleting paragraph (d) and amending paragraphs (a) and (c) to read as follows:

§ 993.81 Assessments.

(a) Each handler shall pay to the committee, upon demand, with respect to all prunes received by him from producers and dehydrators, his pro rata share of all expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each crop year. Each handler's pro rata share shall be the rate of assessment per ton fixed by the Secretary. At any time during or after a crop year the Secretary may increase the rate of assessment to cover unanticipated expenses of the committee or a deficit in assessable tonnage.

(c) Any money collected as assessments during any crop year and not expended in connection with the committee's operations may be used by the committee for a period of five months subsequent to such crop year. At the end of such period the committee shall, from funds on hand, refund or credit to handler accounts the aforesaid excess. Each handler's share of such excess funds shall be the amount of assessments he has paid in excess of his pro rata share of the actual net expenses of the committee for the preceding crop year. Any money collected from assessments hereunder and remaining un-

expended in the possession of the committee at the termination of this part, shall be distributed in such manner as the Secretary may direct: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

27. Amend § 993.82 to read as follows:

§ 993.82 Funds.

All funds received by the committee pursuant to the provisions of this part shall be used solely for authorized purposes. The Secretary may, at any time, require the committee or its members and alternate members to account for all receipts and disbursements.

28. Add a new § 993.94 to read as follows:

§ 993.94 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of prunes. The expense of such projects shall be paid from funds collected pursuant to § 993.81.

29. Add a new § 993.83 under Miscellaneous Provisions to read as follows:

§ 993.83 Rights of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to the removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other acts of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

Dated: July 12, 1960.

F. R. BURKE,
Acting Deputy Administrator,
Marketing Services.

[F.R. Doc. 60-6581; Filed, July 14, 1960;
8:47 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 608]

[Administrative Order 536]

INDUSTRY COMMITTEE NO. 48-B

Resignation and Appointment of Employer Member

Donald J. Garcia, Sabana Grande, Puerto Rico, appointed as an employer representative on Industry Committee No. 48-B by virtue of Administrative Order No. 534 (25 F.R. 5296), has resigned.

Now, therefore, pursuant to authority contained in the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.), and Reorganization Plan No. 6 of 1950 (3 CFR, 1950 Supp., p. 165), I hereby appoint Oscar Castro-Rivera, San Juan, Puerto Rico, to serve on Industry Com-

mittee No. 48-B as an employer representative replacing Donald J. Garcia.

Signed at Washington, D.C., this 12th day of July 1960.

JAMES T. O'CONNELL,
Acting Secretary of Labor.

[F.R. Doc. 60-6599; Filed, July 14, 1960;
8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b) (5), 72 Stat. 1786; 21 U.S.C. 348 (b) (5)), notice is given that a petition has been filed by Merck and Company, Inc., Rahway, New Jersey, proposing the issuance of a regulation to provide for the use of any one or a mixture of not more than 50 grams of procaine penicillin, streptomycin, chlortetracycline, or zinc bacitracin per ton of medicated animal feed, with not less than 125 parts per million (0.0125 percent) nor more than 250 parts per million (0.025 percent) of 1-(4-amino-2-n-propyl-5-pyrimidinylmethyl)-2-picolinium chloride hydrochloride in medicated chicken feed to be used solely as an aid in stimulating growth in chickens and as an aid in preventing outbreaks of coccidiosis.

Dated: July 11, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner
of Food and Drugs.

[F.R. Doc. 60-6576; Filed, July 14, 1960;
8:46 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Withdrawal of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), The Dow Chemical Company, Midland, Michigan, has withdrawn its petition proposing the issuance of a regulation to establish a tolerance of 175 parts per million (0.0175 percent) of mineral oil in or on meat, notice of filing of which was published in the FEDERAL REGISTER of February 11, 1959 (24 F.R. 1028).

The withdrawal of this petition is without prejudice to a future filing.

Dated: July 8, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner
of Food and Drugs.

[F.R. Doc. 60-6577; Filed, July 14, 1960;
8:47 a.m.]

CIVIL AERONAUTICS BOARD

[14 CFR Part 221]

[Economic Regs. Docket No. 11618]

CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Notice of Proposed Rule Making

JULY 12, 1960.

Notice is hereby given that the Civil Aeronautics Board has under consideration an amendment to Part 221 of the Board's Economic Regulations for the purpose of bringing all effective tariffs within the form requirements of this Part.

The principal features of the proposed amendment are explained in the explanatory statement and the proposed amendment to Part 221 as set forth below. This regulation is proposed under the authority of Sections 204(a) and 403 of the Federal Aviation Act of 1958 (72 Stat. 743, 758; 49 U.S.C. 1324, 1373).

Interested persons may participate in the proposed rule making through submission of ten (10) copies of written data, views or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington 25, D.C. All relevant matter in communications received on or before August 15, 1960, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available on or after August 17, 1960, for examination by interested persons in the Docket Section of the Board, Room 711, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER,
Secretary.

Part 221, the tariff filing regulation, became effective in its present revised form on July 1, 1954. It was believed at that time that tariffs and their amendments already in effect would be revised and amended from time to time in accordance with Part 221 and that compliance of all tariffs with Part 221 would thus be achieved by a gradual process. Experience has shown that this has been accomplished only in part.

Inconsistent tariffs create definite problems for travelers and shippers. Where one carrier has brought its tariffs into conformity with Part 221 and another has not, the result may be that different interpretations obtain for different carriers in traffic which is competitive. For example, some tariffs still contain generic commodity descriptions in lieu of specific descriptions as required by § 221.75 of Part 221. The Board deems it necessary, therefore, to designate a date by which all tariffs currently in effect would have to be revised in accordance with Part 221.

It is recognized that a period of time will be required for the carriers to bring their tariffs into compliance. Accordingly, an effective date of February 1, 1961, is envisaged at this time.

It is proposed to amend Part 221 of the Economic Regulations (14 CFR Part 221), by adding a new § 221.5 to read as follows:

§ 221.5 Effective date of compliance with this part.

All tariffs and tariff amendments in force on (effective date of this amendment) whether or not the tariff matter therein was in force on July 1, 1954, shall be brought into compliance with this part effective not later than February 1, 1961.

[F.R. Doc. 60-6587; Filed, July 14, 1960;
8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 1, 21]

[Docket No. 13631; FCC 60-782]

REPORT OF LICENSEE IN DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

Notice of Proposed Rule Making

1. The Commission proposes to amend its Form L,¹ Annual Report of Licensee in Domestic Public Land Mobile Radio Service. Such amendments, if adopted, will be effective for the reports covering calendar year 1960. The amendments proposed are principally to rearrange and clarify the existing form, so much so that proposed rule making proceedings may not be mandatory under the Administrative Procedure Act. However, it may be that licensees and others interested in the development of the common carrier mobile radio services have thoughts regarding useful information which should be obtained at this time. This proceeding will afford an excellent opportunity for the submission of suggestions embodying such thoughts at a time when they will receive the fullest consideration.

2. The only change of a substantive nature proposed for Form L is to insert a new question inquiring whether or not the actual operation of the service is in the hands of a person or entity other than the licensee. If the answer to this question is in the affirmative it is proposed to require that the terms of the agreement, including consideration, by which responsibility for the actual operation is placed upon someone other than the licensee, be disclosed in the report. In view of provisions of the Communications Act forbidding transfer of control of radio stations without prior Commission consent the pertinency of this type of question will be apparent.

3. A summary of other changes being proposed in Form L is, (a) a definition of rural subscriber service is being added to Instruction 2, (b) a separate line is being added in the sections on service data and revenue for rural subscriber service so that data regarding this service will no longer be reported as a part of "Other," (c) columns are being added in the section on service data for fixed

¹ Form filed as part of the original document.

stations authorized and served and the three present columns in that section on number of revenue messages are being transferred to the section on revenue, (d) Instruction 5 is being revised in recognition of the fact that new columns are being added in the section on service data, (e) the question on number of mobile stations served in vehicles or vessels used by licensee or any affiliate of licensee is being reworded in the interest of clarity, (f) the present section VI on mobile stations tabulated in accordance with priorities for service is being renumbered as section II and the present section II on revenue is being renumbered as section IV which results in the present sections IV and V, condensed balance sheet and condensed income statement, respectively, being renumbered as sections V and VI, respectively, (g) the balance sheet captions are being changed slightly, (h) the term "mobile stations" is being substituted for "mobile units" throughout in order to conform with the definition in § 21.1 of our rules, (i) instructions 2 and 9 have been incorporated in a parenthetical note under "remarks", (j) instruction 10 has been incorporated in a parenthetical note under the space for certification of the report, (k) the remaining instructions have been renumbered, (l) four of the remaining instructions have been moved to the top of the reverse side of the form immediately preceding the items to which they relate in an effort to overcome reader resistance, (m) columns headed "mobile stations" are being cross-referenced to instruction 3 (old number 5) which instruction is being expanded to explain that one-way signaling receivers, whether or not installed in a vehicle, are considered to be mobile stations, and (n) column headings in section IV relating to revenue and nonrevenue messages are being modified to include, in parentheses, a note to the effect that the number of messages reported should agree with the number of messages recorded in the station log.

4. A copy of Form L is attached to this notice.¹

5. This notice of proposed rule making is issued under authority of sections 4(i), 219(b), 303(j), 303(r), and 308(b) of the Communications Act of 1934, as amended.

6. Any interested party who is of the opinion that the proposed amendments should not be adopted, or should not be adopted in the form proposed herein, may file with the Commission on or before August 19, 1960, a statement or brief setting forth his comments. Comments in support of the proposed amendments may also be filed on or before the same

date. Comments or briefs in reply to the original comments or briefs may be filed within twenty days of the last day for filing said original comments or briefs. No additional comments may be filed unless (1) specifically requested by the Commission, or (2) good cause for filing such additional comments is established. The Commission will consider all such comments that are presented before taking action in the matter and, if any comments are submitted which appear to warrant the holding of oral argument, notice of the time and place of such oral argument will be given.

7. In accordance with the provisions of § 1.54 of the Commission's rules and regulations, an original and fourteen copies of all statements or briefs filed shall be furnished to the Commission.

Adopted: July 7, 1960.

Released: July 12, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-6597; Filed, July 14, 1960;
8:48 a.m.]

[47 CFR Parts 2, 11]

[Docket No. 13655; FCC 60-816]

NON-GOVERNMENT RADIO- LOCATION SERVICE

Notice of Proposed Rule Making

In the matter of amendment of Parts 2 and 11 of the Commission's rules to provide for the use of the band 10000-10500 Mc by the non-Government radiolocation service, Docket No. 13655.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. Tellurometer, Inc., in a petition filed April 12, 1960, which was modified by a supplemental filing on April 20, 1960, requests amendment of the Table of Frequency Allocations in § 2.104(a) (5) to provide for the radiolocation service in the band 10000-10500 Mc in addition to those services to which that band is now allocated. Petitioner also requests an appropriate amendment to Subpart M of Part 11 to permit the granting of licenses to radiolocation land and radiolocation mobile stations in the band 10000-10500 Mc on the condition that such stations shall not cause interference to stations of other services to which that band is allocated.

3. The band 10000-10500 Mc is now allocated to both Government and non-Government users. However, by the terms of footnote US127 to the Table of Frequency Allocations, all users are restricted to CW emission, non-Government access to the band is limited to the amateur service, and the amateur service is required to protect Government

services in that band from harmful interference.

4. Petitioner states that the degree of accuracy achievable with the Tellurometer device is a function of bandwidth available and that the availability of the band 10000-10500 Mc would permit survey measurement accuracies of plus or minus one-half inch. The band 10500-10550 Mc which is presently allocated to the radiolocation service is not wide enough to permit the degree of accuracy considered necessary for some survey operations.

5. It is therefore proposed to amend Parts 2 and 11 as set forth below to make the frequency band 10000-10500 Mc available to the non-Government radiolocation service on the express condition that (1) only CW will be authorized, (2) harmful interference will not be caused to the amateur service or to the Government services to which the band is allocated, (3) the non-Government radiolocation service will accept any harmful interference that might be experienced from stations of the other services to which the band is allocated, and (4) the non-Government radiolocation service will be limited to survey operations using transmitter powers not to exceed one watt into the antenna.

6. The Administrative Radio Conference, Geneva (1959) modified a number of definitions presently in use in the Commission's rules. For example, the term "radiopositioning" was redefined as "radiolocation." It is the Commission's intention to institute rule-making in the near future to realign its rules, to the extent practicable, with the decisions of that Conference. For the time being, however, it is proposed to introduce new terminology only to the extent necessary to deal with new allocations such as is proposed herein. For administrative purposes it is considered necessary to retain, temporarily, seemingly duplicate definitions in some instances. Accordingly, it is proposed to make the definition changes and insertions set forth in the Appendix hereto.

7. The proposed amendments to Parts 2 and 11 of the Commission's rules as set forth below, are issued pursuant to the authority contained in section 303 (c), (f) and (r) of the Communications Act of 1934, as amended.

8. All interested persons are invited to file, on or before August 19, 1960, comments supporting or opposing the proposals set out in this Notice and in the Appendix hereto, or submitting any modifications or counterproposals the parties may wish to submit. Comments in reply thereto may be submitted by August 29, 1960. The Commission will consider all comments filed hereunder prior to taking final action in this matter provided that, notwithstanding the provisions of § 1.213 of the rules, the Commission will not be limited solely to the comments filed in this proceeding.

¹ Form filed as part of the original document.

9. In accordance with the provisions of § 1.54 of the Commission's rules and regulations, the original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: July 7, 1960.

Released: July 12, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

I. Proposed amendments to Part 2:

1. In § 2.1, in alphabetical order, the definition "Radiodetermination" is added; the definitions "Radiolocation" and "Radiolocation service" are revised; and the definition "Radiolocation station" is deleted and superseded by "Radiolocation land station" and "Radiolocation mobile station", as follows:

§ 2.1 Definitions.

Radiodetermination. The determination of position, or the obtaining of in-

formation relating to position, by means of the propagation of radio waves.

Radiolocation. Radiodetermination used for purposes other than those of radionavigation.

Radiolocation service. A radiodetermination service involving the use of radiolocation.

Radiolocation land station. A station in the radiolocation service not intended to be used while in motion.

Radiolocation mobile station. A station in the radiolocation service intended to be used while in motion or during halts at unspecified points.

2. In § 2.104(a) (5), the table of frequency allocations is amended by changing the entries in Columns 8, 9, and 11 for the band 10000-10500 Mc; Footnote US127 is revised; and new Footnote NG-- is added, as follows:

§ 2.104 Frequency allocations.

- (a) * * *
- (5) * * *

United States		Federal Communications Commission				
Band (Mc)	Allocation	Band (Mc)	Service	Class of station	Frequency	Nature (OF SERVICES of stations)
5	6	7	8	9	10	11
10000-10500	G, NG (US127)	10000-10500	Amateur Radiolocation (NG--).	Amateur Radiolocation land Radiolocation mobile.	-----	AMATEUR RADIOLOCATION.

US127 The band 10,000-10,500 Mc is limited to CW systems. The amateur service and non-Government radiolocation service, which shall not cause harmful interference to the Government radiolocation service, are the only non-Government services permitted in this band. The non-Government radiolocation service is limited to survey operations using transmitters with a power not to exceed one watt into the antenna.

NG-- Non-Government stations in the radiolocation service shall not cause harmful interference to the amateur service.

II. Proposed amendments to Part 11:

1. Section 11.3 *Definition of Terms*, is amended by the addition of new definitions as follows:

§ 11.3 Definition of terms.

(y) *Radiolocation land station.* A station in the radiolocation service not intended to be used while in motion.

(z) *Radiolocation mobile station.* A station in the radiolocation service in-

tended to be used while in motion or during halts at unspecified points.

2. Section 11.607 is amended by the addition of a new paragraph (h), as follows:

§ 11.607 Frequencies available.

(h) Radiolocation Land Stations and Radiolocation Mobile Stations in this service may be authorized to use frequencies in the band 10,000-10,500 Mc, for CW emission only, upon condition that no harmful interference is caused to other users of this band; and upon further condition that such stations in the radiolocation service operating in this band must accept any harmful interference that may be experienced from the operation of other services in this band. The non-Government radiolocation service is limited to survey operations using transmitters with a power not to exceed one watt into the antenna.

[F.R. Doc. 60-6596; Filed, July 14, 1960; 8:48 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 601

[Reg. Docket No. 375; Draft Release No 60-8]

DEFINITION OF CONTROLLED
AIRSPACE

Notice of Public Hearing

Draft Release 60-8, published as a notice of proposed rule making in the FEDERAL REGISTER on May 7, 1960 (25 F.R. 4083), gave notice that the Federal Aviation Agency proposed to rescind Civil Air Regulations Amendments 60-14 and 60-14A and to adopt a new amendment to Part 60 which would revise the controlled airspace structure.

As a result of the review of the written comments received in response to the draft release, it has been concluded that it is desirable for the Agency to obtain the oral views and comments of interested persons in regard to the proposed revision to the controlled airspace structure.

Notice is hereby given that an informal hearing in accordance with section 4(b) of the Administrative Procedure Act will be held before a representative of the Administrator, at 10:00 a.m., e.d.t., on August 10, 1960, at 1711 New York Avenue NW., Washington, D.C., for the purpose of receiving such views and comments. Amendments 60-14 and 60-14A have been rescinded, effective June 30, 1960, by Amendment 60-18 (25 F.R. 6015) and will not be included in the subject matter of this hearing.

All parties who wish to present their views and comments at the hearing should send advanced written notice of such intention, in duplicate, to the Docket Section, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. Such notice should include the name and number of persons expected to attend, the organization, if any, represented and an estimate of the amount of time required for the presentation of views and comments.

All comments presented at the hearing will be considered before action is taken on the proposed rule and the proposal may be changed in the light of comment received.

D. D. THOMAS,
Director,

Bureau of Air Traffic Management.

[F.R. Doc. 60-6585; Filed, July 14, 1960; 8:47 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Office of the Secretary

FINISHED PRODUCTS OTHER THAN RESIDUAL FUEL OIL TO BE USED AS FUEL; PUERTO RICO

Adjustments in Maximum Level

JULY 13, 1960.

The maximum level of imports into Puerto Rico of finished products, other than residual fuel oil to be used as fuel, established by Presidential Proclamation 3279 (24 F.R. 1781) is modified pursuant to paragraph (d) of section 2 of said Proclamation to permit, during the period July 1, 1960, through December 31, 1960, an increase of 2700 barrels per day in the imports of light virgin naphtha, 109 barrels per day in the imports of asphalt, to meet the increased demand in Puerto Rico.

Increases in allocations, pursuant to this authorization, will be granted to those eligible importers who have satisfactorily demonstrated an increased need for these oils.

ELMER F. BENNETT,

Acting Secretary of the Interior.

[F.R. Doc. 60-6693; Filed, July 14, 1960; 10:57 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12194 etc.; FCC 60M-1191]

AMERICAN TELEPHONE AND TELEGRAPH CO. ET AL.

Order Scheduling Prehearing Conference

In the matter of American Telephone and Telegraph Company, et al., Docket No. 12194, (11645 and 11646), charges, classifications, regulations and practices for and in connection with channels for data transmission.

Counsel for all parties in this proceeding are directed to appear for a conference to be held on July 19, 1960, at 2:00 p.m., in the Offices of the Commission at Washington, D.C. The conference will be concerned with consideration of the date to be specified for the resumption of the hearings and of such other matters as will be appropriate for discussion preliminary to resumption herein, with emphasis on procedures that would be conducive to an early conclusion of the proceeding.

Dated: July 11, 1960.

Released: July 11, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,

Acting Secretary.

[F.R. Doc. 60-6588; Filed, July 14, 1960; 8:47 a.m.]

No. 137—Pt. I—6

[Docket No. 13179; FCC 60M-1153]

MARTIN KARIG

Order Continuing Hearing

In re application of Martin Karig, Johnstown, New York, Docket No. 13179, File No. BP-11926; for construction permit.

Upon the Hearing Examiner's own motion, due to his absence from the office on military leave, the Hearing in this proceeding now scheduled for July 11, 1960, should be continued.

Accordingly, it is ordered, That the Hearing now scheduled be, and the same is hereby continued to July 22, 1960, 10:00 a.m., in the Commission Offices, Washington, D.C.

Dated: July 5, 1960.

Released: July 11, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-6589; Filed, July 14, 1960; 8:47 a.m.]

[Dockets Nos. 13509, 13510; FCC 60M-1186]

M-L RADIO, INC. (KMLW) AND TAFT BROADCASTING CO.

Order Continuing Hearing

In re applications of M-L Radio, Inc. (KMLW), Marlin, Texas, Docket No. 13509, File No. BP-12159; Paul E. Taft, d/b as Taft Broadcasting Company, Houston, Texas, Docket No. 13510, File No. BP-12868; for construction permits.

On the oral request of counsel for M-L Radio, Inc., and without objection by counsel for the other parties: *It is ordered*, This 7th day of July 1960, that the hearing of July 26 is rescheduled to Monday, September 26, 1960, at 10:00 a.m., in the offices of the Commission, Washington, D.C., and that the time for exchange of exhibits is extended from July 12 to September 15, and for notification of witnesses and receipt of other material, from July 19 to September 20, 1960.

Released: July 11, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-6590; Filed, July 14, 1960; 8:47 a.m.]

[Docket Nos. 13632, 13633; FCC 60-802]

WILLIAM R. PACKHAM AND RADIO STATION WPCC, INC. (WPCC)

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of William R. Packham, Hendersonville, North Carolina, Docket No. 13632, File No. BP-12394, re-

quests 1410 kc, 500 w, Day; Radio Station WPCC, Incorporated (WPCC), Clinton, South Carolina, Docket No. 13633, File No. BP-13744, has 1410 kc, 500 w, Day, requests 1410 kc, 1 kw, Day; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of July 1960;

It appearing that upon the basis of the information presently before the Commission, and except as indicated by the issues specified below, each of the instant applicants is legally, technically and otherwise qualified to construct and operate its instant proposal; that Radio Station WPCC, Incorporated, is also financially qualified; but that William R. Packham may not be financially qualified; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated March 8, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing that in response to the Commission's above-mentioned letter, William R. Packham amended his application to include (a) a verified copy of his agreement with Mr. Tom Carr whereby Mr. Carr will build the proposed station for \$20,000; and (b) a supporting balance sheet showing that Mr. Carr has sufficient liquid assets to construct the station as proposed, but that, the balance sheet of Packham reflects only \$840 in liquid assets whereas he requires more than \$6,800 to operate his proposal for at least three months; and that, therefore, it cannot be determined that Packham is financially qualified to operate his proposed station; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a

consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposed operation of William R. Packham and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WPCC and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether the instant proposal of William R. Packham would involve objectionable interference with Station WPCC, Clinton, South Carolina (existing operation), or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28(c) (3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

6. To determine whether William R. Packham is financially qualified to operate his proposed station.

7. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient and equitable distribution of radio service.

8. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if either, of the instant applications should be granted.

It is further ordered, That Radio Station WPCC, Incorporated, is made a party respondent with respect to the existing operation of WPCC.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue:

To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: July 12, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-6592; Filed, July 14, 1960;
8:47 a.m.]

[Docket Nos. 13639, 13640; FCC 60-805]

SOUTHEASTERN BROADCASTING SYSTEM, INC. (WMJM) AND WASHINGTON BROADCASTING CO. (WSNT)

Order Designating Applications For Consolidated Hearing on Stated Issues

In re applications of Southeastern Broadcasting System, Incorporated (WMJM) Cordele, Georgia, Docket No. 13639, File No. BP-12389, has 1490 kc, 250 w, U, requests 1490 kc, 250 w, 1 kw-L, U; Washington Broadcasting Company, Inc. (WSNT), Sandersville, Georgia, Docket No. 13640, File No. BP-13105, has 1490 kc, 250 w, U, requests 1490 kc, 250 w, 500 w-L, U; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of July 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that except as indicated by the issues specified below, each of the applicants is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated February 19, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of either of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing that WSNT (BP-13105) failed to indicate that the total percentage of population loss from existing stations and pending applications is less than 10 percent, and failed to submit a detailed site photograph showing the proposed 1 volt contour; and

It further appearing that by letter dated March 23, 1960, WMRE requested that the application of the Washington Broadcasting Company, Inc., be denied and that no hearing be held; but that pursuant to the provisions of section 309(b) of the Communications Act of 1934, as amended, both the said applications must be designated for hearing; and

It further appearing that after consideration of the foregoing, and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operations of Stations WMJM and WSNT and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the instant proposal of the Southern Broadcasting System, Incorporated (WMJM) would involve objectionable interference with Stations WSNT, Sandersville, Georgia; WSFB, Quitman, Georgia; and WRDL, Lanett, Alabama-West Point, Georgia, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

4. To determine whether the instant proposal of the Washington Broadcasting Company, Inc. (WSNT) would involve objectionable interference with Stations WSYL, Sylvania, Georgia; and WMRE, Monroe, Georgia, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether interference received from the present operations of Stations WSYL and WMRE, and the proposed operation of Station WMJM would affect more than ten percent of the population within the normally protected primary service area of the instant proposal of the Washington Broadcasting Company, Inc. (WSNT), in contravention of § 3.28(c) (3) of the Commission rules, and, if so, whether cir-

cumstances exist which would warrant a waiver of said section.

6. To determine whether the WSNT transmitter site is satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern.

7. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient and equitable distribution of radio service.

8. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if either, of the instant applications should be granted.

It is further ordered, That the Valley Broadcasting Company, Inc., Emerson W. Browne tr/as Quitman Broadcasting Company, Edwin H. Bass tr/as Sylvania Broadcasting System, and the Walton Broadcasting Company, licensees of Stations WRLD, WSFB, WSYL, and WMRE, respectively, are made parties to the proceeding.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: July 12, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-6593; Filed, July 14, 1960;
8:48 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-161]

GENERAL DYNAMICS CORP.

Notice of Issuance of Utilization Facility Export License

Please take notice that no request for a formal hearing having been filed following filing of a notice of proposed action with the Office of the Federal Register, the Atomic Energy Commission has issued License No. XR-37 to General Dynamics Corporation authorizing export of a research reactor to the Musashi College of Technology, Tokyo, Japan.

The notice of proposed issuance of this license, published in the FEDERAL REGISTER on March 24, 1960 (25 F.R. 2504), described the reactor as a 100 kilowatt TRIGA Mark II nuclear reactor.

Dated at Germantown, Md., this 8th day of July 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Acting Director, Division of
Licensing and Regulation.

[F.R. Doc. 60-6563; Filed, July 14, 1960;
8:45 a.m.]

[Docket No. 50-162]

GENERAL DYNAMICS CORP.

Notice of Issuance of Utilization Facility Export License

Please take notice that no request for a formal hearing having been filed following filing of a notice of proposed action with the Office of the Federal Register, the Atomic Energy Commission has issued License No. XR-38 to General Dynamics Corporation authorizing export of a research reactor to Rikkyo University, Tokyo, Japan. The notice of proposed issuance of this license, published in the FEDERAL REGISTER on March 24, 1960 (25 F.R. 2504), described the reactor as a 100 kilowatt TRIGA Mark II nuclear reactor.

Dated at Germantown, Md., this 8th day of July 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Acting Director, Division of
Licensing and Regulation.

[F.R. Doc. 60-6564; Filed, July 14, 1960;
8:45 a.m.]

FEDERAL POWER COMMISSION

[Docket No. E-6900]

APPALACHIAN POWER CO.

Order Providing for Hearing and Denying Motion for Extension of Time and Other Relief

JULY 8, 1960.

By order issued October 29, 1959, (22 F.P.C. 754) the Commission ordered Appalachian Power Company (Company), to show cause in writing and within 60 days why an order should not be entered determining:

(1) That Company is accounting for and reporting deferred taxes on income otherwise than by use of the Commission's prescribed Accounts 507-A and 266, all as indicated above, and therefore that it has and continues to violate the accounting requirements prescribed by the Commission through its Uniform System of Accounts;

(2) That this action by Company constitutes a willful and knowing violation of the Federal Power Act;

(3) That the Company be required to make, keep, and preserve its accounts

in the manner prescribed by this Commission in the Uniform System of Accounts Prescribed for Public Utilities and Licensees;

(4) That the Company be ordered to file such substitute pages of its Annual Report for 1958 (F.P.C. Form No. 1), including the report to stockholders appended as part of said Annual Report, to make the accounting and reporting of accumulated deferred taxes on income therein consistent and in compliance with the requirements therefor as prescribed by the Commission.

To date, Company has not filed any substantive reply, on the merits, to the issues raised by the afore-mentioned Commission order. Rather, Company has requested that all proceedings in this docket be stayed pending Commission action in Docket No. E-6918. Company's requests for stay have been presented in two ways.

First, Company initiated Docket No. E-6918, by Petition filed December 15, 1959, requesting inter alia an order of the Commission declaring Commission Order No. 216 to be invalid.¹ In that Petition, Company requested that all proceedings in this Docket (E-6900), be stayed "until 30 days after the issuance of a final order upon" that Petition.

Secondly, Company, by Motion filed May 25, 1960, in this Docket (E-6900), requested that it be granted "an extension of time to answer in Docket E-6900 until the final disposition of all proceedings relative to the Petition"; (Petition) meaning Company's afore-mentioned December 15, 1959, Petition initiating Docket No. E-6918.² Company's May 25, 1960, Motion also requests that the Motion, itself, be set down for hearing with opportunity for Company to render written and oral presentations to the Commission in support of the relief therein requested.

In addition, Company, on June 21, 1960, in an "Application for Rehearing" of the Commission's May 23, 1960 order dismissing Company's December 15, 1959 Petition in Docket No. E-6918, again requested that the Commission stay all proceedings in this Docket (E-6900) "until 30 days after the final disposition" of its December 15, 1959 Petition.

By order of the Commission issued concurrently herewith (Docket No. E-6918) Company's "Application for Rehearing" is denied.

Since the issuance of the afore-mentioned Commission order on October 29, 1959, Company has filed its Annual Report (F.P.C. Form No. 1) with this Commission for the year 1959. That Report reveals Company has continued its accounting and reporting procedures for

¹ Commission Order 216, issued October 22, 1959, by its terms merely interprets certain language of the Commission's prior Order No. 204—Order Amending Uniform System of Accounts Prescribed for Public Utilities and Licensees to Provide for the Accounting and Reporting of Deferred Taxes on Income.

² The Commission's October 29, 1959 "Order to Show Cause" initiating this proceeding (Docket No. E-6900), afforded Company a period of 60 days from the date of issuance thereof, to respond to the issues which that order raises.

deferred taxes on income in the manner as described in the Commission's October 29, 1959, order.

The Commission finds that in view of the foregoing it is necessary and appropriate for the purposes of the Federal Power Act and the afore-mentioned Commission order issued herein on October 29, 1959, that this matter be set for hearing; and that Company's May 25, 1960 Motion be denied; all as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority contained in the provisions of the Federal Power Act, particularly sections 301, 304, 307, 308, 309 and 311 thereof, and the Commission's rules of practice and procedure, a public hearing be held on September 12, 1960, at 10:00 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., at which hearing Company shall show cause, if any there be, why the Commission should not find and determine:

(1) That Company is accounting for and reporting deferred taxes on income otherwise than by use of the Commission's prescribed Accounts 507-A and 266, all as indicated in the aforementioned Commission order issued herein on October 29, 1959, and as confirmed in this order with respect to the year 1959, and therefore that it has and con-

tinues to violate the accounting requirements prescribed by the Commission through its Uniform System of Accounts;

(2) That this action by Company constitutes a willful and knowing violation of the Federal Power Act;

(3) That the Company be required to make, keep, and preserve its accounts in the manner prescribed by this Commission in the Uniform System of Accounts Prescribed for Public Utilities and Licensees;

(4) That the Company be ordered to file such substitute pages of its Annual Reports for 1958 and 1959 (F.P.C. Form No. 1), including the reports to stockholders appended as part of said Annual Reports, to make the accounting and reporting of accumulated deferred taxes on income therein consistent and in compliance with the requirements thereof as prescribed by the Commission.

(B) Any petitions seeking leave to intervene in this proceeding or notices of intervention shall be filed with the Federal Power Commission, Washington 25, D.C., on or before August 5, 1960 and otherwise in accordance with § 1.8 (18 CFR 1.8) of this Commission's rules of practice and procedure.

(C) Interested State commissions may participate in this proceeding as provided by §§ 1.8 and 1.37(f) (18 CFR 1.8 and 1.37(f)) of this Commission's rules of practice and procedure.

(D) Company's May 25, 1960 Motion is hereby denied.

By the Commission.

JOSEPH H. GUTRIE,
Secretary.

[F.R. Doc. 60-6569; Filed, July 14, 1960;
8:46 a.m.]

[Docket Nos. RI60-468—RI60-474]

MIDHURST OIL CORP. ET AL.

Order Providing for Hearing on and
Suspension of Proposed Changes in
Rates¹

JULY 8, 1960.

In the matter of Midhurst Oil Corporation (Operator), et al., Docket No. RI60-468; Texas Pacific Coal and Oil Company, Docket No. RI60-469; Texas Pacific Coal and Oil Company (Operator), et al., Docket No. RI60-470; Edwin L. Cox, Docket No. RI60-471; J. R. Goff, Trustee, Docket No. RI60-472; Humble Oil & Refining Company (Operator), et al., Docket No. RI60-473; Humble Oil & Refining Company, Docket No. RI60-474.

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Notice of change dated—	Date tendered	Effective date unless suspended	Rate suspended until—	Cents per Mcf		Rate in effect subject to refund in Docket Nos.
									Rate in effect ²	Proposed increased rate	
RI60-468	Midhurst Oil Corp. (Operator), et al.	7	6	Tennessee Gas Transmission Co. (West Magnolia City Field, Jim Wells County, Tex.).	Undated	6-9-60	7-10-60	12-10-60	12.12268	17.24347	-----
RI60-469	Texas Pacific Coal and Oil Co.	5	8	El Paso Natural Gas Co. (South Fulterton Gas Plant, Andrews County, Tex.).	6-9-60	6-10-60	7-11-60	12-11-60	11.1485	17.0034	-----
RI60-469	do	1	8	El Paso Natural Gas Co. (Payton Field, Pecos, and Ward Counties, Tex.).	6-9-60	6-10-60	7-11-60	12-11-60	11.1056	15.6488	-----
RI60-469	do	12	3	El Paso Natural Gas Co. and Hunt Oil Co. (King Mountain Field, Upton County, Tex.).	6-8-60	6-10-60	7-11-60	12-11-60	8.108	13.68225	-----
RI60-469	do	6	2	El Paso Natural Gas Co. (Spraberry Field, Reagan County, Tex.).	6-10-60	6-13-60	7-14-60	12-14-60	11.0	17.0	-----
RI60-469	do	8	2	El Paso Natural Gas Co. (Bagley Pool, Lea County, N. Mex.).	6-10-60	6-13-60	7-14-60	12-14-60	10.5	15.5	-----
RI60-470	Texas Pacific Coal and Oil Co. (Operator), et al.	20	4	El Paso Natural Gas Co. (Eumont Field, Lea County, N. Mex.).	6-9-60	6-13-60	7-14-60	12-14-60	10.5	15.5	-----
RI60-471	Edwin L. Cox	6	1	Panhandle Eastern Pipe Line Co. (Greenwood Field, Morton County, Tex.).	5-26-60	6-10-60	7-11-60	12-11-60	² 12.0	14.15	-----
RI60-471	do	5	1	do	5-26-60	6-10-60	7-11-60	12-11-60	² 12.0	14.15	-----
RI60-472	J. R. Goff, Trustee	1	8	Trunkline Gas Co. (Clear Creek Field, Allen and Beauregard Parishes, La.).	6-7-60	6-10-60	7-11-60	12-11-60	² 18.3	23.5	G-20441
RI60-473	Humble Oil & Refining Co. (Operator), et al.	144	2	El Paso Natural Gas Co. (Amacker-Tippett Field, Upton County, Tex.).	6-7-60	6-10-60	7-11-60	12-11-60	² 10.3072	13.6823	G-19157
RI60-474	Humble Oil & Refining Co.	240	-----	Colorado Interstate Gas Co. (Hugoton Field, Haskell County, Kans.).	³ 4-29-60	6-10-60	7-11-60	12-11-60	² 8.0	-----	-----
RI60-474	do	240	1	do	6-7-60	6-10-60	7-11-60	12-11-60	² 8.0	12.5	-----

¹ The stated effective dates are the first day after expiration of the required statutory notice.

² The pressure base is 15.025 psia.

³ The pressure base is 14.65 psia.

⁴ The stated effective date is that requested by respondent.

⁵ Contract.

In support of its proposed increase, Midhurst states that the contract was negotiated at arm's-length; all of the pricing provisions thereof were a consideration for entering into such contract; and the requested price is in line with the current value of gas sold in the area.

In support of its proposed increase, Texas Pacific states that the favored-nation provisions constituted a major portion of the consideration of the contracts of sale and were arrived at by bargaining at arm's-length. Regarding

its sale to El Paso, Humble similarly mentions arm's-length bargaining and states that the proposed rate is in line with going contract prices in the area. If suspended, Humble requests that the suspension period be limited to one day on the theory that the staff has been investigating Humble's books and records since June 27, 1956, and additional time is not required for investigation.

In support, Cox states that the pricing provisions of the contracts represent the negotiated prices for sales of gas there-

under; such provisions are in general use in long-term contracts and are economically desirable; and the proposed rates are substantially below prices for newly-dedicated gas in the area.

In support of its increased rate, Goff cites the contractual provisions and states that the proposed rate is no more

¹ This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

than the initial prices for gas sold in the same general area, and in view of increasing costs, the higher price is needed to encourage exploration and development.

In support of its proposed increased rate to Colorado Interstate, Humble states that the superseding contract was entered into as a result of arm's-length bargaining and the proposed rate is substantially below the going price for gas in the Hugoton-Panhandle Field.

The changes in rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements and Humble's Rate Schedule No. 240 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed changes in rates and charges contained in the above-designated supplements, and Humble's Rate Schedule No. 240.

(B) Pending hearings and decisions thereon, each of the above-designated supplements and Humble's Rate Schedule No. 240 are hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before August 22, 1960.

By the Commission (Commissioner Kline dissenting to the suspension of the filings in Docket No. RI60-474).

[SEAL]

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-6570; Filed, July 14, 1960;
8:46 a.m.]

[Docket No. RI60-475]

PHILLIPS PETROLEUM CO.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates

JULY 8, 1960.

On June 10, 1960, Phillips Petroleum Company (Phillips) tendered for filing

proposed changes in rates for sales of natural gas to Kerr-McGee Oil Industries, Inc., in the producing area of Panhandle Field, Gray and Carson Counties, Texas. The Notices of Change were dated June 8, 1960, and June 9, 1960, and the filings were designated Supplement No. 11 to Phillips' FPC Gas Rate Schedule No. 183 and Supplement No. 5 to Phillips' FPC Gas Rate Schedule No. 288, and proposed an effective date of June 10, 1960. The changes reflect decreases of 0.4461 cents from 11.7518 cents to 11.3057 cents per Mcf, at a pressure base of 14.65 psia, based upon price redetermination provisions contained in Phillips' contracts of sale dated April 1, 1950, and September 18, 1956. Said contracts provide for prices equal to the current market price being paid at the wellhead for sweet gas produced in the Texas Panhandle Field, as determined by the Railroad Commission of Texas. Such determinations are made twice a year by the Texas Railroad Commission and Phillips has been filing rate changes in accordance with such determinations. A determination was made on November 16, 1959, for a price of 11.7518¢ per Mcf for sweet gas. Phillips filed for such prices on December 9, 1959, and the proposed rates were suspended in Docket No. G-20603 until June 9, 1960. The requisite motion to make the rates effective was filed on June 1, 1960. The latest determination by the Texas Railroad Commission was made on May 16, 1960, and is for a price of 11.3075¢ per Mcf for sweet gas. This is a decrease of 0.4661¢ per Mcf from the previously determined rate of 11.7518¢ per Mcf. The reasons for the decrease in the weighted average price have not been stated.

The proposed changes may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of Phillips proposed changes, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

(2) It is necessary and proper in carrying out the provisions of the Natural Gas Act that the above-designated supplements be allowed to take effect subject to refund upon the timely filing of an agreement and undertaking, as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and the regulations under the Natural Gas Act (18 CFR Ch. I) a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed decreased rates and charges contained in Supplement Nos. 11 and 5 to Phillips' FPC Gas Rate Schedule Nos. 183 and 288.

(B) Pending a hearing and decision thereon, the above-designated supplements are hereby suspended and the use thereof deferred until July 12, 1960, and until such further time as they are

made effective in the matter prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Supplement Nos. 11 and 5 to Phillips' FPC Gas Rate Schedule Nos. 183 and 288 shall be effective as of July 12, 1960: *Provided*, That within 20 days from the date of this order, Phillips shall execute and file under Docket No. RI60-475 with the Secretary of the Commission an agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and Section 154.102 of the Regulations thereunder (prescribed by Order No. 215 and Order No. 215A). The agreement and undertaking shall be signed by a responsible officer of Phillips, shall be attested, and shall be accompanied by proper authorization from the board of directors and by a certificate showing service of copies upon all purchasers under the rate schedule involved. Unless Phillips is advised to the contrary within 15 days after the filing of such agreement and undertaking, it shall be deemed to have been accepted for filing.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.37(f)) on or before August 22, 1960.

By the Commission (Commissioner Kline dissenting).

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-6571; Filed, July 14, 1960;
8:46 a.m.]

[Docket No. RI60-435]

UNION PRODUCING CO.

Order Providing for Hearing on Suspension of Proposed Changes in Rates

JULY 8, 1960.

In the order providing for hearing on and suspension of proposed changes in rates, issued June 24, 1960, and published in the FEDERAL REGISTER on July 1, 1960 (25 F.R. 6226-27), the date "January 1, 1961" set forth in ordering clause (B) should be corrected to read "December 1, 1960."

J. H. GUTRIDE,
Secretary.

[F.R. Doc. 60-6572; Filed, July 14, 1960;
8:46 a.m.]

[Docket Nos. RI60-97, RI60-426]

W. A. RICHARDSON OIL CO. ET AL.

Order Accepting Rate Tender for Filing, Providing for Hearing and Suspending Proposed Change in Rate and Terminating Proceeding, in Part

JULY 7, 1960.

In the matter of W. A. Richardson Oil Company, et al., Docket No. RI60-97;

McCarrick, Gouger & Mitchell, et al.,
Docket No. RI60-426.

In the order accepting rate tender for filing, providing for hearing and suspending proposed change in rate and terminating proceeding, in part, issued June 22, 1960, and published in the FEDERAL REGISTER on June 28, 1960 (25 F.R. 5954), in ordering clause (C) "Supplement No. 2" should be corrected to read "Supplement No. 1 to McCarrick, Gouger & Mitchell, et al. FPC Gas Rate Schedule No. 2."

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-6573; Filed, July 14, 1960;
8:46 a.m.]

[Docket No. CP60-39]

NORTHERN NATURAL GAS CO.

Notice of Application and Date of Hearing

JUNE 16, 1960.

Take notice that Northern Natural Gas Company (Applicant), a Delaware corporation with a principal office in Omaha, Nebraska, filed, on February 18, 1960, an application in Docket No. CP60-39, for a certificate of public convenience and necessity authorizing the construction and operation of a 7000 horsepower compressor station to be located at the intake of Northern's existing "Spearman System" dehydration and gasoline plant located in section 23 of the A.B. & M. Survey in southwest Ochiltree County, Texas, subject to the jurisdiction of the Commission and more fully described in this application on file in the Commission and open to public inspection.

Applicant states the purpose of the compressor station is to permit Northern to take increased volumes of gas under existing and new gas purchase contracts in the North Hansford and Lips producing areas of Hansford, Ochiltree and Roberts counties.

Applicant proposes to install other facilities in addition to the compressor facilities. Applicant intends to augment the present Spearman Plant dehydration and gasoline capacity, to loop certain field lines, to construct new field lines and to replace thirty-eight and a quarter miles of existing 4-, 6-, 8-, and 10-inch field lines. The looping or extending of existing pipe will entail construction of nearly forty-one miles of 6-, 8-, 10-, 12-, and 26-inch field lines. Most of the proposed pipeline is in the larger sizes.

Applicant states the estimated cost of facilities to be:

Compressor station (7000 H.P.)	\$2,685,200
40.8 miles of field lines 6" to 26"	1,746,900
Dehydration plant addition	174,000
Hydrocarbon extraction, addition	436,900
Total	5,043,000
Interest and overhead	201,700
	5,244,700
Cost to remove 38.3 miles of field lines 4" to 10"	66,435

Estimated cost before salvage-- \$5,311,135
Salvage—field lines----- 417,627

Total estimated net
cost ----- 4,893,508

Applicant further states that the funds required for the additional facilities will be obtained from current cash or cash generated from operations.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

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 on July 26, 1960, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before July 15, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-6598; Filed, July 14, 1960;
8:49 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24W-2137]

NORTH AMERICAN PROPERTIES CORP.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

I. North American Properties Corporation (issuer), a Delaware corporation, filed with the Commission on April 1, 1958 a notification on Form 1-A and an offering circular relating to a proposed offering of 40,000 units at 51 cents per unit, consisting of 5 Class A shares and 1 Class B share, or a total of 200,000 shares of Class A 10 cents par value stock and 40,000 shares of Class B one cent par value stock, for an aggregate offering of \$20,400 and subsequently filed an amendment thereto increasing the offering to 80,000 units at 51 cents

a unit for an aggregate total offering of \$40,800, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) and Regulation A promulgated thereunder.

II. The Commission has reasonable cause to believe that:

A. The exemption under Regulation A is unavailable in that John L. de Lyra, an undisclosed affiliate and promoter of the issuer, is subject to an injunction issued by a court of competent jurisdiction enjoining him from further violations of the registration and anti-fraud provisions of the Securities Act of 1933, as amended.

B. The terms and conditions of Regulation A have not been complied with in that:

1. The notification fails to set forth the full name and complete address of each affiliate of the issuer as required by Item 2(b) thereof;

2. The notification fails to set forth the full name and complete address of each promoter as required by Item 3(c) thereof.

C. The notification and offering circular contain untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The failure to disclose the name and address of a promoter who was in a controlling position;

2. The failure to disclose the direct and indirect interests of each officer, director, and promoter of the issuer;

3. The statement that the address of North American Properties Corporation was 1700 Walnut Street, Philadelphia, Pa.;

4. The failure to disclose that named officers and directors were mere fronts for the undisclosed promoter;

5. The statement that principal activities of the issuer would be in Philadelphia and neighboring cities;

6. The statement that 10,000 shares of North American Properties Corporation Class A stock and 2,000 shares of Class B stock were sold to officers and directors, and that \$1,020 was paid in cash therefor;

7. The statement that the address listed for the alleged officers and directors, Theodore Kempinski and Joan Pierce was 2225 S. 17th Street or 2245 S. 17th Street, Philadelphia, Pa.;

8. The statement that North American Properties Corporation had no properties under serious consideration at the time the offering circular was amended, April 30, 1958;

9. The statement in the Balance Sheet dated March 24, 1958 that 10,000 shares of the Class A stock and 2,000 shares of Class B stock had been sold for \$1,020 and that such amount had been received.

D. The report of sales on Form 2-A contains untrue statements of material facts and omits to state material facts necessary in order to make the state-

ments made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The statement that the issuer had commenced its offering on May 23, 1958 and completed it on May 26, 1958;

2. The statement that the company had received \$40,800 from the sale of 80,000 units, and had on hand "cash proceeds of \$40,699.81";

3. The statement that the issue "has been closed and that the entire issue has been sold";

4. The statement that "no brokers, dealers, or underwriters, were engaged to dispose of the issue, nor did any participate in the distribution of the issue".

E. The offering was made in violation of section 17 of the Securities Act of 1933, as amended.

III. *It is ordered*, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission, for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will promptly be given by the Commission.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 60-6575; Filed, July 14, 1960;
8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 348]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 12, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. 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 63228. By order of July 11, 1960, the Transfer Board approved the transfer to Elmer Kisgen, 1904 Quint Ave., Carroll, Iowa, of Certificate No. MC 62007, issued February 27, 1959, to Edmund Schroeder, 310 W. First St., Carroll, Iowa, authorizing the transportation of: Livestock and agricultural commodities, from Maple River over specified routes to Omaha, Nebr., serving intermediate and off-route points within eight miles of Maple River; and livestock, feed, agricultural implements, agricultural implement parts, lubricating oil and grease in containers, and building materials, from Omaha, Nebr., over specified routes to Maple River, Iowa, serving intermediate and off-route points within eight miles of Maple River.

No. MC-FC 63253. By order of July 11, 1960, the Transfer Board approved the transfer to Orbit Transportation Company, Incorporated, Houston, Texas, of a portion of Certificate No. MC 119703, issued June 8, 1960, to Steel Haulers, Inc., Prairie Village, Kans., authorizing the transportation of: Steel articles and such materials as are used or useful on highway construction projects (except cement, rock, sand and gravel), from Houston, Tex., to points in Arkansas, Louisiana, and Oklahoma within 400 miles of Houston, Tex. James F. Miller, 500 Board of Trade, Tenth and Wyandotte, Kansas City 5, Mo., for applicants.

No. MC-FC 63316. By order of July 11, 1960, the Transfer Board approved the transfer to LaGrange-LaGrange Park Transit Company, Inc., La Grange Park, Ill., of the operating rights authorized to American Coach Company, Inc., Glenview, Ill., in Certificates Nos. MC 113576 Sub 1 and MC 113576 Sub 3, issued May 1, 1953, and February 7, 1955, authorizing the transportation of passengers and their baggage, and express, newspapers, and mail, in the same vehicle with passengers, over regular routes to, from, and between specified points in Wisconsin and Illinois. Louis R. Gentili, 855 First National Bank Building, Chicago 3, Ill., for applicants.

No. MC-FC 63334. By order of July 11, 1960, the Transfer Board approved the transfer to Valley Milling Company, Inc., of that portion of the operating rights authorized to Piedmont Mountain Freight Lines, Inc., North Wilkesboro, N.C., in Certificate No. MC 787 Sub 10, issued December 18, 1959, authorizing the transportation of lumber, over irregular routes, from points in Alleghany, and Wilkes Counties, N.C., and in Wythe, and Bland Counties, Va., to points in Maryland, and West Virginia. E. James Moore, 209 Ninth Street, North Wilkesboro, N.C., for applicants.

No. MC-FC 63389. By order of July 11, 1960, the Transfer Board approved the transfer to Grovis O. Donald, doing business as Donald's 1241 Chaco, Farmington, New Mexico, of a Certificate in

No. MC 114112 Sub 2, issued October 9, 1957, to Edward D. Shaulis, 1518 Santiago, Farmington, New Mexico, which authorizes the transportation of diamond core barrels and bits, and tools used in connection therewith, from, to, and between specified points in Colorado, Nebraska, Wyoming, Utah, New Mexico, and Arizona.

[SEAL]

HAROLD D. McCoy,
Secretary.

[F.R. Doc. 60-6582; Filed, July 14, 1960;
8:47 a.m.]

[Revised S.O. 562, Taylor's I.C.C. Order 121]

LONG ISLAND RAIL ROAD CO.

Diversion or Rerouting of Traffic

In the opinion of Charles W. Taylor, Agent, The Long Island Rail Road Company is unable to transport traffic routed over its lines, because of work stoppage.

It is ordered, That:

(a) Rerouting traffic: The Long Island Rail Road Company and its connections being unable to transport traffic in accordance with shippers' routing because of work stoppage, are hereby authorized to divert such traffic over any available route to expedite the movement, regardless of the routing shown on the waybill. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) Concurrence of receiving roads to be obtained: The railroad or railroads desiring to divert or reroute traffic under this order shall confer with the proper transportation officer of the railroad or railroads to which such traffic is to be diverted or rerouted, and shall receive the concurrence of such other railroads before the rerouting or diversion is ordered.

(c) Notification to shippers: The carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipments on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with the pertinent authority conferred upon it by the Interstate Commerce Act.

(f) Effective date: This order shall become effective at 9:00 a.m., July 10, 1960.

(g) Expiration date: This order shall expire at 11:59 p.m., July 20, 1960, unless otherwise modified, changed, suspended or annulled.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., July 11, 1960.

INTERSTATE COMMERCE
COMMISSION,
CHARLES W. TAYLOR,
Agent.

[F.R. Doc. 60-6583; Filed, July 14, 1960;
8:47 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

LEARNER EMPLOYMENT CERTIFICATES

Issuance to Various Industries

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), and Administrative Order No. 524 (24 F.R. 9274) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

American Uniform Co., North Parker Street, Cleveland, Tenn.; effective 6-11-60 to 6-10-61 (washable service apparel).

Angelica Uniform Co., Summersville, Mo.; effective 6-12-60 to 6-11-61 (women's washable service apparel; men's washable dental smocks).

Brookside Industries, Inc., Reidsville, N.C.; effective 6-19-60 to 6-18-61 (men's sport, uniform and dress shirts).

Clinton Garment Manufacturing Co., Inc., Clinton, Ky.; effective 6-8-60 to 6-7-61 (men's and boys' parka jackets, etc.).

Edinburg Manufacturing Corp., Edinburg, Va.; effective 6-8-60 to 6-7-61 (infants' garments).

Joseph Greenberg, Inc., 133 North Poplar Street, Elizabethtown, Pa.; effective 7-1-60 to 6-30-61 (children's dresses).

Guin Garment Corp., Guin, Ala.; effective 6-8-60 to 6-7-61 (boys' shirts).

Helena Garment Co., Bobbie Brooke Square, West Helena, Ark.; effective 6-23-60 to 6-22-61 (ladies' dresses and co-ordinates). Jamestown Shirt Corp., Jamestown, Tenn.; effective 7-3-60 to 7-2-61 (men's sport shirts).

Kingston Dresses, Inc., Highway 64, Fayetteville, Tenn.; effective 6-7-60 to 6-6-61 (misses' and junior dresses).

The Kym Co., Jackson, Ga.; effective 6-16-60 to 6-15-61 (men's single pants).

Lock Haven Garment Co., 921 Third Street, Lock Haven, Pa.; effective 6-13-60 to 6-12-61 (ladies' sportswear, blouses).

Loma Manufacturing Co., Inc., 101 South Main Street, Winchester, Ky.; effective 6-16-60 to 6-15-61 (ladies' blouses; men's shirts).

Norris Manufacturing Co., Taylors, S.C.; effective 6-10-60 to 6-9-61 (men's, boys' and ladies' sport shirts).

Phillips-Van Heusen Corp., Barnesboro, Pa.; effective 6-26-60 to 6-25-61 (sport shirts).

Publix Shirt Corp., Myerstown, Pa.; effective 6-16-60 to 6-15-61 (men's and boys' cotton dress shirts).

Rival Dress Co., Inc., 110 West Blain Street, McAdoo, Pa.; effective 6-16-60 to 6-15-61 (ladies' dresses).

Williamson-Dickie Manufacturing Co., McAllen, Tex.; effective 6-17-60 to 6-16-61 (men's and boys' cotton pants).

Wilson County Garment Co., Watertown, Tenn.; effective 6-16-60 to 6-15-61 (men's sport shirts).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Angelica Uniform Co., Eminence, Mo.; effective 6-9-60 to 6-8-61; 10 learners (men's and women's washable service uniforms).

Angelica Uniform Co., Marquand, Mo.; effective 6-18-60 to 6-17-61; 10 learners (men's cotton washable pants).

Apparel Manufacturing Corp., 112 South Center Street, Mebane, N.C.; effective 6-26-60 to 6-25-61; 10 learners (children's dresses).

Brooks-Seas Manufacturing Co., 151-53 Park Avenue, Wilkes-Barre, Pa.; effective 6-15-60 to 6-14-61; 10 learners (children's dresses).

Central Apparel Corp., 2409 North Main Street, Danville, Va.; effective 6-16-60 to 6-15-61; 10 learners (children's wear).

Freeland Dress Co., Inc., 721 Birkbeck Street, Freeland, Pa.; effective 6-16-60 to 6-15-61; 10 learners (children's dresses).

Gross Galesburg Co., Chariton, Iowa; effective 6-25-60 to 6-24-61; 10 learners (men's work pants and shirts).

Hartwell Manufacturing Co., Inc., Depot Street, Hartwell, Ga.; effective 6-17-60 to 6-16-61; 10 learners (men's and boys' cotton work trousers).

Montgomery Sylvania Manufacturing Co., Inc., 22 East Houston Avenue, Montgomery, Pa.; effective 6-13-60 to 6-12-61; 10 learners (ladies' sportswear).

Nahas of Texas, Inc., 10 Second Street SW., Paris, Tex.; effective 6-29-60 to 6-28-61; 10 learners (children's lingerie and blouses).

Polskin Bros., Inc., 1126 North Avenue, Plainfield, N.J.; effective 6-17-60 to 6-16-61; 10 learners (women's sportswear).

Roseboro Manufacturing Co., Roseboro, N.C.; effective 6-13-60 to 6-12-61; five learners (women's cotton dresses).

Wear Well Garment Co., Inc., First No. and German Street, New Ulm, Minn.; effective 6-18-60 to 6-17-61; 10 learners. Learners may not be employed at special minimum wage rates in the production of separate skirts (ladies' slacks).

Winett, Inc., 3059 North 27th Street, Kansas City, Kans.; effective 6-9-60 to 6-8-61; 10 learners (infants' diaper sets and sportswear).

Jack Winter Sportswear, Inc., Warren, Ark.; effective 6-9-60 to 6-8-61; 10 learners (ladies' sportswear).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Blue Bell, Inc., Coalgate, Okla.; effective 6-10-60 to 12-9-60; 20 learners (men's and boys' work pants; ladies' and girls' frontier pants).

Central Apparel Corp., 2409 North Main Street, Danville, Va.; effective 6-9-60 to 12-8-60; 25 learners (children's wear).

Cluett, Peabody and Co., Inc., 1221 West Third Street, Williamsport, Pa.; effective 6-9-60 to 12-7-60; 50 learners (supplemental certificate) (sport shirts).

Cluett, Peabody and Co., Inc., 1221 West Third Street, Williamsport, Pa.; effective 6-8-60 to 12-7-60; 50 learners (sport shirts).

Guin Garment Corp., Guin, Ala.; effective 6-8-60 to 12-7-60; 10 learners (boys' shirts). Hicks-Hayward Co., Del Rio, Tex.; effective 6-15-60 to 12-14-60; 25 learners (work clothing and wash slacks).

Lock Haven Garment Co., 921 Third Street, Lock Haven, Pa.; effective 6-22-60 to 12-21-60; 15 learners (ladies' sportswear).

Martini Garment Co., Huntsville, Ark.; effective 6-8-60 to 12-7-60; 20 learners (men's wash pants).

Henry I. Siegel Co., Inc., Hohenwald, Tenn.; effective 6-9-60 to 12-8-60; 30 learners (men's and boys' single pants).

Henry I. Siegel Co., Inc., South Fulton, Tenn.; effective 6-15-60 to 12-14-60; 60 learners (men's and boys' single pants).

Vandalla Garment Co., Vandalia, Mo.; effective 6-1-60 to 11-30-60; 50 learners (ladies' dresses).

Jack Winter Sportswear, Inc., Warren Ark.; effective 6-9-60 to 12-8-60; 25 learners (ladies' sportswear).

Yunker Manufacturing Co., Inc., Parkersburg, W. Va.; effective 6-20-60 to 12-19-60; 45 learners (infants' cotton apparel).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.60 to 522.66, as amended).

The Boss Manufacturing Co., Onelda, Tenn.; effective 5-23-60 to 5-22-61; 10 percent of the total number of machine stitchers for normal labor turnover purposes (corrected certificate) (work gloves).

Ideal Glove Co., Inc., Maben, Miss.; effective 6-15-60 to 6-14-61; 5 learners for normal labor turnover purposes (work gloves).

Lambert Manufacturing Co., Inc., Plant No. 3, 1006 Washington Street, Chillicothe, Mo.; effective 6-7-60 to 6-6-61; 10 learners for normal labor turnover purposes (leather and leather combination work gloves).

Riegel Textile Corp., Brundidge, Ala.; effective 6-6-60 to 6-5-61; 10 percent of the total number of machine stitchers for normal labor turnover purposes (corrected certificate) (work gloves).

Riegel Textile Corp., Greenville, Ala.; effective 6-8-60 to 6-7-61; 10 percent of the total number of machine stitchers for normal labor turnover purposes (corrected certificate) (work gloves).

Southern Glove Manufacturing Co., Inc., Conover, N.C.; effective 5-26-60 to 5-25-61; 10 percent of the total number of machine stitchers for normal labor turnover purposes (cotton flannel and jersey work gloves) (corrected certificate).

Western Glove Co., Orting, Wash.; effective 6-7-60 to 6-6-61; six learners for normal labor turnover purposes (work gloves).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.44, as amended).

C. W. Anderson Hosiery Co., East Carolina Avenue, Clinton, S.C.; effective 6-16-60 to 6-15-61; five learners for normal labor turnover purposes (dye and finish ladies' hosiery).
Durham Hosiery Mills, Plant No. 14, 109 South Corcoran Street, Durham, N.C.; effective 6-21-60 to 12-20-60; 30 learners for plant expansion purposes (full-fashioned, seamless).

Magnet Mills, Inc., 308 Cullom Street, Clinton, Tenn.; effective 6-20-60 to 12-19-60; 50 learners for plant expansion purposes (seamless, full-fashioned).

Outlook Manufacturing Co., Belmont, N.C.; effective 6-7-60 to 12-6-60; 10 learners for plant expansion purposes (seamless).

W. Y. Shugart and Sons, Inc., Fort Payne, Ala.; effective 6-13-60 to 6-12-61; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

Chalmers Knitting Co., Inc., Amsterdam, N.Y.; effective 6-9-60 to 6-8-61; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's, women's and children's underwear; men's handkerchiefs; women's sportswear).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

R. K. Barter Canneries, Inc., Stonington, Maine; effective 6-10-60 to 12-9-60; 10 percent of the total number of factory production workers for normal labor turnover purposes in the occupation of sardine packer for a learning period of 160 hours at the rates of at least 85 cents an hour for the first 80 hours and not less than 90 cents an hour for the remaining 80 hours (sardines).

Newey Brothers, Inc., East St. Johnsbury Road, St. Johnsbury, Vt.; effective 6-14-60 to 12-13-60; 5 learners for normal labor turnover purposes in the occupation of sewing machine operator for a learning period of 240 hours at the rates of at least 85 cents an hour for the first 120 hours and 90 cents an hour for the remaining 120 hours (cloth tapes sewn with nickelled brass hooks and eyes for corset and brassiere trade).

William Underwood Co., Yarmouth, Maine; effective 6-10-60 to 12-9-60; 10 percent of the total number of factory production workers for normal labor turnover purposes in the occupation of sardine packer for a learning period of 160 hours at the rates of at least 85 cents an hour for the first 80 hours and not less than 90 cents an hour for the remaining 80 hours (canned fish).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

Angela Manufacturing Co., Inc., Guayama, P.R.; effective 5-16-60 to 3-31-61; 13 learners for normal labor turnover purposes in the occupations of: (1) sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours; (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 70 cents an hour (replacement certificate) (brassieres).

Beatrice Needle Craft, Inc., Malecon Road Plant, Mayaguez, P.R.; effective 5-16-60 to

4-22-61; 20 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (brassieres).

Beatrice Needle Craft, Inc., 60 Comercio Street, Mayaguez, P.R.; effective 5-16-60 to 10-7-60; 23 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (brassieres).

Beatrice Needle Craft, Inc., Ponce, P.R.; effective 5-16-60 to 5-4-61; 25 learners for normal labor turnover purposes in the occupations of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (brassieres and girdles).

Catherine Needle Craft, Inc., 60 Comercio Street, Mayaguez, P.R.; effective 5-16-60 to 4-21-61; 15 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (brassieres).

Complex Undergarment Corporation, Coamo, P.R.; effective 5-9-60 to 10-10-60; 60 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 53 cents an hour for the first 240 hours and 62 cents an hour for the remaining 240 hours (replacement certificate) (ladies' underwear).

Delia Mejia, Inc., Luna No. 53 Altos, Ponce, P.R.; effective 5-23-60 to 11-22-60; 30 learners for plant expansion purposes in the occupations of: (1) sewing machine operators, and final pressers, each for a learning period of 480 hours at the rates of 49 cents an hour for the first 240 hours and 57 cents an hour for the remaining 240 hours; (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 49 cents an hour (children's dresses).

Juana Diaz Co., Inc., Juana Diaz, P.R.; effective 5-16-60 to 7-12-60; 15 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (brassieres).

Juana Diaz Co., Inc., Cuatro Calles Street No. 75, Ponce, P.R.; effective 5-16-60 to 9-15-60; 15 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (brassieres) (replacement certificate).

Juana Diaz Co., Inc., Cuatro Calles Street No. 75, Ponce, P.R.; effective 5-16-60 to 3-15-61; 10 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (brassieres).

Flamingo Brassieres Inc., 513 Carolina Street, Hato Rey, P.R.; effective 5-16-60 to 11-15-60; 30 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (brassieres).

Gibson Caribe, Inc., Luquillo, P.R.; effective 5-11-60 to 11-10-60; 15 learners for plant expansion purposes in the occupations of

furnace operators, power press operators, powder mixer, and assembly, each for a learning period of 480 hours at the rates of 80 cents an hour for the first 240 hours and 90 cents an hour for the remaining 240 hours (electrical contacts).

The Henry Corp., Roosevelt, P.R.; effective 5-16-60 to 7-10-60; 15 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (brassieres).

Linda Bra, Inc., Aguas Buenas, P.R.; effective 5-16-60 to 7-28-60; 13 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (brassieres).

Makress, Inc., 908 Miraflores Street, San-turce, P.R.; effective 5-9-60 to 5-8-61; 10 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours to be paid the special minimum wage rates of 60 cents an hour for the first 320 hours and 70 cents an hour for the remaining 160 hours effective from May 9, 1960 to May 15, 1960; effective from May 16, 1960, the special minimum wage rates to be 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (girdles, corsets and allied products).

Newport Brassiere Co., Inc., Caparra Heights, P.R.; effective 5-16-60 to 7-13-60; 17 learners for normal labor turnover purposes in the occupations of: (1) sewing machine operators, for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours; (2) final inspection of fully assembled garments, for a learning period of 160 hours at the rate of 70 cents an hour (replacement certificate) (brassieres).

Paula Brassiere Co., Inc., Caguas, P.R.; effective 5-16-60 to 5-31-60; 14 learners for normal labor turnover purposes in the occupation of power sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (brassieres).

Sally Manufacturing Corp., Juana Diaz, P.R.; effective 5-16-60 to 9-13-60; 30 learners for plant expansion purposes in the occupations of: (1) sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours; (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 70 cents an hour (replacement certificate) (brassieres).

Symphony Brassiere Co., Inc., 425 Carpenter Rd., Hato Rey, P.R.; effective 5-16-60 to 5-31-60; 30 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (brassieres).

Wayne Industries, Inc., Catano, P.R.; effective 5-16-60 to 4-20-61; 28 learners for normal labor turnover purposes in the occupations of sewing machine operators, and looping machine operators, each for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (girdles).

Wayne Industries, Inc., Catano, P.R.; effective 5-16-60 to 7-20-60; 30 learners for plant expansion purposes in the occupations of looping, and sewing, each for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents

an hour for the remaining 160 hours (replacement certificate) (girdles).

Youthful Corp., 318 Carpenter Road, Hato Rey, P.R.; effective 5-16-60 to 6-10-60; 5 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (replacement certificate) (girdles).

Each learner certificate has been issued upon the representations of the employer which, among other things, were

that employment of learners at sub-minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration

thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Signed at Washington, D.C., this 24th day of June 1960.

ROSE G. ROSOFSKY,
Authorized Representative of the
Administrator.

[F.R. Doc. 60-6514; Filed, July 13, 1960;
8:46 a.m.]

Title 2—THE CONGRESS

ACTS APPROVED BY THE PRESIDENT

EDITORIAL NOTE: During the current recess of the Congress a listing of public laws approved by the President will appear in the FEDERAL REGISTER under Title 2—The Congress.

Approved July 12, 1960

- S.J. Res. 41-----Public Law 86-610
A Joint Resolution to establish a National Institute for International Health and Medical Research, to provide for international cooperation in health research, research training, and research planning, and for other purposes.
- S. 747-----Public Law 86-611
An Act to provide for the conveyance of certain lands which are a part of the Des Plaines Public Hunting and Refuge Area and the Joliet Arsenal Military Reservation, located in Will County, Illinois, to the State of Illinois.
- S. 1283-----Public Law 86-613
An Act to regulate the interstate distribution and sale of packages of hazardous substances intended or suitable for household use.
- S. 1502-----Public Law 86-612
An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system.
- S. 1509-----Public Law 86-615
An Act to amend the Interstate Commerce Act, as amended, to provide "grandfather" rights for certain motor carriers and freight forwarders operating in interstate or foreign commerce within Alaska and between Alaska and the other States of the United States, and for certain water carriers operating within Alaska, to provide "grandfather" rights for certain freight forwarders operating between Hawaii and the other States of the United States, and for other purposes.
- S. 1795-----Public Law 86-616
An Act relating to the promotion and separation of certain officers of the regular components of the armed forces.
- S. 1965-----Public Law 86-619
An Act to make uniform provisions of law with respect to the terms of office of the members of certain regulatory agencies.
- S. 2197-----Public Law 86-618
An Act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act so as to authorize the use of suitable color additives in or on foods, drugs, and cosmetics, in accordance with regulations prescribing the conditions (including maximum tolerances) under which such additives may be safely used.

- S. 2857-----Public Law 86-622
An Act to amend the Civil Service Retirement Act so as to provide for disposition of contributions in the case of annuitants whose length of service exceeds the amount necessary to provide the maximum annuity allowable under such Act, and for other purposes.
- S. 3179-----Public Law 86-617
An Act to increase the authorization for appropriations for construction of facilities for the Gorgas Memorial Laboratory.
- S. 3545-----Public Law 86-620
An Act to amend section 4 of the Act of January 21, 1929 (48 U.S.C. 354a(c)), and for other purposes.
- H.J. Res. 627-----Public Law 86-614
A Joint Resolution to authorize appropriations incident to United States participation in the International Bureau for the Protection of Industrial Property.
- H.R. 1157-----Public Law 86-629
An Act to provide for promotion of economic and social development in the Ryukyu Islands.
- H.R. 4049-----Public Law 86-627
An Act to amend the Federal Aviation Act of 1958 in order to authorize free or reduced-rate transportation for certain additional persons.
- H.R. 4346-----Public Law 86-621
An Act to amend the Bankruptcy Act to limit the use of false financial statements as a bar to discharge.
- H.R. 4386-----Public Law 86-634
An Act to amend title 18 of the United States Code to make it unlawful to destroy, deface, or remove certain boundary markers on Indian reservations, and to trespass on Indian reservations to hunt, fish, or trap.
- H.R. 5040-----Public Law 86-632
An Act to amend and clarify the re-employment provisions of the Universal Military Training and Service Act, and for other purposes.
- H.R. 5098-----Public Law 86-640
An Act to provide for the application and disposition of net revenues from the power development on the Grand Valley Federal reclamation project, Colorado.
- H.R. 6179-----Public Law 86-623
An Act to grant the right, title, and interest of the United States in and to certain lands to the city of Crawford, Nebraska.
- H.R. 7726-----Public Law 86-631
An Act to amend section 678 of the Bankruptcy Act (11 U.S.C. 1078) relating to the transmission of petitions, notices, orders, and other papers to the Secretary of the Treasury in Chapter XIII proceedings.
- H.R. 7965-----Public Law 86-639
An Act to amend section 612 of title 38, United States Code, to authorize outpatient treatment incident to authorized hospital care for certain veterans.

- H.R. 8295-----Public Law 86-636
An Act to authorize the transfer to the Navajo Tribe of irrigation project works on the Navajo Reservation, and for other purposes.
- H.R. 9702-----Public Law 86-641
An Act to amend section 2771 of title 10, United States Code, to authorize certain payments of deceased members' final accounts without the necessity of settlement by General Accounting Office.
- H.R. 10068-----Public Law 86-638
An Act to amend section 303 of the Career Compensation Act of 1949, to authorize travel and transportation allowances, and transportation of dependents and of baggage and household effects to the homes of their selection for certain members of the uniformed services, and for other purposes.
- H.R. 10500-----Public Law 86-635
An Act to amend the Career Compensation Act of 1949 with respect to incentive pay for certain submarine service.
- H.R. 10596-----Public Law 86-625
An Act to change the method of payment of Federal aid to State or territorial homes for the support of disabled soldiers, sailors, airmen, and marines of the United States.
- H.R. 11389-----Public Law 86-642
An Act making appropriations for the Executive Office of the President and sundry general Government agencies for the fiscal year ending June 30, 1961, and for other purposes.
- H.R. 11602-----Public Law 86-624
An Act to amend certain laws of the United States in light of the admission of the State of Hawaii into the Union, and for other purposes.
- H.R. 11776-----Public Law 86-626
An Act making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, and offices, for the fiscal year ending June 30, 1961, and for other purposes.
- H.R. 12200-----Public Law 86-633
An Act to amend title 10, United States Code, to authorize reduction in enlisted grade upon approval of certain court-martial sentences.
- H.R. 12231-----Public Law 86-630
An Act making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1961, and for other purposes.
- H.R. 12232-----Public Law 86-628
An Act making appropriations for the Legislative Branch for the fiscal year ending June 30, 1961, and for other purposes.
- H.R. 12570-----Public Law 86-637
An Act to amend section 303(c) of the Career Compensation Act of 1949 by imposing certain limitations on the transportation of household effects.

CUMULATIVE CODIFICATION GUIDE—JULY

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during July.

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Announcement**CFR SUPPLEMENTS**

(As of January 1, 1960)

The following Supplements are now available:

Title 26, Parts 222-299-----	\$1.75
Titles 40-41, Revised-----	\$0.70
Title 44, Revised-----	\$3.25
General Index-----	\$1.00

Previously announced: Title 3 (\$0.60); Titles 4-5 (\$1.00); Title 7, Parts 1-50 (\$0.45); Parts 51-52 (\$0.45); Parts 53-209 (\$0.40); Parts 210-399, Revised (\$4.00); Parts 400-899, Revised, (\$5.50); Parts 900-959 (\$1.50); Part 960 to End (\$2.50); Title 8 (\$0.40); Title 9 (\$0.35); Titles 10-13 (\$0.50); Title 14, Parts 1-39 (\$0.65); Parts 40-399 (\$0.75); Part 400 to End (\$1.75); Title 15 (\$1.25); Title 16, Revised (\$6.50); Title 17 (\$0.75); Title 18 (\$0.55); Title 19 (\$1.00); Title 20 (\$1.25); Title 21 (\$1.50); Titles 22-23 (\$0.45); Title 24 (\$0.45); Title 25 (\$0.45); Title 26 (1939), Parts 1-79 (\$0.40); Parts 80-169 (\$0.35); Parts 170-182 (\$0.35); Parts 300 to End (\$0.40); Title 26, Part 1 (§§ 1.01-1.499) (\$1.75); Parts 1 (§ 1.500 to End)-19 (\$2.25); Parts 20-169 (\$1.75); Parts 170-221 (\$2.25); Part 300 to End (\$1.25); Titles 28-29 (\$1.75); Titles 30-31 (\$0.50); Title 32, Parts 1-399 (\$2.00); Parts 400-699 (\$2.00); Parts 700-799 (\$1.00); Parts 800-999, Revised (\$3.75); Parts 1000-1099, Revised (\$6.50); Part 1100 to End (\$0.60); Title 33 (\$1.75); Title 35, Revised (\$3.50); Title 36, Revised (\$3.00); Title 37, Revised (\$3.50); Title 38 (\$1.00); Title 39 (\$1.50); Title 42, Revised (\$4.00); Title 43 (\$1.00); Title 46, Parts 1-145 (\$1.00); Parts 146-149, Revised (\$6.00); Parts 146-149 (1950 Supp. 1) (\$0.55); Part 150 to End (\$0.65); Title 47, Parts 1-29 (\$1.00); Part 30 to End (\$0.30); Title 49, Parts 1-70 (\$1.75); Parts 71-90 (\$1.00); Parts 91-164 (\$0.45); Part 165 to End (\$1.00); Title 50 (\$0.70).

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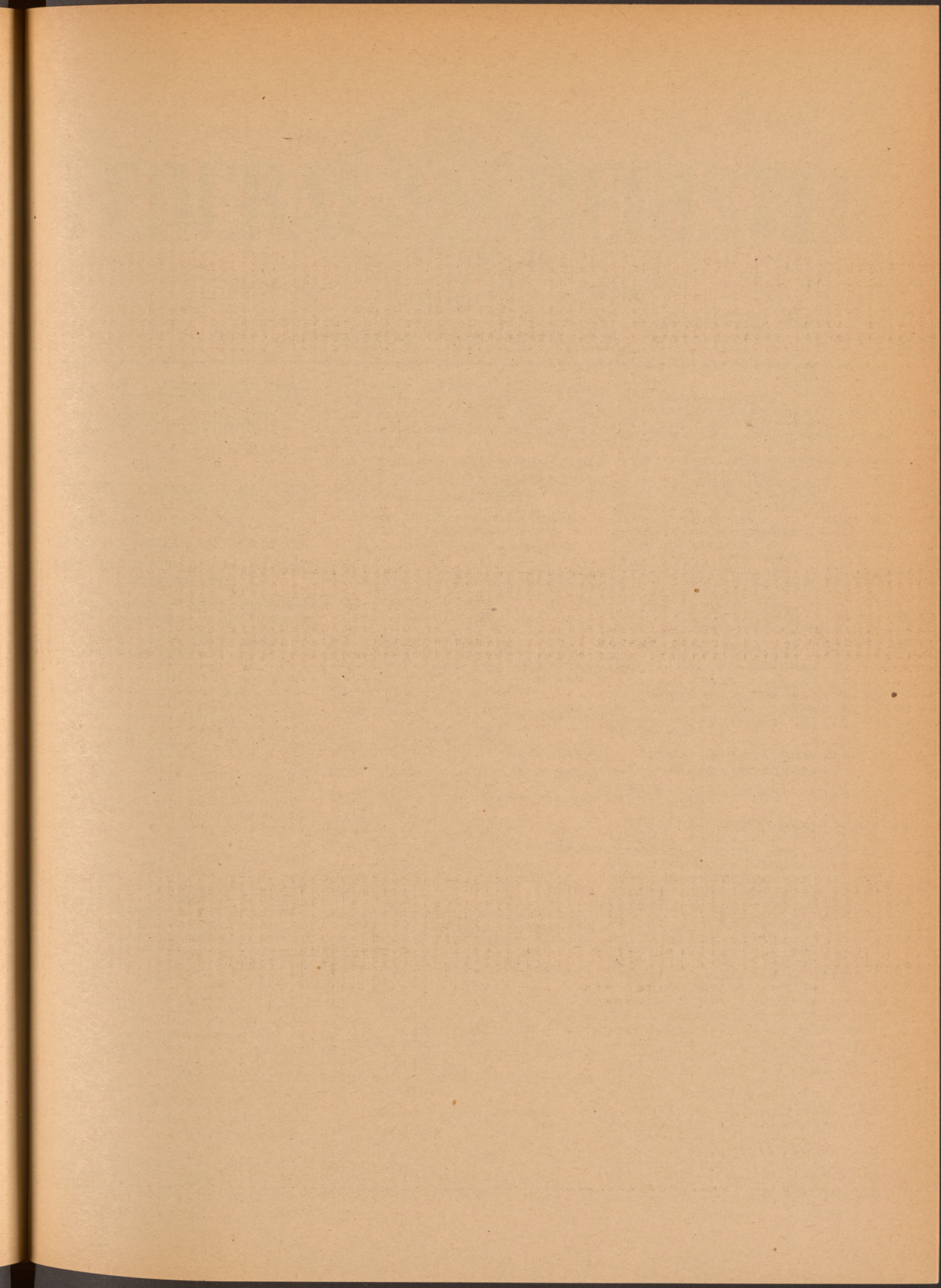
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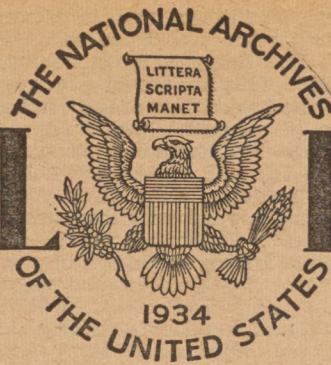
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PART II

FEDERAL REGISTER



VOLUME 25

NUMBER 137

Washington, Friday, July 15, 1960

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

PART 201—RULES OF PRACTICE

PART 202—INFORMAL AND OTHER PROCEDURES

PART 203—CONDUCT OF MEMBERS AND EMPLOYEES AND FORMER MEMBERS AND EMPLOYEES OF THE COMMISSION

Preamble. 1. Pursuant to the provisions of section 3 of the Administrative Procedure Act (5 U.S.C. 1002) the Securities and Exchange Commission is establishing an expanded Part 200, entitled "Organization, Conduct and Ethics, and Information and Requests." This part will include a revision of former Part 200, which related only to the organization of the Commission and submittals and requests, and will also include current information on the Commission's regulations concerning conduct of members and employees and former members and employees of the Commission, on its canons of ethics, and on its practices with respect to information and requests.

2. The Commission also has revised Part 201, its rules of practice, in the interest of providing for more efficient and expeditious conduct of and disposition of administrative proceedings before the Commission. The current revision is designed largely to clarify existing procedures, restate the rules in more logical sequence, eliminate obsolete and redundant provisions, and generally improve the administrative process. To give persons affected thereby full opportunity to become acquainted with the changes in Part 201, the revision will not become effective until October 1, 1960, except that § 201.24, relating to incorporation by reference, will not become effective until January 1, 1961.

3. The Commission has revised Part 202, dealing with informal and other procedures, to bring the part up-to-date.

4. Former Part 203, relating to conduct of members and employees and former members and employees of the Commission, has been superseded by Subparts B and C of Part 200.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

COMMISSION ORIGIN AND AUTHORITY

- Sec.
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200.2 Statutory functions.

GENERAL ORGANIZATION

- 200.10 The Commission.
200.11 Organizational structure.
200.12 Functional responsibilities.
200.13 The Secretary of the Commission.
200.14 Adviser to the Commission.
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200.16 Director of the Office of Opinion Writing.
200.17 The Executive Director.
200.18 Director of the Division of Corporation Finance.
200.19 Director of the Division of Trading and Exchanges.
200.20 Director of the Division of Corporate Regulation.
200.21 The General Counsel.
200.22 The Chief Accountant.
200.23 Director of the Division of Administrative Management.
200.24 The Regional Administrators.
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- 200.80 Information and requests.

AUTHORITY: §§ 200.01 to 200.80 issued under secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 77sss, 78w, 79t, 80a-37, 80b-11.

Subpart A—Organization and Program Management

§ 200.1 General statement and statutory authority.

The Securities and Exchange Commission was created in 1934 under the Securities Exchange Act. That Act transferred to the Commission the administration of the Securities Act of 1933, formerly administered by the Federal Trade Commission. Subsequent acts assigned to the Securities and Exchange Commission for administration are: Public Utility Holding Company Act of 1935, Trust Indenture Act of 1939, Investment Company Act of 1940, and Investment Advisers Act of 1940. By the terms of Chapter X of the Bankruptcy Act, as amended in 1938, the Commission serves under certain circumstances as adviser to United States District Courts in connection with reorganization proceedings for debtor corporations.

§ 200.2 Statutory functions.

Following are brief descriptions of the functions of the Commission under each of the statutes it administers:

(a) *Securities Act of 1933.* (1) Issuers of securities publicly offered for sale in interstate commerce or through the mails are required to file with the Commission

registration statements containing information about the issuer and the offering. Unless a registration statement is in effect with respect to such securities, it is unlawful to sell the securities in interstate commerce or through the mails. (There are certain limited exemptions, such as government securities, non-public offerings, and intrastate offerings.) The effectiveness of a registration statement may be refused or suspended if it contains material misstatements or omissions, thus barring sale of the securities until it is appropriately amended. Registration is not a finding of the Commission as to the accuracy of the facts disclosed; and it is not lawful so to represent. Moreover, registration of securities does not imply approval of the issue by the Commission or insure investors against loss in their purchase, but serves rather to make available to investors the issuer's statement of facts upon which investors may reach investment decisions.

(2) Persons responsible for filing false information with the Commission subject themselves to the risk of fine or imprisonment or both; and the issuing company, its directors and other officers, and the underwriters and dealers may be liable in damages to purchasers of registered securities if the disclosures in the registration statements and prospectus are materially defective. Also the statute contains general antifraud provisions that are not limited to registered securities. These provide a basis for suits by private parties, for injunctive actions by the Commission, and for criminal prosecution.

(b) *Securities Exchange Act of 1934*. This Act requires the filing of registration applications and annual and other reports with national securities exchanges and the Commission, by companies whose securities are listed upon the exchanges. These must contain financial and other data prescribed by the Commission for the information of investors. Material misstatements or omissions are grounds for suspension or withdrawal of the security from exchange trading. This Act makes unlawful proxy solicitations for meetings of listed companies in contravention of rules prescribed by the Commission. The rules so prescribed provide for disclosures to securities holders of information relevant to the proposals which are the subject of solicitations. The Act also requires disclosure by officers, directors, and large (10%) security holders of companies with listed equity securities, of their holdings of and transactions in the equity securities of such companies. The Act also provides for registration by the Commission and for certain regulations by the Commission of national securities exchanges, brokers and dealers engaged in an over-the-counter securities business, and national associations of such dealers. It contains provisions for rule making power in the Commission with respect to short sales, stabilizing, floor trading, activities of specialists and odd-lot dealers, and such matters as excessive trading by the exchange members. The Act empowers the Board of Governors of the Federal Reserve System

to prescribe minimum margin requirements with respect to listed securities.

(c) *Public Utility Holding Company Act of 1935*. This Act provides for regulation by the Commission of the purchase and sale of securities, properties, and other assets by companies comprised within electric and gas utility holding company systems, their intra-system transactions, service and management arrangements. It further provides for limitation of system operations to physically integrated and coordinated properties, and simplification of complex corporate and capital structures and elimination of unfair distribution of voting power. The issuance and sale of securities by holding companies and their subsidiaries, unless exempt (subject to conditions and terms which the Commission is empowered to impose) as an issue expressly authorized by the state in which the issuer is incorporated, must be found by the Commission to meet statutory standards, namely: that the new security is reasonably adapted to the security structure and earning power of the issuer; that the proposed financing is necessary and appropriate to the economical and efficient operation of the company's business; that the consideration received, and fees, commissions, and other remuneration paid are fair; and that the terms and conditions of the sale are not detrimental to investors, consumers, or the public. The purchase and sale of utility properties and other assets may not be made in contravention of rules, regulations, or orders of the Commission regarding the consideration to be received, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters. In passing upon proposals for reorganization, merger, or consolidation, the Commission must be satisfied that the objectives of the act generally are complied with and that the terms of the proposals are fair and equitable to all classes of security holders affected.

(d) *Trust Indenture Act of 1939*. This act is designed to safeguard the interests of purchasers of publicly offered debt securities issued under trust indentures through provisions requiring in such indentures the elimination of certain types of exculpatory clauses and the inclusion of certain protective provisions. The act also requires that the indenture trustee, who is a representative of the debt holders, shall be "independent" and free of certain prescribed interests which might conflict with the proper exercise of his duties.

(e) *Investment Company Act of 1940*. This act provides for the registration with the Commission of investment trusts and investment companies and subjects their activities to regulation in accordance with standards prescribed in the interests of protecting investors. Various transactions of investment companies, including transactions with affiliated interests, are prohibited unless exempted by the Commission. The Commission is authorized to prepare reports to security holders on the fairness of plans of reorganization, merger or consolidation; it may institute court action to enjoin the consummation of plans

considered grossly unfair to security holders, or to enjoin acts and practices of management involving gross misconduct or gross abuse of trust and to disqualify from office officials responsible therefor.

(f) *Investment Advisers Act of 1940*. Persons who, for compensation, engage in the business of advising others with respect to their security transactions must register with the Commission. Their activities in the conduct of such business are subject to standards of the act which make unlawful those practices which constitute fraud or deceit and which require, among other things, disclosure of any interests they may have in transactions executed for clients. It empowers the Commission to seek an injunction against unlawful activity of registered investment advisers or to refer evidence of violations to the Attorney General for criminal prosecution.

(g) *Chapter X of the Bankruptcy Act*. Chapter X of the Bankruptcy Act provides for Commission participation, as adviser to the courts, in corporate reorganization proceedings pursuant to Chapter X. The Commission may advise the court with respect to the feasibility and fairness of proposed plans of reorganization and other matters arising during the course of the proceedings.

GENERAL ORGANIZATION

§ 200.10 The Commission.

The Commission is composed of five members, not more than three of whom may be members of the same political party. The members are appointed by the President, with the advice and consent of the Senate, for 5-year terms, one term ending each year. The Chairman is designated by the President of the United States pursuant to the provisions of section 3 of Reorganization Plan No. 10 of 1950 (3 CFR, 1949-1953 Comp., p. 1006). The Commission is assisted by a staff which includes lawyers, accountants, engineers, security analysts, and examiners, as well as administrative and clerical employees.

§ 200.11 Organizational structure.

The organizational structure of the staff is designed to achieve three principal objectives: to secure in the members of the Commission control over policy making; to create the most effective possible mechanism for enforcing compliance with the Federal securities laws; and to provide the greatest possible assistance to public investors and to the regulated industries in achieving compliance with the various acts. Duties and responsibilities are stated in § 200.12.

§ 200.12 Functional responsibilities.

This section sets forth the administrative and substantive responsibilities of the Executive Director, Division Directors, Office Heads, Regional Administrators, and certain other Commission officers. All Commission officers and other staff members, except Hearing Examiners, shall perform, in addition to the duties herein set forth, such additional duties as the Chairman of the Commission may assign from time to

time. Office Memorandum 157, dated October 13, 1948, is hereby rescinded.

§ 200.13 The Secretary of the Commission.

The Secretary of the Commission shall have the ultimate responsibility to the Commission for the preparation and maintenance of official records of Commission action, the custody of the official seal of the Commission and the certification and authentication of documents reflecting official Commission action, and for the furnishing of information concerning Commission actions and functions to the press and the public.

§ 200.14 Adviser to the Commission.

The Adviser to the Commission is responsible for presenting to the Commission an independent viewpoint with respect to problems and matters in the entire field of capital formation under the several statutes administered by the Commission. He is responsible for undertaking such studies as may be necessary to carry out his advisory functions. He is also responsible for providing advice, guidance, and assistance to Division and Office Heads and their staffs in the development of programs and in connection with cases or matters of first impression or of major significance to the Commission in the administration and enforcement of the Federal Securities Laws.

§ 200.15 Hearing Examiners.

Hearing Examiners preside at public and private hearings and examinations held under the various statutes administered by the Commission and in appropriate cases prepare recommended decisions. The assignment of Hearing Examiners to particular cases or proceedings shall be made by the Chairman or such person as he may designate.

§ 200.16 Director of the Office of Opinion Writing.

The Director of the Office of Opinion Writing shall have the ultimate responsibility to the Commission for the preparation of the opinions of the Commission, including opinions and decisions on motions and certifications of questions and rulings by Hearing Examiners in the course of administrative proceedings, except in cases where, pursuant to a waiver by the parties of separation of function requirements, another Division or Office of the Commission's staff undertakes to prepare such Findings and Opinion, in which cases the Director may assist in such preparation. He shall also have responsibility for the preparation of the Commission's Annual Report to the Congress, including the editing of material submitted by various staff units, and joint responsibility with the General Counsel in dealing with general problems arising under the Administrative Procedure Act, including the revision or adoption of Rules of Practice.

§ 200.17 The Executive Director.

The Executive Director of the Commission shall be the chief administrative official of the Commission. He shall have the direct responsibility to the

Chairman for the administration of the Commission to the extent that the Chairman has delegated or may delegate his authority as set forth in Reorganization Plan 10 of 1950, including, without thereby limiting, the administrative direction and coordination of the divisions and offices in the Headquarters Office and the Regional Offices in the field. He shall have the ultimate responsibility to the Commission for the administrative matters reserved to the Commission by Reorganization Plan 10 of 1950. He shall also serve as the Director of the Division of Administrative Management and shall be responsible for the administration of the Regulation Regarding Conduct of Members and Employees and Former Members and Employees of the Commission. Where operating divisions and offices in the Headquarters Office in Washington and the field offices are unable to reach agreement as to the priority and execution of any proceeding, investigation or project to be performed by the field offices, the question shall be referred promptly to the Executive Director.

§ 200.18 Director of the Division of Corporation Finance.

The Director of the Division of Corporation Finance shall have the ultimate responsibility to the Commission for the administration and enforcement of all matters relating to establishing and requiring adherence to standards of economic and financial reporting with respect to securities trade on exchanges or offered for public sale pursuant to registration or exemptive regulations, establishing and requiring adherence to standards of fair disclosure in the solicitation of proxies for election of directors and other corporate actions, enforcement of the standards set forth in the Trust Indenture Act of 1939 regarding indentures covering debt securities, and enforcing of financial reporting and disclosure provisions applicable to investment companies and reviewing their sales literature. These duties shall include the ultimate responsibility to the Commission for the administration and enforcement of disclosure and related requirements of the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, and the Investment Company Act of 1940, as listed below, which responsibility shall extend to matters arising in the Headquarters Office and in the field offices:

(a) All matters under the Securities Act of 1933 arising from or pertaining to material filed pursuant to the requirements of that Act.

(b) All matters arising under the Securities Exchange Act of 1934 in connection with:

(1) The registration of securities on national securities exchanges pursuant to section 12 of that Act.

(2) The examination and processing of periodic reports filed pursuant to sections 13 and 15 (d) of that Act.

(3) The examination and processing of proxy soliciting material pursuant to section 14 of that Act.

(4) The examination and processing of ownership reports filed under section 16 (a) of that Act.

(5) The denial or suspension of registration of securities listed on national securities exchanges, pursuant to section 19 (a) (2) of that Act, arising from failure to comply with the reporting provisions of the Act.

(c) The examination and processing of proxy material filed under the Public Utility Holding Company Act of 1935 and subject to §§ 240.14a-1 to 240.14a-11 of this chapter issued under the Securities Exchange Act of 1934, and the examination of reports filed under section 17 (a) of the Public Utility Holding Company Act of 1935.

(d) All matters rising under the Trust Indenture Act of 1939.

(e) All matters relating to disclosure and reporting and the enforcement thereof under the following sections of the Investment Company Act of 1940:

(1) Sections 8 (a) through 8 (e) of that Act, relating to the registration of investment companies.

(2) Section 14 (a) of that Act, insofar as it relates to notice of disclosure with respect to dividends.

(3) Section 19 of that Act, insofar as it relates to notice of and disclosure with respect to dividends.

(4) Section 20 (a) and any other sections of that Act, insofar as they relate to proxy solicitation material.

(5) Section 24 of that Act, relating to registration under the Securities Act of 1933 and to disclosure in sales literature. (The Directors of the Divisions of Corporation Finance and Corporate Regulation shall have joint responsibility to the Commission with respect to the content of the Statement of Policy Relating to Investment Company Sales Literature.)

(6) Section 30 of that Act, insofar as it relates to periodic and ownership reports.

§ 200.19 Director of the Division of Trading and Exchanges.

The Director of the Division of Trading and Exchanges shall have the ultimate responsibility to the Commission for the administration and enforcement of all matters relating to the regulation of exchanges, national securities associations, brokers, dealers and investment advisers; the institution and conduct of proceedings to revoke or deny the registration of brokers and dealers; the prevention of fraudulent trading practices and market manipulations; the supervision of investigation and enforcement activities, except as assigned to other operating divisions or offices in the Headquarters Office; and the conduct of statistical functions. These duties shall include the ultimate responsibility to the Commission for the administration and enforcement of matters arising under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, and the Investment Advisers Act of 1940, as specified below, which responsibility shall extend to matters arising in the Headquarters Office and in the field offices:

(a) Investigations of violations or suspected violations of sections 5 and 17 of the Securities Act of 1933, except those arising from or pertaining to material filed pursuant to the provisions of that Act.

(b) Administration and enforcement of all matters arising under the Securities Exchange Act of 1934, except:

(1) The examination and processing of applications for registration of securities on national securities exchanges pursuant to section 12 of that Act.

(2) The examination and processing of periodic reports filed pursuant to sections 13 and 15(d) of that Act.

(3) The examination and processing of proxy soliciting material pursuant to section 14 of that Act.

(4) The examination and processing of ownership reports filed under section 16(a) of that Act.

(5) The denial or suspension of registration of securities listed on national securities exchanges, pursuant to section 19(a)(2) by reason of failure to comply with the reporting requirements of that Act.

(c) Investigations initiated pursuant to the provisions of section 12(h) of the Public Utility Holding Company Act of 1935.

(d) Investigations initiated pursuant to the provisions of the Investment Company Act of 1940.

(e) Administration and enforcement of all matters arising under the Investment Advisers Act of 1940.

(f) The Director shall have responsibility for the institution of injunctive actions arising out of the above listed matters and for the determination of whether the available evidence supports the allegations in the proposed complaint. The General Counsel shall be consulted concerning the form and substance of the complaint and any court papers and, upon the filing of the complaint, the General Counsel shall have responsibility for supervising the further course of the litigation.

§ 200.20 Director of the Division of Corporate Regulation.

The Director of the Division of Corporate Regulation shall have the ultimate responsibility to the Commission for the administration and enforcement of all matters arising under the Public Utility Holding Company Act of 1935, the regulatory provisions of the Investment Company Act of 1940, and the Commission's responsibilities under Chapter X and XI of the Bankruptcy Act, as listed below, which responsibility shall extend to matters arising in the Headquarters Office and in the field offices:

(a) The administration and enforcement of all matters arising under the Public Utility Holding Company Act of 1935, except:

(1) The examination and processing of proxy solicitation material which is subject to §§ 240.14a-1 to 240.14a-11 of this chapter under the Securities Exchange Act of 1934.

(2) Investigations pursuant to section 12(h) of the Public Utility Holding Company Act of 1935.

(3) The examination and processing of ownership reports filed under section 17(a) of that Act.

(b) The administration and enforcement of all matters arising under the Investment Company Act of 1940, except investigations, and except matters relating to disclosure and reporting and enforcement thereof under the following sections:

(1) Sections 8(a) through 8(e) of that Act, relating to the registration of investment companies.

(2) Section 14(a) of that Act, insofar as it relates to registration under the Securities Act of 1933.

(3) Section 19 of that Act, insofar as it relates to notice of and disclosure with respect to dividends.

(4) Section 20(a) of that Act, and any other sections, insofar as they relate to proxy solicitation material.

(5) Section 24 of that Act, relating to registration under the Securities Act of 1933 and to disclosure in sales literature. (The Directors of the Divisions of Corporation Finance and Corporate Regulation shall have joint responsibility to the Commission with respect to the content of the Statement of Policy Relating to Investment Company Sales Literature.)

(6) Section 30 of that Act, relating to periodic and ownership reports.

(c) All matters relating to the Commission's responsibilities under Chapters X and XI of the Bankruptcy Act, including representation of the Commission in the United States District Courts in cases involving those chapters.

§ 200.21 The General Counsel.

The General Counsel shall be the chief legal officer of the Commission and shall have the ultimate responsibility to the Commission for the representation of the Commission in judicial proceedings in which it is involved as a party or as amicus curiae, directing and supervising all civil litigation in the United States District Courts (except District Court proceedings under Chapter X of the Bankruptcy Act), and representing the Commission in all cases in Appellate Courts. He shall be ultimately responsible also for the review of cases to be referred to the Department of Justice with a recommendation for criminal prosecution, for advising the Commission at the latter's request or at the latter's request or at the request of any Division Director or Office Head, or when he considers it appropriate to so on his own motion, with respect to interpretations involving novel questions of law, except in situations where he is precluded therefrom by separation-of-functions considerations, for the conduct of administrative proceedings relating to the disqualification of professional persons from practice before the Commission; for the preparation of such new legislation as the Commission may consider recommending to the Congress, for the preparation of Commission comments to the Congress upon new legislation. He shall be the Commission's liaison officer with the Department of Justice, and with the staffs of the various

Congressional committees which may have an interest in the Commission's statutes or programs. He also shall be responsible for the review and clearance of the form and content of articles, treatises, and prepared speeches and addresses by members of the staff relating to the Commission or to the statutes and rules administered by the Commission. These responsibilities extend to matters arising in the Headquarters Office and in the field offices as well. He also shall have joint responsibility with the Director of the Office of Opinion Writing in dealing with general problems arising under the Administrative Procedure Act, including the revision or adoption of rules of practice.

§ 200.22 The Chief Accountant.

The Chief Accountant of the Commission shall be the chief accounting officer of the Commission and shall have the ultimate responsibility to the Commission on accounting and auditing matters arising in the administration of the Acts administered by the Commission, particularly with respect to new accounting policy determinations, the form and content of financial statements to be filed with the Commission, and the supervision of procedures to be followed in audit or accounting investigations conducted by the Commission staff. He shall also have responsibility for recommending, and assisting counsel in conducting administrative proceedings relating to the disqualification of accountants to practice before the Commission.

§ 200.23 Director of the Division of Administrative Management.

The Director of the Division of Administrative Management shall have the ultimate responsibility to the Commission and the Chairman for all personnel management functions including recruitment and placement; for all fiscal management functions including preparation of estimates of appropriations and supervision of obligation and expenditure of funds; for all records management functions including maintenance of general files and public reference services; and for all general administrative functions including maintenance of library and duplicating services and purchase and issuance of supplies and equipment.

§ 200.24 The Regional Administrators.

Each Regional Administrator shall have the responsibility within his geographical region (except as specified below with regard to matters arising under Chapters X and XI of the Bankruptcy Act) for executing the Commission's responsibilities under the various Acts administered by the Commission subject to the supervision and direction of the Executive Director, the Division Directors, the General Counsel and the Chief Accountant within their respective spheres as set forth above. The Regional Administrator's responsibilities include particularly the investigation of

transactions in securities on national securities exchanges, in the over-the-counter market, and in distributions to the public; the examination of members of national securities exchanges and registered brokers and dealers including the examination of reports filed under § 240.17a-5 of this chapter; the examination and processing of filings under §§ 230.251 to 230.262 of this chapter issued pursuant to section 3(b) of the Securities Act of 1933; the prosecution of injunctive actions in United States District Courts and administrative proceedings before Hearing Examiners; the rendering of assistance to United States Attorneys in criminal cases; and the making of the Commission's facilities more readily available to the public in that region. In addition, the New York Regional Administrator shall be responsible for the participation in proceedings under Chapters X and XI of the Bankruptcy Act in the New York and Boston Regions, and in the State of Pennsylvania; the Chicago Regional Administrator in the Chicago, Fort Worth and Denver Regions, except for the State of Utah; and the San Francisco Regional Administrator in the San Francisco and Seattle Regions, plus the State of Utah.

§ 200.25 Issuance of instructions.

Within the spheres of responsibilities heretofore set forth, the Executive Director, all Division and Office Heads, and all Regional Administrators may, subject to the approval of the Executive Director, issue such definitive instructions as may be necessary pursuant to this section.

(a) All existing procedures and authorizations not inconsistent with this section shall continue in effect until and unless modified by definitive instructions issued pursuant to this paragraph.

§ 200.26 Rules.

The individual operating divisions shall have the initial responsibility for proposing amendments to existing rules or new rules under the statutory provisions within the jurisdiction of the particular division. Where any such proposal presents a legal problem or is a matter of first impression, or involves a matter of enforcement policy or questions involving statutes other than those administered by the Commission, or may have an effect on prior judicial precedent or pending litigation, submission of the proposal should be made to the Office of the General Counsel for an expression of opinion prior to presentation of the matter to the Commission.

Subpart B—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

§ 200.31 General statement of policy.

It is deemed contrary to Commission policy for a member or employee of the Commission to:

(a) Engage, directly or indirectly, in any personal business transaction or private arrangement for personal profit which accrues from or is based upon his official position or authority or upon

confidential information which he gains by reason of such position or authority.¹

(b) Accept, directly or indirectly, any valuable gift, favor, or service from any person with whom he transacts business on behalf of the United States.²

(c) Discuss or entertain proposal for future employment by any person outside the Government with whom he is transacting business on behalf of the United States.³

(d) Divulge confidential commercial or economic information to any unauthorized person, or release any such information in advance of authorization for its release.⁴

(e) Become unduly involved, through frequent or expensive social engagements or otherwise, with any person outside the Government with whom he transacts business on behalf of the United States; or

(f) Act in any official matter with respect to which there exists a personal interest incompatible with an unbiased exercise of official judgment.⁵

(g) Fail reasonably to restrict his personal business affairs so as to avoid conflicts of interest with his official duties.

¹ Members of the Commission are subject also to the following prohibition in section 4(a) of the Securities Exchange Act of 1934:

"* * * No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title * * *

Detailed provisions regarding outside or private employment and transactions in securities and commodities are set forth in §§ 200.32 and 200.33. Further provisions regarding use and disclosure of confidential information are set forth in paragraph (d) of this section and in the note appended thereto.

² Members and employees of the Commission are subject also to provisions of the Federal Criminal Code which prohibit any officer or employee of the United States from asking, accepting or receiving any money or other thing of value in connection with any matter before him in his official capacity (18 U.S.C. 202), and from accepting anything of value for giving or procuring a government contract (18 U.S.C. 216).

³ Detailed provisions regarding negotiation for future employment are set forth in § 200.35.

⁴ The policy regarding confidential information stated in paragraphs (a) and (d) of this section is intended to cover cases where, apart from specific prohibitions in any statute or other rule, the disclosure or use of such information would be unethical. Detailed prohibitions regarding disclosure or use of confidential information are set forth in § 230.122 of this chapter under the Securities Act of 1933; section 24(c) of the Securities and Exchange Act of 1934 and § 240.0-4 of this chapter issued under that Act; section 22(a) of the Public Utility Holding Company Act of 1935 and § 250.104 of this chapter issued under that Act; section 45(a) and § 270.45a-1 of this chapter under the Investment Company Act of 1940; and section 210(b) under the Investment Advisers Act of 1940.

⁵ § 200.34 provides a procedure for relieving employees from assignments in certain cases, including those covered by § 200.31(f).

§ 200.32 Outside or private employment.

(a) No member or employee shall permit his name to be associated in any way with any legal, accounting or other professional firm or office.⁶

(b) No employee shall have any outside or private employment of affiliation with any firm or organization incompatible with concurrent employment by the Commission. This applies particularly to employment or association with any registered broker, dealer, public utility holding company, investment company or investment adviser or directly or indirectly related to the issuance, sale or purchase of securities. It applies also to any legal, accounting, or engineering work for compensation involving matters in which the Federal Government or any State, Territorial or municipal authority may be significantly interested.

(c) No employee shall accept or perform any outside or private employment which interferes with the efficient performance of his official duties. An employee who intends to perform services for compensation or engage in any business shall report his intention to do so to the Director of Personnel prior to such acceptance or performance.

(d) No employee shall accept or perform any outside or private employment specifically prohibited to Federal employees by statutes or executive order. For example:

(1) 18 United States Code, section 283, provides, among other things, that Federal employees are prohibited from acting as agent or attorney in prosecuting any claim against the United States or from aiding or assisting in any way, except as otherwise permitted in the discharge of official duties, in the prosecution or support of any such claims, or from receiving any gratuity, or any share of an interest in any claim from any claimant against the United States.

(2) 18 United States Code, section 281, provides, among other things, that Federal employees are prohibited from directly or indirectly receiving or agreeing to receive any compensation whatever for services rendered or to be rendered to any person in relation to any matter in which the United States is a party or directly or indirectly interested.

(3) 5 United States Code, section 62, provides that no person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other [Federal] office to which compensation is attached unless specially authorized by law. The provision, however, does not apply to retired members of the armed forces under certain circumstances.

(4) Executive Order No. 9 of January 18, 1873, prohibits, subject to exceptions, Federal employees from accepting or

⁶ With respect to members, this paragraph supplements the statutory prohibition of outside employment contained in section 4(a) of the Securities Exchange Act, quoted in footnote 1. The remaining provisions of this section are not applicable to members in view of the provisions of section 4(a).

holding office under a State, Territorial, County or municipal authority.

(5) 18 United States Code, section 434, provides in substance that no person shall act both as agent for a business entity and for the United States in a transaction between the business entity and the United States.

(6) 18 United States Code, section 1914, provides in substance that no government official or employee shall accept any salary in connection with his government service from any source other than the United States.

(e) No employee shall appear in court or on a brief in a representative capacity (with or without compensation) or otherwise accept or perform legal, accounting or engineering work for compensation unless specifically authorized by the Commission. Requests for such authorization shall be submitted to the division or office head or regional administrator concerned, together with all pertinent facts regarding the proposed employment, such as the name of the employer, the nature of the work to be performed, and its estimated duration. Division and other office heads and regional administrators shall forward all requests, together with their recommendations thereon, to the Director of Personnel for presentation to the Commission.

(f) No employee shall publish any article or treatise or deliver any prepared speech or address relating to the Commission or the statutes and rules that it administers without having obtained clearance from the Commission. The proposed publication or speech will be examined to determine whether it contains confidential information or whether there is any reason why the publication or delivery of the employee's private views on the subject matter would be otherwise inappropriate. Clearance for publication or delivery will not involve adoption of or concurrence in the views expressed, and any such publication or speech shall include at an appropriate place by way of footnote or otherwise the following disclaimer of responsibility:

The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author's colleagues upon the staff of the Commission.

(g) No employee shall hold office in or be a director of any company which has public security holders, except not for profit corporations, savings and loan associations, and similar institutions, whose securities are exempted under section 3(a)(4) or 3(a)(5) of the Securities Act of 1933.

§ 200.33 Securities transactions.

(a) This section applies to all transactions effected by or on behalf of a member or employee. Members and employees are considered to have sufficient interest in the security and commodity transactions of their husbands or wives so that such transactions must

be reported and are subject to all the terms of this section.

(b) No member or employee shall effect or cause to be effected any transaction in a security except for bona fide investment purposes. Unless otherwise determined by the Commission for cause shown, any purchase which is held for less than one year will be presumed not to be for investment purposes. Any employee who believes the application of this paragraph will result in undue hardship in a particular case may make written application to the Commission (through the Branch of Personnel, attention of Director of Personnel) setting out in detail the reasons for his belief and requesting a waiver.

(c) No member or employee shall effect any purchase or sale of a future contract for any commodity without the prior approval of the Commission.

(d) No member or employee shall carry securities on margin; nor shall any member or employee borrow funds or securities with or without collateral for the purpose of purchasing or carrying securities or commodities with the proceeds unless prior approval of the Commission has been secured.

(e) No member or employee shall sell a security which he does not own, or the sale of which is consummated by the delivery of a security borrowed by or for such member's or employee's account.

(f) No member or employee shall purchase any security which is the subject of a registration statement filed under the Securities Act of 1933, or of a letter of notification filed under §§ 230.251 to 230.262 or any other security of the same issuer, while such a registration statement or letter of notification is pending or during the first sixty days after its effective date.

(g) No member or employee shall purchase securities of (1) any holding company registered under section 5 of the Public Utility Holding Company Act of 1935, or any subsidiary thereof, or (2) any company if its status under such Act or the applicability of any provision of the Act to it is known by the employee to be under consideration.

(h) No member or employee shall purchase any securities issued by any investment company prima facie subject to the jurisdiction of the Commission under the provisions of the Investment Company Act of 1940.

(i) No member or employee shall purchase any security which to his knowledge is involved in any pending investigation by the Commission or in any proceeding before the Commission or to which the Commission is a party.

(j) No member or employee shall purchase any securities of any company which is in receivership or which is undergoing reorganization under section 77-B or Chapter X of the Bankruptcy Act.

(k) The restrictions imposed in paragraphs (f) to (j) of this section do not apply to the exercise of a privilege to convert or exchange securities; to the exercise of rights accruing unconditionally by virtue of ownership of other securities (as distinguished from a con-

tingent right to acquire securities not subscribed for by others); or to the acquisition and exercise of rights in order to round out fractional shares.

(l) Members and employees shall report every transaction in any security or commodity within five business days. (Reports submitted by employees in field offices must be placed in the mails within five days of the date of each transaction.) Other changes in holdings resulting from inheritance or from reclassifications, gifts, stock dividends or split-ups, for example, shall be reported promptly. These reports shall be prepared on the official form provided for this purpose, copies of which may be procured from the Branch of Personnel (Form SE-P-3, revised). These reports shall be transmitted to the Director of Personnel. The envelope should be marked "Confidential—Securities Transactions."

(m) At the time of taking the Oath of Office a new member or employee shall fill in the information required on Form SE-P-4, revised, relating to securities owned by him or his spouse or any trust or estate of which he is a trustee or other fiduciary or beneficiary, and relating to accounts with securities firms, and relatives who are partners or officers of securities firms, investment companies, investment advisers, or public utilities.

(n) This section does not apply to personal notes, individual real estate mortgages, United States Government securities, and securities issued by building and loan associations or co-operatives.

(o) Any member or employee who is a trustee or other fiduciary or a beneficiary of a trust or estate holding securities not exempted by paragraph (n) of this section shall report the existence and nature of such trust or estate to the Director of Personnel. The transactions of such trust or estate shall be subject to all the provisions of this section except in situations where the member or employee is solely a beneficiary and has no power to control, and does not in fact control or advise with respect to, the investments of the trust or estate, and except to the extent that the Commission shall otherwise direct in view of the circumstances of the particular case.

§ 200.34 Action in cases of personal interest.

Any employee assigned to work on any application, filing, or matter of a company in which he then owns any securities or has any personal interest or with which he has been employed or associated in the past shall immediately advise the division director or other office head or regional administrator of the fact. Division directors, other office heads and regional administrators are authorized to direct the reporting employee to continue with the assignment in question where this appears in the interest of the Government, taking into account (a) the policy stated in § 200.31 (f) and (g), (b) the general desirability of avoiding situations that require a question of conflict of interest to be resolved, (c) the extent the employees' activities will be supervised, and (d) the difficulty of assigning the matter to some other em-

ployee. Where the employee in question is not relieved of the assignment, his written report concerning the nature of his interest shall be forwarded to the Director of Personnel with a notation that he has been directed to continue the assignment together with such explanation, if any, as may seem appropriate. In the event that a division director or other office head or regional administrator deems that he has, himself, such personal interest in a transaction as may raise a question as to his disinterestedness, he may delegate his responsibility in the matter to a subordinate, but in that event shall submit a brief memorandum of the circumstances to the Director of Personnel.

§ 200.35 Negotiation for private employment.

(a) The provisions of § 200.31(c) are deemed to preclude negotiation for private employment by an employee who is immediately engaged in representing the Commission in any matter in which the prospective employer is opposing counsel or person chiefly affected. With the approval of his superior or the Commission an employee may be relieved of any assignment which, in the absence of such relief, might preclude such negotiation.

(b) No employee shall undertake to act on behalf of the Commission in any capacity in a matter that, to his knowledge, affects even indirectly any person outside the Government with whom he is discussing or entertaining any proposal for future employment, except pursuant to the direction of the Commission, his division director or other office head, or his regional administrator, as provided in § 200.34.

§ 200.36 Practice by former members and employees of the Commission.

(a) No person shall appear in a representative capacity before the Commission in a particular matter if such person, or one participating with him in the particular matter, personally considered it or gained personal knowledge of the facts thereof while he was a member or employee of the Commission. As used in this paragraph, a single investigation or formal proceeding, or both if they are related, shall be presumed to constitute a particular matter for at least two years irrespective of changes in the issues. However, in cases of proceedings in which the issues change from time to time, such as proceedings involving compliance with section 11 of the Public Utility Holding Company Act, this paragraph shall not be construed as prohibiting appearance in such a proceeding, more than two years after ceasing to be a member or employee of the Commission, unless it appears to the Commission that there is such identity of particular issues or pertinent facts as to make it likely that confidential information, derived while a member or employee of the Commission, would have continuing relevance to the proceeding, so as to make the participation therein by the former member or employee of the Commission unethical or prejudicial to the interests of the Commission.

(b) Any former member or employee of the Commission, who, within two years after ceasing to be such, is employed or retained as the representative of any person outside the Government in any matter in which it is contemplated that he will appear before the Commission shall, within ten days of such retainer or employment, or of the time when appearance before the Commission is first contemplated, file with the Secretary of the Commission a statement as to the nature thereof together with any desired explanation as to why it is deemed consistent with this section. Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this rule. The reporting requirements of this paragraph do not apply to communications incidental to court appearances in litigation involving the Commission.

(c) As used in this section, the term "appear before the Commission" means personal appearance before or personal communication with the Commission or any member or employee thereof, in connection with any interpretation or matter of substance arising under the statutes administered by the Commission. As used in this section, the term "representative" or "representative capacity" shall include not only the usual type of representation by an attorney, etc., but also representation of a corporation in the capacity of an officer, director, or controlling stockholder thereof.

(d) Persons in doubt as to the applicability of this section may apply for an advisory ruling of the Commission.

§ 200.37 Employees on leave of absence.

The provisions of this part relative to employees of the Commission are applicable to employees on leave with pay or on leave without pay other than extended military service.

§ 200.38 Violation and participation in violation of rules.

Knowing participation in a violation of this subpart by persons not within the scope of this subpart shall likewise be deemed improper conduct and in contravention of Commission rules. Departure from the regulations in this subpart without specific approval may be cause for removal or for disqualification from appearing and practicing before the Commission.

§ 200.39 Payment of tax obligations of employees.

Failure of an employee to pay his just tax obligations (except where there exists a bona fide dispute as to the employee's liability therefor) may be a cause for removal or other disciplinary action.

Subpart C—Canons of Ethics

§ 200.50 Authority.

The Canons of Ethics for Members of the Securities and Exchange Commission were approved by the Commission on July 22, 1958.

§ 200.51 Policy.

It is characteristic of the administrative process that the Members of the Commission and their place in public opinion are affected by the advice and conduct of the staff, particularly the professional and executive employees. It shall be the policy of the Commission to require that employees bear in mind the principles specified in the Canons.

§ 200.52 Copies of the Canons.

The Canons have been distributed to employees of the Commission. In addition, executive and professional employee are issued copies of the Canons upon entrance on duty.

§ 200.53 Preamble.

(a) Members of the Securities and Exchange Commission are entrusted by various enactments of the Congress with powers and duties of great social and economic significance to the American people. It is their task to regulate varied aspects of the American economy, within the limits prescribed by Congress, to insure that our private enterprise system serves the welfare of all citizens. Their success in this endeavor is a bulwark against possible abuses and injustice which, if left unchecked, might jeopardize the strength of our economic institutions.

(b) It is imperative that the members of this Commission continue to conduct themselves in their official and personal relationships in a manner which commands the respect and confidence of their fellow citizens. Members of this Commission shall continue to be mindful of, and strictly abide by, the standards of personal conduct set forth in Subpart B of this part regarding Conduct of Members and Employees and Former Members and Employees of the Commission, most of which has been in effect many years and which was codified in substantially its present form in 1953. Section 200.31 enunciates a General Statement of Policy as follows:

It is deemed contrary to Commission policy for a member or employee of the Commission to:

(1) Engage, directly or indirectly, in any personal business transaction or private arrangement for personal profit which accrues from or is based upon his official position or authority or upon confidential information which he gains by reason of such position or authority;

(2) Accept, directly or indirectly, any valuable gift, favor, or service from any person with whom he transacts business on behalf of the United States.

(3) Discuss or entertain proposals for future employment by any person outside the Government with whom he is transacting business on behalf of the United States;

(4) Divulge confidential commercial or economic information to any unauthorized person, or release any such information in advance of authorization for its release;

(5) Become unduly involved, through frequent or expensive social engagements or otherwise, with any person outside the Government with whom he transacts business on behalf of the United States; or

(6) Act in any official matter with respect to which there exists a personal interest incompatible with an unbiased exercise of official judgment.

(7) Fall reasonably to restrict his personal business affairs so as to avoid conflicts of interest with his official duties.

(c) In addition to the continued observance of these foregoing principles of personal conduct, it is fitting and proper for the members of this Commission to restate and resubscribe to the standards of conduct applicable to its executive, legislative and judicial responsibilities.

§ 200.54 Constitutional obligations.

The members of this Commission have undertaken in their oaths of office to support the Federal Constitution. Insofar as the enactments of the Congress impose executive duties upon the members, they must faithfully execute the laws which they are charged with administering. Members shall also carefully guard against any infringement of the constitutional rights, privileges, or immunities of those who are subject to regulation by this Commission.

§ 200.55 Statutory obligations.

In administering the law, members of this Commission should vigorously enforce compliance with the law by all persons affected thereby. In the exercise of the rule-making powers delegated this Commission by the Congress, members should always be concerned that the rule-making power be confined to the proper limits of the law and be consistent with the statutory purposes expressed by the Congress. In the exercise of their judicial functions, members shall honestly, fairly and impartially determine the rights of all persons under the law.

§ 200.56 Personal conduct.

Appointment to the office of member of this Commission is a high honor and requires that the conduct of a member, not only in the performance of the duties of his office but also in his everyday life, should be beyond reproach.

§ 200.57 Relationships with other members.

Each member should recognize that his conscience and those of other members are distinct entities and that differing shades of opinion should be anticipated. The free expression of opinion is a safeguard against the domination of this Commission by less than a majority, and is a keystone of the commission type of administration. However, a member should never permit his personal opinion so to conflict with the opinion of another member as to develop animosity or unfriendliness in the Commission, and every effort should be made to promote solidarity of conclusion.

§ 200.58 Maintenance of independence.

This Commission has been established to administer laws enacted by the Congress. Its members are appointed by the President by and with the advice and consent of the Senate to serve terms as provided by law. However, under the law, this is an independent Agency, and in performing their duties, members should exhibit a spirit of firm independence and reject any effort by representatives of the executive or legislative branches of the government to affect their independent determination of any

matter being considered by this Commission. A member should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety; so also he should be above fear of unjust criticism by anyone.

§ 200.59 Relationship with persons subject to regulation.

In all matters before him, a member should administer the law without regard to any personality involved, and with regard only to the issues. Members should not become indebted in any way to persons who are or may become subject to their jurisdiction. No member should accept loans, presents or favors of undue value from persons who are regulated or who represent those who are regulated. In performing their judicial functions, members should avoid discussion of a matter with any person outside this Commission and its staff while that matter is pending. In the performance of his rule-making and administrative functions, a member has a duty to solicit the views of interested persons. Care must be taken by a member in his relationship with persons within or outside of the Commission to separate the judicial and the rule-making functions and to observe the liberties of discussion respectively appropriate. Insofar as it is consistent with the dignity of his official position, he should maintain contact with the persons outside the agency who may be affected by his rule-making functions, but he should not accept unreasonable or lavish hospitality in so doing.

§ 200.60 Qualification to participate in particular matters.

The question in a particular matter rests with that individual member. Each member should weigh carefully the question of his qualification with respect to any matter wherein he or any relatives or former business associates or clients are involved. He should disqualify himself in the event he obtained knowledge prior to becoming a member of the facts at issue before him in a quasi-judicial proceeding, or in other types of proceeding in any matter involving parties in whom he has any interest or relationship directly or indirectly. If an interested person suggests that a member should disqualify himself in a particular matter because of bias or prejudice, the member shall be the judge of his own qualification.

§ 200.61 Impressions of influence.

A member should not, by his conduct, permit the impression to prevail that any person can improperly influence him, that any person unduly enjoys his favor or that he is affected in any way by the rank, position, prestige, or affluence of any person.

§ 200.62 Ex parte communications.

Matters of quasi-judicial nature should be determined by a member solely upon the record made in the proceeding and the arguments of the parties or their counsel properly made in the regular course of such proceeding. All communications by parties or their counsel

to a member in a quasi-judicial proceeding which are intended or calculated to influence action by the member should at once be made known by him to all parties concerned. A member should not at any time permit ex parte interviews, arguments, or communications designed to influence his action in such a matter.

§ 200.63 Commission opinions.

The opinions of the Commission should state the reasons for the action taken and contain a clear showing that no serious argument of counsel has been disregarded or overlooked. In such manner, a member shows a full understanding of the matter before him, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute some useful precedent to the growth of the law. A member should be guided in his decisions by a deep regard for the integrity of the system of law which he administers. He should recall that he is not a repository of arbitrary power, but is acting on behalf of the public under the sanction of the law.

§ 200.64 Judicial review.

The Congress has provided for review by the courts of the decisions and orders by this Commission. Members should recognize that their obligation to preserve the sanctity of the laws administered by them requires that they pursue and prosecute, vigorously and diligently but at the same time fairly and impartially and with dignity, all matters which they or others take to the courts for judicial review.

§ 200.65 Legislative proposals.

Members must recognize that the changing conditions in a volatile economy may require that they bring to the attention of the Congress proposals to amend, modify or repeal the laws administered by them. They should urge the Congress, whenever necessary, to effect such amendment, modification or repeal of particular parts of the statutes which they administer. In any action a member's motivation should be the common weal and not the particular interests of any particular group.

§ 200.66 Investigations.

The power to investigate carries with it the power to defame and destroy. In determining to exercise their investigatory power, members should concern themselves only with the facts known to them and the reasonable inferences from those facts. A member should never suggest, vote for, or participate in an investigation aimed at a particular individual for reasons of animus, prejudice or vindictiveness. The requirements of the particular case alone should induce the exercise of the investigatory power, and no public pronouncement of the pendency of such an investigation should be made in the absence of reasonable evidence that the law has been violated and that the public welfare demands it.

§ 200.67 Power to adopt rules.

In exercising its rule-making power, this Commission performs a legislative function. The delegation of this power

by the Congress imposes the obligation upon the members to adopt rules necessary to effectuate the stated policies of the statute in the interest of all of the people. Care should be taken to avoid the adoption of rules which seek to extend the power of the Commission beyond proper statutory limits. Its rules should never tend to stifle or discourage legitimate business enterprises or activities, nor should they be interpreted so as unduly and unnecessarily to burden those regulated with onerous obligations. On the other hand, the very statutory enactments evidence the need for regulation, and the necessary rules should be adopted or modifications made or rules should be repealed as changing requirements demand without fear or favor.

§ 200.68 Promptness.

Each member should promptly perform the duties with which he is charged by the statutes. The Commission should evaluate continuously its practices and procedures to assure that it promptly disposes of all matters affecting the rights of those regulated. This is particularly desirable in quasi-judicial proceedings. While avoiding arbitrary action in unreasonably or unjustly forcing matters to trial, members should endeavor to hold counsel to a proper appreciation of their duties to the public, their clients and others who are interested. Requests for continuances of matters should be determined in a manner consistent with this policy.

§ 200.69 Conduct toward parties and their counsel.

Members should be temperate, attentive, patient and impartial when hearing the arguments of parties or their counsel. Members should not condone unprofessional conduct by attorneys in their representation of parties. The Commission should continuously assure that its staff follows the same principles in their relationships with parties and counsel.

§ 200.70 Business promotions.

A member must not engage in any other business, employment or vocation while in office, nor may he ever use the power of his office or the influence of his name to promote the business interests of others.

§ 200.71 Fiduciary relationships.

A member should avoid service as a fiduciary if it would interfere or seem to interfere with the proper performance of his duties, or if the interests of those represented require investments in enterprises which are involved in questions to be determined by him. Such relationships would include trustees, executors, corporate directors, and the like.

§ 200.72 Supervision of internal organization.

Members and particularly the Chairman of the Commission should scrutinize continuously its internal organization in order to assure that such organization handles all matters before it efficiently and expeditiously, while recognizing that changing times bring changing emphasis in the administration of the laws.

Subpart D—Information and Requests

§ 200.80 Information and requests.

(a) A detailed description of the available informal procedures that may be employed to secure advice and to consult with members of the staff on problems relating to the statutes and regulations administered by the Commission is contained in the material published in Part 202 of this chapter.

(b) The Commission has specially staffed and equipped public reference rooms in its central offices at Washington, D.C., and in the New York and Chicago Regional Offices. More limited facilities for public use are provided in other regional and branch offices.

(c) During the Commission's regular business hours, the public may examine, in the Washington offices, copies of public information filed with the Commission, and certain other public documents. Available documents include registration statements, applications, and declarations filed under the various statutes administered by the Commission, records of Commission action, and certain other public record material.

(d) All regional offices have available for public examination copies of prospectuses used in recent offerings of securities registered under the Securities Act, of active broker-dealer and investment adviser applications originating in their respective regions, and of Regulation A letters of notification filed in their respective regions.

(e) In the New York offices of the Commission, other available materials include copies of recent periodic reports made by companies having securities listed on exchanges other than the New York Stock Exchange and the American Stock Exchange (reports by companies listed on the latter exchanges may be seen at the exchanges) and copies of current reports of many companies which have effective registration statements under the Securities Act of 1933.

(f) In the Chicago offices of the Commission, recent reports of companies which have securities listed on the New York and American stock exchanges are available.

(g) Certain materials are considered nonpublic or confidential and generally are not available to the public. Such documents include, but are not limited to: (1) Documents, papers, data or evidence obtained or made in the course of any nonpublic hearing, examination, or investigation; (2) correspondence, and internal Commission records and working papers, such as Minutes of Commission meetings and deliberations, staff drafts and working papers, intra-agency and internal memoranda, personnel documents, etc.; (3) material classified for purposes of national security; (4) letters or reports to members of Congress, Congressional committees, and other government agencies or officials unless and until such documents are made public by the recipients; (5) preliminary copies of proxy material, and (6) documents afforded confidential treatment pursuant to SEC statutes and rules.

(h) Photocopies of registration statements, reports, and other public material

filed with the Commission, or portions thereof, may be obtained through the public reference room at the central offices of the Commission in Washington. Fees charged to the public for photocopies are established by an annual contract between the Commission and the private copier who does the work. Current schedules of fees for copying work are available from the public reference room or any regional or branch office. Inquiries and orders may be made to the public reference room in Washington personally, by telephone, or by mail.

(i) Annually the Records and Service Officer on behalf of the Commission makes a contract for stenographic reporting of hearings, examinations, and investigations in Washington and in the field. Interested members of the public may obtain copies of the transcript of public hearings from the contract reporter at prices set by tables of charges in the contract, copies of which are on file in the Commission offices in Washington and in each regional and branch office.

(j) The Commission publishes an annual report to the Congress which sets forth the result of the Commission's operations during the past fiscal year under the various statutes committed to its charge. Copies may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C.

(k) The Commission's decisions, reports, orders, rules and regulations are published initially in the form of releases and distributed to the press and mailed to persons on the mailing list to receive them. The decisions and reports thereafter are printed in bound volumes entitled "Securities and Exchange Commission Decisions and Reports;" these volumes may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, D.C.

(l) The Commission also makes other information in the fields of securities and finance, including economic studies, available to the public through the issuance of releases on specific subject matters.

(m) A classification of the releases available from the Commission appears below as Appendix A to this part. Other publications available from the Commission are set forth in Appendix B to this part. Copies of statutes, rules and regulations, and miscellaneous publications set forth in Appendix C to this part may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, D.C.

APPENDIX A—CLASSIFICATION OF RELEASES AVAILABLE

Mailing lists are maintained in the following classifications only:

1. *News Digest*: A daily summary of orders, decisions, rules and rule proposals issued by the Commission under the various laws it administers, together with a resume of financing proposals contained in Securities Act registration statements and of other Commission announcements.

2. *Rule Proposals*: A special classification for those who wish to receive all proposals (except those referred to in item 8 below) for adoption of new rules of forms or amend-

ments of existing rules or forms (under any of the SEC laws) in order to have an opportunity to submit views and comments thereon. Registrants affected by any such proposal will receive copies thereof whether or not they are on this list. For new or amended rules or forms, if and when adopted, see other release classifications.

3. *All Rules Under Securities Act of 1933* (including those with respect to oil and gas royalties, securities and dealers) and under the Trust Indenture Act of 1939: This classification is only for new or amended rules as finally adopted. See classification 2 for proposed new or amended rules or forms.

4. *All Rules Under Securities Exchange Act of 1934*: This classification is only for new or amended rules, as finally adopted. See classification 2 for proposed new or amended rules or forms.

5. *Holding Company Act Opinions and Rules*: Special classification for those interested in Commission decisions and rules adopted under this Act (frequently, a summary of a decision is distributed in lieu of the full text thereof). See classification 2 for proposed new or amended rules or forms.

6. *All Rules Under Investment Company Act of 1940*: This classification is only for new or amended rules, as finally adopted. See classification 2 for proposed new or amended rules or forms.

7. *All Rules Under Investment Advisers Act of 1940*: This classification is only for new or amended rules, as finally adopted. See classification 2 for proposed new or amended rules or forms.

8. *Accounting*: A paper-bound book containing Accounting Series Releases Nos. 1 to 77, inclusive, amended to March 10, 1956, may be purchased from the Superintendent of Documents, Government Printing Office, Washington 25, D.C. for \$1. Proposed new or amended accounting rules will be distributed to persons whose names appear on the accounting list. When any such revision in the accounting rules or other accounting release is adopted, one copy thereof will generally be distributed to each person on this list. However, where the new rule or release is lengthy or may not be of wide, general interest, a special "summary" briefly describing the rule or release will be distributed to this list. In such event, one copy of such newly adopted rule or release may be obtained by request from our Publications and Distribution Unit.

9. *Corporate Reorganizations*: Announcements relating to the Commission's activities under Chapter X of the Bankruptcy Act, as amended, and advisory reports (or summaries thereof) filed with Courts pursuant thereto.

10. *Securities Traded on Exchanges*: Annual directory and quarterly supplements of securities traded on national securities exchanges.

11. *Individuals' Saving*: Releases issued quarterly presenting data on the volume and composition of individuals' saving. (Information is also included in the SEC monthly Statistical Bulletin.)

12. *Weekly Trading Data on New York Exchanges*: SEC stock price indexes and daily round-lot and odd-lot transactions effected on the New York and American Stock Exchanges. (Information is also included in the SEC monthly Statistical Bulletin.)

13. *Plant and Equipment Expenditures*: Releases issued quarterly presenting data on plan and equipment expenditures of United States business, both actual and anticipated. Joint study of SEC and Department of Commerce. (Information is also included in the SEC monthly Statistical Bulletin.)

14. *Net Working Capital*: Releases issued quarterly presenting data on current assets and liabilities of all United States corporations. (Information is also included in the SEC monthly Statistical Bulletin.)

15. *Quarterly Financial Reports*: Releases issued quarterly summarizing balance sheet

and income data for U.S. manufacturing corporations reflected in reports of joint SEC and FTC study. (Copies of reports available at GPO at cost of \$1 per year.)

16. *New Securities Offerings*: Releases issued quarterly presenting data on all new securities offerings by corporations in the United States. (More detailed data is available in the SEC monthly Statistical Bulletin.)

17. *Corporate Pension Funds*: Releases issued annually presenting estimates of corporate pension fund assets and their composition and data on receipts and expenditures.

18. *Litigation Releases*: Releases announcing actions to enjoin violations of SEC laws and rules and developments in such actions, as well as developments in criminal prosecutions for securities violations.

APPENDIX B—OTHER PUBLICATIONS AVAILABLE FROM THE COMMISSION

Limited amounts of the following material are available, free of charge, upon request to the Commission's Publications and Distribution Unit:

Work of the Securities and Exchange Commission. (This pamphlet describes briefly the duties and activities of the Commission.)

Uniform System of Accounts for Public Utility Holding Companies.

Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies.

List of Registered Investment Companies. Most frequently used Forms under each of the Acts.

APPENDIX C—STATUTES, RULES, AND MISCELLANEOUS PUBLICATIONS

Copies of the material listed below may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C.:

Acts, Rules and Regulations: Securities Act of 1933, as Amended. General Rules and Regulations Under the Securities Act of 1933.

Securities Exchange Act of 1934, as Amended.

General Rules and Regulations Under the Securities Exchange Act of 1934.

Public Utility Holding Company Act of 1935.

General Rules and Regulations Under the Public Utility Holding Company Act of 1935.

Trust Indenture Act of 1939 and General Rules and Regulations Thereunder.

Investment Company Act of 1940, as Amended.

General Rules and Regulations Under the Investment Company Act of 1940.

Investment Advisers Act of 1940 and General Rules and Regulations Thereunder.

Regulation S-X (form and content of financial statements) Under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940.

Chapter X of the National Bankruptcy Act. Rules of Practice of the Commission.

Compilations and Reports:

SEC Annual Report to Congress.

SEC Decisions and Reports.

SEC Judicial Decisions.

Accounting Series Releases (compiled, includes Nos. 1-77—see classification 8 in Appendix A for further information).

Periodicals:

Official Summary. A monthly summary of security transactions and holdings reported under the provisions of the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940 by officers, directors, and certain other persons.

Statistical Bulletin. Issued monthly. Presents data on new securities offerings, registrations, underwriters, trading on exchanges, stock price indexes, round-lot and odd-lot

tradings, special offerings, secondary distributions, and other financial series including those releases under classifications 11 to 15, inclusive.

Quarterly Financial Reports—Manufacturing: Reports beginning with the third quarter of 1955 presenting quarterly balance sheet and income data for all United States manufacturing corporations. Joint study of SEC and the Federal Trade Commission.

PART 201—RULES OF PRACTICE

Sec.

201.1 Scope of rules of practice.
201.2 Appearance and practice before the Commission.

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201.26 Confidential treatment of certain matters.

AUTHORITY: §§ 201.1 to 201.26 issued under secs. 19, 23, 48 Stat. 85, as amended, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 77sss, 78w, 79t, 80a-37, 80b-11.

§ 201.1 Scope of rules of practice.

These rules of practice are generally applicable to proceedings before the Commission under the statutes which it administers, particularly those which involve a hearing or opportunity for hearing before the Commission or its duly designated officer. In connection with any particular matter, reference should also be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Commission thereunder, which special requirements are controlling.

§ 201.2 Appearance and practice before the Commission.¹

(a) *By non-lawyers.* An individual may appear in his own behalf, a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent

¹ Additional restrictions upon practice by former employees of the Commission are contained in Rule 6 of the Commission's Conduct Regulation (§ 200.36 of this chapter).

the corporation, trust or association, and an officer or employee of a State commission or of a department or political subdivision of a State may represent the State commission or the department or political subdivision of the State, in any proceeding.

(b) *By lawyers.* A person may be represented in any proceeding by an attorney at law admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States, or the Court of Appeals or the District Court of the United States for the District of Columbia.

(c) *Representation only as specified.* A person shall not be represented at any hearing before the Commission or a hearing officer except as stated in paragraphs (a) and (b) of this section or except as otherwise permitted by the Commission.

(d) *Notice of appearance; power of attorney.* When an attorney appears before the Commission or a hearing officer in a representative capacity in a particular proceeding which involves a hearing or an opportunity for hearing, he shall file with the Commission a written notice of such appearance, which shall state his name, address and telephone number and the name and address of the person or persons on whose behalf he appears. Any person appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his authority to act in such capacity.

(e) *Suspension and disbarment.* The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice of and opportunity for hearing in the matter (1) not to possess the requisite qualifications to represent others, or (2) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct.

(f) *Contemptuous conduct.* Contemptuous conduct at any hearing before the Commission or a hearing officer shall be ground for exclusion from said hearing and for summary suspension without a hearing for the duration of the hearing.

(g) *Practice defined.* For the purposes of this rule, practicing before the Commission shall include, but shall not be limited to (1) transacting any business with the Commission; and (2) the preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other expert.

§ 201.3 Nonapplicability to investigations; transcripts in investigations.

(a) *Nonapplicability of rules of practice.* These rules of practice, other than § 201.2(e) and except to the extent to which these sections specifically refer to investigations, shall not be applicable to investigations conducted by the Com-

mission pursuant to sections 8(e), 19(b), and 20(a) of the Securities Act of 1933; section 21(a) of the Securities Exchange Act of 1934; sections 11(a), 13(g), 18(a), 18(b) and 30 of the Public Utility Holding Company Act of 1935; section 321(a) of the Trust Indenture Act of 1939; section 209(a) of the Investment Advisers Act of 1940; or sections 14(b) and 42(a) of the Investment Company Act of 1940.

(b) *Right to copy of data or transcript of testimony.* A person who has submitted data or evidence in such investigations shall be entitled to retain or procure a copy of his data or a transcript of his testimony on payment of the prescribed fees; provided, however, in the case of non-public investigations such person shall file a written request stating the reason for desiring to procure such copy or transcript. The Commission may in any non-public investigatory proceeding for good cause deny such request. In the latter event, such person, upon proper identification, shall have the right to inspect the official transcript of his testimony.

(c) *Counsel for witnesses in investigations.* Any person compelled to appear in person at an investigation designated in paragraph (a) of this section may be accompanied, represented and advised by counsel, but such counsel may not represent any other witness or any person being investigated, unless permitted in the discretion of the officer conducting the investigation or of the Commission upon being satisfied that there is no conflict of interest in such representation and that the presence of identical counsel for other witnesses or persons being investigated would not tend to hinder the course of the investigation.

§ 201.4 Issuance, amendment and repeal of rules of general application.

(a) *By petition.* Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary of the Commission. Such petition shall include a statement setting forth the text of any proposed rule or amendment desired or specifying the rule, the repeal of which is desired and stating the nature of his interest and his reasons for seeking the issuance, amendment or repeal of the rule. The Secretary shall acknowledge receipt of the petition and refer it to the Commission for such action as the Commission deems appropriate, and shall notify the petitioner of the action taken by the Commission.

(b) *Notice of proposed issuance, amendment or repeal of rules.* Except where the Commission finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, whenever the Commission proposes to issue, amend, or repeal any rule or regulation of general application other than an interpretative rule, general statement of policy, or a rule of agency organization, procedure, or practice, or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, there shall first be published in the FEDERAL REGISTER a notice of the proposed action.

Such notice shall include (1) a statement of the time, place, and nature of the rule-making proceeding, with particular reference to the manner in which interested persons shall be afforded the opportunity to participate in such proceedings; (2) reference to the authority under which the rule is proposed; and (3) the terms or substance of the proposed rule or a description of the subjects and issues involved.

§ 201.5 Business hours.

The principal office of the Commission, at 425 Second Street NW., Washington, D.C., is open each day, except Saturdays, Sundays, and holidays, from 9 a.m. to 5:30 p.m., eastern standard time or eastern daylight-saving time, whichever is currently in effect in Washington.

§ 201.6 Notice of proceedings and hearings.

(a) *Notice of proceedings; order for proceedings.* Whenever an order for proceeding is issued by the Commission, appropriate notice thereof shall be given by the Secretary or other duly designated officer of the Commission to each party to the proceeding and any other person entitled to notice or to the person designated by any such party or person as being authorized to receive on his behalf notices issued by the Commission. The parties or persons entitled to notice shall be timely informed of the time, place and nature of any hearing and the legal authority and jurisdiction under which the hearing is to be held, and furnished a short and simple statement of the matters of fact and law to be considered and determined. In proceedings in which an answer is directed pursuant to § 201.7, the order for proceeding shall set forth the action proposed and the factual and legal basis alleged therefor in such detail as will permit a specific response thereto.

(b) *Notice of hearing; service of notice.* The time and place for any hearing in a proceeding shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives. Each party or person entitled to notice shall be given notice of hearing a reasonable time in advance of the hearing, and such notice may be given by personal service, by confirmed telegraphic notice or, in any proceedings other than those pursuant to section 8 of the Securities Act of 1933 or sections 305 or 307 of the Trust Indenture Act of 1939, by registered mail, addressed to his last known business or residence address or to the address of his agent for service.

(c) *Publication of notice of hearing.* Unless otherwise ordered by the Commission, notice of any public hearing shall be given general circulation by release to the public press and, where ordered, by publication in the FEDERAL REGISTER.

(d) *Amendment of order for proceedings.* In any proceeding amendments to the matters of fact and law to be considered may be authorized, for cause shown, by the hearing officer during the course of the hearing, or by the Commission at any time.

§ 201.7 Answers.

(a) *When required.* In any order for proceeding issued by the Commission, the Commission may direct that any party respondent shall file an answer to the allegations contained in the order for proceeding, and any party in any proceeding may file an answer.

(b) *Time to file answer.* Except where a different period is provided by rule or by order, a party respondent directed to file an answer as provided in paragraph (a) of this section shall do so within 15 days after service upon him of the order for proceeding. Any other person admitted to such a proceeding (except a person becoming a party under § 201.9(a)) may be required to file an answer within such time as is directed by the hearing officer or the Commission. Where amendments to the matters of fact and law to be considered in such proceeding are authorized subsequent to the institution of the proceeding, the parties may be required to answer within a reasonable time the matters of fact and law to be considered as amended.

(c) *Requirements of answer; effect of failure to deny.* Unless otherwise directed by the Commission, an answer required by this section shall specifically admit, deny, or state that the party does not have and is unable to obtain sufficient information to admit or deny, each allegation in the order for proceeding. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party intends in good faith to deny only a part or a qualification of an allegation, he shall specify so much of it as is true and shall deny only the remainder.

(d) *Motion for more definite statement.* A party may file, with an answer required by this section, a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion will set the periods in which such statement, and any answer thereto, shall be filed.

(e) *Effect of failure to file answer.* If a party fails to file an answer required by this section within the time provided, the proceeding may be determined against such party by the Commission upon consideration of the order for proceeding, the allegations of which may be deemed to be true.

(f) *Signature on answer; requirement and effect.* Every answer filed pursuant to this section shall be signed by the party filing it or by at least one attorney, in his individual name, who represents such party. The signature constitutes a certificate by the signer that he has read the answer; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

§ 201.8 Settlements, pre-trial conferences and procedural agreements.

(a) *Offers of settlement.* (1) Parties may propose in writing offers of settle-

ment which shall be submitted to and considered by the interested division of the Commission where time, the nature of the proceeding, and the public interest permit. Such offers may be made at any time during the course of the proceeding; and (2) the interested division shall present an offer of settlement to the Commission with its recommendation, except that where the division's recommendation is unfavorable, the offer shall not be presented to the Commission by the division unless the party making the offer so requests. Where the Commission deems it appropriate, it may also give the party making the offer an opportunity to make an oral presentation to the Commission. Where the Commission rejects an offer of settlement, the party making the offer shall be notified of the Commission's action and the offer of settlement shall be deemed withdrawn and such offer and any documents relating thereto shall not constitute a part of the record. Final acceptance by the Commission of any offer of settlement will be only by its Findings and Opinion issued in the proceedings.

(b) *Specification of procedures.* In any proceeding the moving party shall, in the moving papers or the notice of hearing if that is practicable, or, if not, as early as practicable in the course of the hearing, specify the procedures considered necessary or appropriate in the proceeding, with particular reference to (1) whether there should be a recommended decision by a hearing officer, (2) whether there should be a recommended decision by any other responsible officer of the Commission, (3) whether the interested division of the Commission may assist in the preparation of the Commission's decision, and (4) whether there should be a 30-day waiting period between the issuance of the Commission's order and the date it is to become effective. Any other party may object promptly or within such time as shall be designated by the hearing officer, having due regard to the circumstances of the case, to the procedure so specified and such party may specify such additional procedure as he considers necessary or appropriate; in the absence of such objection or specification of additional procedure, such party may be deemed to have waived objection to the specified procedure and to the omission of any procedure not specified, unless the Commission, for good cause shown and upon taking into account any resulting prejudice to other parties, determines the contrary.

(c) *Conferences on procedure; stipulations.* The hearing officer on his own motion may, or at the request of any party shall, call a conference of the parties at the opening of the hearing or at any subsequent time for the purpose of specifying and agreeing on the procedural steps to be followed or omitted in the proceeding. Any proposal as to the procedural matters enumerated in paragraph (b) of this section, or, subject to the approval of the hearing officer, any other procedural matter which is agreed upon by all parties present and which is not contrary to any specific provision of this part, shall be

embodied in an appropriate stipulation, which shall become part of the record, and shall determine the procedure in that respect, except that the Commission may, upon taking into account any resulting prejudice to the parties, vary such procedure at the request of any party or on its own motion.

(d) *Conferences on issues.* During the course of any proceeding, to the extent practicable, where time, the nature of the proceeding and the public interest permit, the hearing officer shall, at the request of any party or upon his own motion, hold conferences for the purpose of clarifying and simplifying issues by consent of the parties.

§ 201.9 Parties and limited participation.

(a) *Who may become parties; interested division a party.* Any interested representative, agency, authority or instrumentality of the United States or any interested State, State commission, municipality or other political subdivision of a State shall become a party to any proceeding upon the filing of a written notice of appearance therein. The interested division of the Commission shall be deemed a party to all proceedings.

(b) *Parties in broker-dealer proceedings.* In proceedings under sections 15(b), 15A(1)(2) or 19(a)(3) of the Securities Exchange Act of 1934, any person associated with a member of a national securities association, a member of a national securities exchange, a broker or a dealer, whose interests may be affected by the proceedings, shall be entitled to participate as a party. If he participates generally in the proceedings or files a notice of appearance, he shall be deemed a party of record and will be given notices of intermediate developments in the proceedings. In any event he may inform himself of such developments by attendance at the hearings or examination of the record (whether the proceedings be public or private) or by arrangement with a party of record so that he can determine whether he desires to be heard at any time. The term "person associated" as used in this section shall mean a person associated with a member, broker or dealer in any of the capacities specified in sections 15(b) and 15A(b)(4) of the Securities Exchange Act of 1934.

(c) *Limited participation; leave to be heard.* Any person may, at the discretion of the hearing officer, be given leave to be heard in any proceeding as to any matter affecting his interests. Requests for leave to be heard shall be in writing, shall set forth the nature and extent of the applicant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than 2 days prior to the date fixed for the commencement of the hearing, or where a respondent is required to answer, requests for leave to be heard shall be filed within the time provided for the filing of the answer. The hearing officer or the Commission may direct any person requesting leave to be heard to submit himself to examination as to his interest in the proceeding.

(d) *Rights of participant.* Leave to be heard pursuant to paragraph (c) of this section may include such rights of a party as the hearing officer may deem appropriate, except that oral argument before the Commission may be permitted only by the Commission upon written request therefor. Persons granted leave to be heard shall be bound, except as may be otherwise determined by the hearing officer, by any stipulation between the parties to the proceeding with respect to procedure, including submission of evidence, substitution of exhibits, corrections of the record, the time within which briefs or exceptions may be filed or proposed findings and conclusions may be submitted, the filing of recommended decisions, the procedure to be followed in the preparation of decisions, and the effective date of the Commission's order in the case. Where the filing of briefs or exceptions or the submission of proposed findings and conclusions are waived by the parties to the proceedings, a person granted leave to be heard pursuant to paragraph (c) of this section shall not be permitted to file a brief or exceptions or submit proposed findings and conclusions except by leave of the Commission or of the hearing officer, if the hearing is pending before the hearing officer. Except as may otherwise be specifically directed by the hearing officer at the request of any person granted leave to be heard, such person shall be expected to inform himself by attendance at public hearings and by examination of the public files of the Commission as to the various steps taken in the proceeding including continuances, the filing of amendments, answers, motions, or briefs by parties to the proceeding, or the fixing of time for any such action, and such person shall not be entitled as of right to other notice thereof, or to service of copies of documents.

(e) *When intervention as party granted.* Except as provided in paragraphs (a) and (b) of this section, no person shall be admitted as a party to a proceeding by intervention unless the Commission is satisfied on the basis of the written application of such person (and any evidence taken in connection therewith) that his participation as a party will be in the public interest, and that leave to be heard pursuant to paragraphs (c) and (d) of this section would be inadequate for the protection of his interests.

(f) *Permission to state views.* Any person who has not complied with the requirements of paragraph (c) of this section may, in the discretion of the hearing officer, be permitted to file a memorandum or make an oral statement of his views, and the hearing officer may accept for the record written communications received from any such person. Unless offered and admitted as evidence of the truth of the statements therein made, the memoranda and oral or written communications submitted pursuant to the provisions of this paragraph will be considered only to the extent that the statements therein made are otherwise supported by the record.

(g) *Certain persons entitled to leave to be heard.* The hearing officer is directed to grant leave to be heard under paragraph (c) or (f) of this section, whichever may be applicable, to any person to whom it is proposed to issue any security in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the Commission is authorized to approve the terms and conditions of such issuance and exchange after a hearing upon the fairness of such terms and conditions.

(h) *Review by Commission; modification of participation provisions.* Any ruling of the hearing officer as to matters within the scope of this section is subject to review by the Commission at the close of the proceeding, or at the Commission's discretion, in the course of the proceeding. The Commission may, by order in any case, modify the provisions of this section which would otherwise be applicable, and may impose such terms and conditions on the participation of any person in any proceeding as it may deem necessary or appropriate in the public interest.

§ 201.10 Consolidation.

By order of the Commission, proceedings involving a common question of law or fact may be joined for hearing of any or all the matters in issue in such proceedings and such proceedings may be consolidated; and the Commission may make such orders concerning the conduct of such proceedings as may tend to avoid unnecessary costs or delay.

§ 201.11 Hearings for the purpose of taking evidence; procedure.

(a) *When held.* Hearings for the purpose of taking evidence shall be held as ordered by the Commission.

(b) *Presiding officers; public hearings.* All such hearings shall be held before the Commission or a hearing officer, who shall be a hearing examiner or other officer duly designated by the Commission or shall be one or more members of the Commission. The hearings shall be conducted in an impartial and orderly manner. All such hearings, except hearings on applications for confidential treatment filed pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, section 24(b) of the Securities Exchange Act of 1934, section 22(b) of the Public Utility Holding Company Act of 1935, section 45(a) of the Investment Company Act of 1940, section 210(a) of the Investment Advisers Act of 1940, or the rules and regulations promulgated under such sections, shall be public unless otherwise ordered by the Commission. No hearing shall be private where all respondents request that the hearing be made public.

(c) *Disqualification of hearing officer.* In any hearing for the purpose of taking evidence a hearing officer may withdraw from a case when he deems himself disqualified. In such event he shall immediately notify the Commission of his withdrawal and inform it of his reasons for such action. Any party or any person who has been granted leave to be heard pursuant to § 201.9 may in good

faith request a hearing officer to withdraw on the grounds of personal bias or other disqualification. The person seeking disqualification shall file with the hearing officer a timely affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the hearing officer may file a response thereto. If the hearing officer believes himself not disqualified, he shall so rule and proceed with the hearing. If the person seeking disqualification excepts from the ruling of the hearing officer, the hearing officer shall certify the question together with the affidavit and any response filed in connection with it, to the Commission. The Commission may rule on the question without hearing or it may require testimony or argument on the issues raised. The affidavit and response, any testimony taken, and the decision thereon shall be part of the record in the case.

(d) *Functions of hearing officer.* The hearing officer shall regulate the course of the hearing and during the course of such hearing shall rule upon procedural matters relating to the hearing, including applications for the issuance, modification or quashing of subpoenas and the taking of depositions and interrogatories pursuant to §§ 201.4(b) and 201.15. Upon notice to all parties, the hearing officer may reopen any hearing prior to the filing of a recommended decision therein, or, if no recommended decision is to be filed, prior to the time for filing briefs with the Commission.

(e) *Rulings by hearing officer; exceptions.* All applications, motions and objections made during the course of the hearing shall be made to and decided by the hearing officer, except that where his ruling would dispose of the proceeding in whole or in part, it shall be made in his recommended decision submitted after the conclusion of the hearing. Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon except as ordered by the hearing officer. Rulings by the hearing officer on all applications, motions and objections shall be part of the record. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling in order to be urged before the Commission. Such exceptions will be deemed waived however, unless raised in accordance with § 201.12 (a) or in the manner of a proposed finding in accordance with § 201.16(d) or in the manner of an exception to a recommended decision in accordance with § 201.17.

(f) *Transcript of hearings.* Hearings for the purpose of taking evidence shall be stenographically reported, and a transcript thereof shall be made.

§ 201.12 Motions and applications.

(a) *Review of hearing officer's rulings.* Upon exception to any ruling of the hearing officer, the matter shall, on request of a party, be promptly certified to the Commission for its consideration upon a finding by the hearing officer: (1) That there is at issue a privilege not

to answer questions posed; or (2) that a subsequent reversal of the ruling by the Commission would unduly delay or prolong the proceeding or cause undue inconvenience to the parties, taking into consideration the probability of such reversal. If the hearing officer does not certify the matter, a party may apply to the Commission for review, or the Commission on its own motion may direct that the matter be submitted to it for review. Unless otherwise ordered by the hearing officer, the hearing before the hearing officer shall continue whether or not such certification or application is made. Failure to request certification or to make such an application will not waive the right to seek review of the ruling of the hearing officer after the close of the hearing pursuant to §§ 201.16(d) and 201.17. The Commission will prescribe the procedure for each application hereunder and paragraphs (b) and (c) of this section shall not apply.

(b) *Motions to Commission.* All motions and applications not required to be made to the hearing officer pursuant to § 201.11 shall be made to and ruled upon by the Commission.

(c) *Filing of motions to Commission; briefs.* Motions or applications calling for determination by the Commission shall be filed with the Secretary or other duly authorized officer of the Commission in writing, provided that motions or applications calling for determination by the Commission but made in the course of a hearing may be filed in writing with the hearing officer, who shall refer such motion or application to the Commission. Any such motion or application shall be accompanied by a written brief of the points and authorities relied upon in support of the same. Any party may file an answering brief within 5 days after service upon him of such motion or other application as provided in § 201.23, unless otherwise directed by the Commission. Motions and applications will be considered on the briefs filed following the time for filing the answering brief, unless otherwise directed by the Commission. No oral argument will be heard on such matters unless the Commission so directs. Unless otherwise ordered by the Commission or the hearing officer, the hearing shall continue pending the determination of the motion or application by the Commission.

§ 201.13 Extension of time and adjournments.

Except as otherwise provided by law, the Commission for cause shown may extend or shorten any time limits prescribed by this part for filing any papers and may postpone or adjourn any hearing. A hearing before a hearing officer shall begin at the time and place ordered by the Commission, provided that, within the limits provided by statute, the hearing officer may for good cause postpone the commencement of the hearing for not more than 7 days. Any convened hearing may be adjourned to such time and place as may be ordered by the Commission or by the hearing officer. It is the policy of the Commission that such adjournments shall be for not more than 30 days and in no event shall a hearing

officer order an adjournment for a period in excess of 45 days.

§ 201.14 Evidence.

(a) *Presentation and admission of evidence.* All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation, which shall be administered by the hearing officer. Every party shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing officer shall receive relevant and material evidence, rule upon offers of proof and exclude all irrelevant, immaterial or unduly repetitious evidence.

(b) *Subpoenas; motions to quash or modify.* (1) Any member of the Commission, the hearing officer or any other officer designated by the Commission for the purpose, in connection with any hearing ordered by the Commission,

(i) Shall issue subpoenas requiring the attendance and testimony of witnesses at any designated place of hearing, upon application therefor by any party, and

(ii) May issue subpoenas requiring the production of documentary or other tangible evidence at any designated place of hearing, upon written application by any party, which shall include a showing of the general relevance, materiality and reasonable particularity of the documentary or other tangible evidence desired and the facts to be proved by them.

(2) In cases in which it is impracticable to make timely application to the hearing officer, any party may at his discretion apply to the Regional Administrator of the Commission who thereupon shall issue subpoenas requiring the attendance and testimony of witnesses upon the application of any party.

(3) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of service of such subpoena, apply to the hearing officer or, in the case of a subpoena issued by a member of the Commission, to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of reasons therefor. Upon notice to the person upon whose application the subpoena was issued, and opportunity for hearing, the Commission or the hearing officer, as the case may be, may quash or modify the subpoena.

(c) *Witness fees and mileage.* Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

(d) *Official notice.* The Commission, the hearing officer or any Commission officer who is preparing a recommended decision may at the request of any party, or upon his own motion, take official

notice of any material fact which might be judicially noticed by a district court of the United States, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

§ 201.15 Depositions and interrogatories.

(a) *Applications and orders for depositions.* Any party desiring to take a deposition shall make written application therefor, setting forth the reasons why such deposition should be taken, the name and residence of the witness, the matters concerning which it is expected to question the witness, and the time and place proposed for the taking of the deposition. Thereupon the hearing officer or Commission, as the case may be, may in his or its discretion, issue an order which will name the witness whose deposition is to be taken, state the scope of the testimony to be taken, and specify the time when, the place where, and the designated officer before whom the witness is to testify. Such order shall be served upon all parties by the Secretary, or other duly designated officer of the Commission, a reasonable time in advance of the time fixed for taking testimony.

(b) *Testimony on depositions.* Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers shall be taken down in the words of the witness.

(c) *Objections to questions or evidence.* Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the officer shall include argument or debate. Objections to questions or evidence shall be noted by the officer upon the deposition, but he shall not have power to decide on the competency or materiality or relevance of evidence. Failure to object to questions or evidence before the officer shall not be deemed a waiver unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(d) *Filing of depositions.* The testimony shall be reduced to writing by the officer, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. The original deposition and exhibits shall be forwarded under seal to the Secretary of the Commission with such number of copies as may be requested by the Secretary of the Commission. Upon receipt thereof the Secretary or other duly designated officer shall file the original in the proceeding and shall forward a copy to each party or his attorney of record.

(e) *Form of depositions.* Such depositions shall conform to the specifications of § 201.22 (e), (f) and (g), but deficiencies of form shall not invalidate the deposition if properly executed.

(f) *Depositions as part of the record.* Any part of a deposition not received in evidence at a hearing before the Commission or a hearing officer shall not constitute a part of the record in such proceeding, unless the parties shall so agree or the Commission so orders.

(g) *Interrogatories.* Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination upon application of any party as provided in paragraph (a) of this section. The interrogatories shall be filed with the application in triplicate. Within ten (10) days after service, any party may file with the Secretary his objections, if any, to such interrogatories, and may file such cross-interrogatories as he desires to submit. Such objections and cross-interrogatories shall be filed in triplicate and all other parties shall have ten (10) days after service to file their objections, if any, to such interrogatories. Objections to interrogatories or cross-interrogatories shall be settled by the hearing officer. Objections to interrogatories shall be made before the order for taking the deposition issues and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories and cross-interrogatories, no party shall be present or represented, and no person other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order. The testimony shall be reduced to writing by the officer or under his direction and shall be subscribed by the witnesses and certified in usual form by the officer.

§ 201.16 Proposed findings and conclusions; recommended decision.²

(a) *Effect of failure to appear at hearing.* Unless a party otherwise indicates his objections thereto or the Commission otherwise directs, a party's failure to appear at a hearing of which he has been properly notified, shall be deemed to be a waiver of his right to a recommended decision in the proceeding, and of his right to object to the participation of the interested division of the Commission in the preparation of the Commission's decision.

(b) *When recommended decision required.* The hearing officer shall prepare a recommended decision in any proceeding in which a hearing officer's decision is required under the Administrative Procedure Act, unless such requirement is waived by all parties, and in any other proceeding in which the Commission directs him to prepare such decision.

(c) *Recommended decision by interested division.* Except to the extent that the Commission directs otherwise, in any proceeding where a recommended decision is to be prepared by any officer of the Commission other than the hearing officer, such recommended decision shall

be prepared by the staff of the interested division.

(d) *Proposed findings and conclusions; briefs.* In any proceeding involving a hearing or an opportunity for hearing, the parties may file in writing proposed findings and conclusions. Proposed findings of fact shall indicate the basis therefor by appropriate citations to the record. Briefs in support of such proposals may be filed therewith or as a part thereof, and any proposed finding or conclusion not briefed may be regarded as waived.

(e) *Time for filing proposed findings and briefs prescribed by hearing officer.* At the end of every hearing, the hearing officer shall, after consultation with the parties, prescribe the period within which such proposed findings and conclusions and supporting briefs are to be filed and shall direct such filings to be either simultaneous or successive, provided, however, that the period within which the first filing is to be made shall not exceed 30 days after the close of the hearing. If successive filings are directed the proposed findings and conclusions of the moving party shall be set forth in serially numbered paragraphs and any counter statement of proposed findings and conclusions must, in addition to any other matter, indicate as to which paragraphs of the moving party's proposals there is no dispute. Reply briefs may be filed by the moving party or, where simultaneous filings are directed, by all parties, within the period prescribed therefor by the hearing officer.

(f) *Service of record; preparation and filing of recommended decision.* In proceedings in which a recommended decision is to be prepared, the record in the proceeding shall, promptly after the time for the last filing of briefs in reply to proposed findings, be served by the Records Officer upon the person designated to prepare the recommended decision. Such person shall file his recommended decision with the Secretary within 30 days after such service and it shall promptly be served upon the parties. The recommended decision shall set forth separately, in serially numbered paragraphs, the findings of fact and conclusions forming the basis thereof.

§ 201.17 Exceptions to recommended decisions.²

(a) *Time for filing exceptions; effect of failure to file.* Within 10 days after receipt of a recommended decision of a hearing officer, any party may serve and file written exceptions thereto indicating specifically the paragraphs to which exceptions are taken. Any objections to a recommended decision not saved by exception filed pursuant to this section will be deemed to have been abandoned and may be disregarded.

(b) *Time for filing briefs; oral argument on exceptions.* A brief in support of such exceptions or in support of one or more paragraphs of the recommended decision may be served and filed within 20 days after receipt of the recommended decision, and any exception not briefed may be regarded as waived. A reply

brief may be served and filed within 10 days of service of the original brief. Exceptions may be argued orally only before the Commission.

(c) *Time for filing recommended decision by division.* In any proceeding in which the recommended decision is prepared by the interested division of the Commission this section shall apply, except that the time limits on actions hereunder shall be such as shall be set by the hearing officer at the end of the hearing.

§ 201.18 Briefs.

Briefs shall be confined to the particular matters remaining at issue. Briefs not filed at or before the time provided will not be received except upon special permission of the Commission. Each exception which is briefed shall be supported by a concise argument and by citation of such statutes, decisions and other authorities and by page references to such portions of the record, as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript. Reply briefs shall be confined to matters in original briefs of other parties.

§ 201.19 Special time limits for broker-dealer suspension cases.

In any proceeding pursuant to section 15(b) of the Securities Exchange Act of 1934 on the question of suspension of registration of a broker or dealer pending final determination whether such registration shall be revoked, the following time limits shall be applicable, unless otherwise ordered by the Commission, in lieu of the time limits prescribed by other provisions of this part:

(a) *Proposed findings and briefs.* Proposed findings and conclusions and briefs in support thereof may be filed within 3 days after the close of the hearing.

(b) *Recommended decision.* In proceedings in which a recommended decision is to be prepared, the record in the proceedings shall, promptly after the time for filing proposed findings and conclusions and briefs in support thereof, be served by the Records Officer upon the person designated to prepare the recommended decision. Such person shall file his recommended decision with the Secretary within 5 days after such service and it shall promptly be served upon the parties.

(c) *Exceptions.* Within 3 days after the receipt of a recommended decision of a hearing officer, any party may serve and file written exceptions thereto.

(d) *Briefs.* A brief in support of such exceptions or in support of one or more paragraphs of the recommended decision may be served and filed within 5 days after receipt of the recommended decision. A reply brief may be served and filed within 4 days of service of the original brief.

§ 201.20 Contents and certification of record.

(a) *Contents of Record.* (1) The record in every proceeding before the Commission for final decision shall include:

² See § 201.19 for special time limits applicable to broker-dealer suspension cases.

(i) The order for proceedings, the notice of hearing and any amendments thereto;

(ii) Any responsive pleading and any amendments thereto;

(iii) The moving papers to the extent the same are not comprehended under subdivision (i) of this subparagraph;

(iv) Any other document or portion thereof which constitutes part of the official public records of the Commission and which is specified in the documents listed in subdivision (i), (ii) or (iii) of this subparagraph, unless the hearing officer shall determine the same to be irrelevant, immaterial or unduly repetitious;

(v) Any affidavit and response, testimony taken and decision in connection with a request to withdraw under § 201.11(c);

(vi) Proofs of service;

(vii) Any application, motion or objection made in the course of the proceeding, rulings thereon and exceptions thereto;

(viii) Any stipulation between the parties as to any matter of fact, law or procedure;

(ix) The transcript of testimony and any specification of corrections thereof;

(x) Any exhibit received at the hearing, including any document or portion thereof constituting part of the official public records of the Commission which the hearing officer during the course of the hearing may incorporate by reference upon a determination that it is relevant, material and not unduly repetitious;

(xi) Any written communication accepted by the hearing officer pursuant to § 201.9(f);

(xii) Any proposed findings and conclusions; and

(xiii) Any recommended decision and exceptions thereto.

(2) At the beginning of the hearing, the hearing officer shall read into the record a list of the documents which at that time constitute the record.

(3) The documents or portions thereof referred to in subdivisions (iv) and (x) of subparagraph (1) of this paragraph shall be deemed to have been received in evidence as exhibits whether or not they have been physically introduced.

(4) Promptly after the close of the hearing, the hearing officer shall transmit to the Records Officer of the Commission or his designated deputy a list of documents or portions thereof constituting part of the public official records of the Commission which during the course of the hearing have been admitted as exhibits pursuant to subparagraph (1)(x) of this paragraph, or excluded pursuant to subparagraph (1)(iv) of this paragraph, and a copy of any written communication accepted pursuant to § 201.9(f), application, motion, objection, ruling or stipulation made in writing during the proceeding which has not theretofore been filed with the Secretary or other duly designated officer of the Commission or included in the transcript. Promptly after the last date for filing briefs, and prior to any oral arguments before the Commission, the Records Officer of the Commission or his

duly designated deputy shall certify the entire record to the Commission for final decision, provided that documents or portions thereof constituting part of the official records of the Commission may be incorporated by reference and need not be physically transferred to the record.

(b) *Retention of documents not admitted in evidence; substitution of copies.* (1) Documents offered in evidence during the course of a hearing but excluded by the hearing officer, and documents marked for identification but not offered as exhibits, shall not be considered as a part of the record, but any such document shall be retained in the custody of the Commission.

(2) With the consent of the parties a copy may be substituted for a document which is retained pursuant to the provisions of this paragraph.

(c) *Correction of transcript.* Any party may submit a timely request to the hearing officer to correct the transcript. Proposed corrections of the transcript may be submitted to the hearing officer by stipulation of the parties, or by a motion by any party, and, upon notice to all parties to the proceeding, the hearing officer may specify corrections of the transcript. A copy of such specification shall be furnished to all parties and made a part of the record.

(d) *Scandalous or impertinent matter.* Any scandalous or impertinent matter contained in any brief or pleading or in connection with any oral presentation in a proceeding may be stricken on order of the Commission or at the direction of the hearing officer.

§ 201.21 Hearings before the Commission.

(a) *Oral argument.* Except as to motions and applications dealt with in § 201.12, upon written request of any party a matter to be decided by the Commission will be set down for oral argument before the Commission unless exceptional circumstances make oral argument impractical or inadvisable. Such request must be made within the time provided for filing the original briefs.

(b) *Time allowed.* Unless otherwise directed by the Commission, not more than 1 hour will be allowed for oral argument by any participant and, where the same or similar interests are represented by more than 1 participant, an aggregate of not more than 1 hour will be allowed the interests so represented irrespective of the number of participants, the time to be divided equally among such participants. In appropriate cases the Commission may, in its discretion, extend, shorten or reallocate the time prescribed herein. Oral argument should be succinct.

(c) *Basis for Commission determinations.* The Commission shall determine the matter on the record, any briefs of the parties and any oral argument before the Commission.

(d) *Leave to adduce additional evidence.* The Commission, upon its own motion or upon application in writing by any party for leave to adduce additional evidence which application shall show

to the satisfaction of the Commission that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence at the hearing before the Commission or the hearing officer, may hear such additional evidence or may refer the proceeding to the hearing officer for the taking of such additional evidence.

(e) *Petition for rehearing.* Any petition for rehearing by the Commission shall be filed within 5 days after issuance of the order complained of and shall clearly state the specific grounds and the specific matters upon which rehearing is sought.

§ 201.22 Filing; formalities; computation of time.

(a) *Filing with Commission.* All papers required to be filed with the Commission in any proceeding shall be filed with the Secretary, and must be received at the office of the Commission in Washington, D.C., within the time limit, if any, for such filing.

(b) *Docket of proceedings.* A docket of all proceedings shall be maintained by the Commission, and each proceeding shall be assigned a number.

(c) *Number of copies.* Unless otherwise specifically provided in this part or by a particular rule or order of the Commission an original and 7 copies of all papers shall be filed.

(d) *Length and form of briefs.* All briefs, including briefs filed pursuant to paragraph (c) of this section, containing more than 10 pages shall include an index and table of cases. The date of each brief must appear on its front cover or title page. No brief shall exceed 60 pages in length, except with the permission of the Commission.

(e) *Paper, spacing, type.* All papers filed under this part shall be typewritten, mimeographed or printed, shall be plainly legible, shall be on one grade of good unglazed white paper approximately 8 inches wide and 10½ inches long, with left-hand margin 1½ inches wide, and shall be bound on the left-hand side. They shall be double spaced, except that quotations shall be single-spaced and indented. If printed, they shall be in either 10- or 12-point type with double-leaded text and single-leaded quotations.

(f) *Signatures.* All papers must be signed in ink by the party filing the same, or his duly authorized agent or attorney, and must show the address of the signer.

(g) *Title page.* All papers filed must include at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the names of the parties, and the subject of the particular paper or pleading, and the docket number assigned to the proceeding.

(h) *Signature on orders.* All orders of the Commission shall be signed by the Secretary or such other person as may be authorized by the Commission.

(i) *Time allowances for residents of distant states.* Wherever the rules in this part provide a specific limitation as to the time within which any papers are required to be filed with the Commission in any proceeding, an additional

period of 3 days shall be available for the hearing officers and parties who are residents of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(j) *Computation of time.* In computing any period of time prescribed or allowed by this part or by order of the Commission the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is Saturday, Sunday or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.

§ 201.23 Service of pleadings, etc. other than moving papers.

(a) *Service of documents filed with Commission.* All amendments to moving papers, all answers, all motions or applications made in the course of a proceeding (unless made orally during a hearing), all proposed findings and conclusions, all exceptions to any recommended decision, and all briefs shall be filed with the Commission and shall, at the time of personal delivery or dispatch to the Commission, be served by the filing party upon all other parties to the proceeding (including the interested division of the Commission), provided that such papers relating to proceedings concerning confidential treatment pursuant to provisions of Clause 30 of Schedule A of the Securities Act of 1933, section 24(b) of the Securities Exchange Act of 1934, section 22(b) of the Public Utility Holding Company Act of 1935, section 45(a) of the Investment Company Act of 1940, or section 210(a) of the Investment Advisers Act of 1940, and the rules and regulations promulgated under such sections, shall be served only by filing the appropriate number of copies thereof upon the Commission.

(b) *How service made.* Service of such documents shall be made by personal service on, or by mail addressed to, the party or his attorney or other agent for service. Where service is made by mail on a person located more than 500 miles from the point of mailing, airmail must be used. Where the document being served is printed, 2 copies shall be served on each party or his attorney or other agent for service. Service shall be deemed made at the time of personal service or of deposit in the mails properly addressed and post-paid. Where a party makes service by mail, any specific limitation on the time within which the person on whom such mail service has been made may respond thereto shall be increased by 2 days.

(c) *Proof of service.* Proof of service must be made by filing with the Commission an affidavit of service or, in the case of any attorney-at-law, a certificate, simultaneously with the filing of the required number of copies with the Commission.

(d) *Service of decisions and orders.* Copies of all recommended decisions, de-

cisions, orders and rulings by the Commission on any written application shall be served by the Secretary or other duly designated officer of the Commission on the applicant and, if made in connection with a pending proceeding, on all parties thereto.

§ 201.24 Incorporation by reference.

(a) *Requirements.* Where rules, regulations, or instructions to forms permit incorporation by reference, a document may be so incorporated only by reference to the specific document and to the prior filing in which it was physically filed, not to another file which incorporates it by reference. No document which has been on file with the Commission for a period of more than 10 years may be incorporated by reference in a current filing except basic documents as designated under paragraph (b) of this section.

(b) *Basic documents.* The Commission, on its own initiative or upon request, may classify as basic documents certain documents filed under the various Acts administered by the Commission, which appear to the Commission to possess such administrative, legal, historical or other values as to warrant being retained and considered available for incorporation by reference for an indefinite period. Requests for such classification shall be submitted to the Commission in duplicate and shall contain (1) a precise description of the document and of the filing in which it is physically filed and (2) the reasons for the request. A request will be considered to have been granted if notification of denial is not given within 60 days of the receipt of the request. If the Commission grants a request pursuant to this paragraph, it may subsequently dispose of any basic document the retention of which would in its opinion no longer serve a substantial purpose, after giving the person who made the request notice of the proposed disposition and an opportunity to object thereto.

§ 201.25 Availability of information to public.

(a) *Information in documents filed with Commission generally public.* Unless otherwise provided by statute or rule or otherwise directed by the Commission, all information contained in any notification, statement, application, declaration, recommended decision, or other document filed with the Commission pursuant to requirement of a statute or a rule or order of this Commission shall be available to the public.

(b) *Inspection, purchase of copies and certification of public records.* Public material may be inspected in the Public Reference Room at the principal office of the Commission, and such material on file at regional offices of the Commission may be inspected at these offices during regular business hours. Copies of public material will be sold to any person upon payment of the proper fees. A schedule of such fees will be mailed on request. In addition to any copying charge, a charge of \$2.00 will be made for each certification relating to the Commission's records without additional charge for

the seal of the Commission, which will be affixed in all instances.

(c) *Publication of final opinions, orders and rules.* All final opinions and orders entered by the Commission in the adjudication of cases, and all rules of the Commission shall be released for general publication, except where confidential treatment has for good cause been directed by the Commission. Copies of such published material shall be available for public inspection at the office of the Commission or may be obtained by mail on request. Bound volumes of past Decisions and Reports are obtainable from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. at a prescribed charge.

(d) *Purchase of transcripts of public hearings.* Transcripts of public hearings will be supplied by the official reporter at the prescribed rates.

§ 201.26 Confidential treatment of certain matters.

(a) *Requests for confidential treatment.* Confidential treatment of material listed in § 201.25(a) may be requested for good cause where authorized by statute. Request for confidential treatment may be made pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933 and § 230.485 of this chapter thereunder, section 24(b) of the Securities Exchange Act of 1934 and § 240.24b-2 of this chapter thereunder, section 22(b) of the Public Utility Holding Company Act of 1935 and § 250.104 of this chapter thereunder, section 45(a) of the Investment Company Act of 1940 and § 270.45a-1 of this chapter thereunder, or section 210(a) of the Investment Advisers Act of 1940. In any case where a hearing for the purpose of taking testimony relating to whether confidential treatment should be granted or continued is to be held, the Commission may in its discretion, prior to the hearing, require the person desiring the confidential treatment to furnish in writing additional information in respect of its grounds of objection to public disclosure. Failure to supply the information so requested within 15 days from the date of receipt by the registrant of a notice of the information required, shall be deemed a waiver of the objections to public disclosure of that portion of the information filed confidentially with respect to which the additional information required by the Commission relates, unless the Commission shall otherwise order for good cause shown at or before the expiration of such 15-day period.

(b) *Procedure in confidential treatment cases.* All papers containing data as to which confidential treatment is sought, together with any application making objection to the disclosure thereof, or other papers relating in any way to such application, shall be made available to the public only in accordance with orders of the Commission and/or the applicable provisions of § 230.485 of this chapter issued under the Securities Act of 1933, § 240.24b-2 of this chapter issued under the Securities Exchange Act of 1934, § 250.104 of this chapter issued under the Public Utility Holding Company Act of 1935, section 45 of the

Investment Company Act of 1940 and § 270.45a-1 of this chapter issued under that Act, or section 210(a) of the Investment Advisers Act of 1940.

Proposed findings and conclusions and briefs in support of such proposed findings and conclusions, a recommended decision, exceptions thereto and briefs in support of or in opposition to such exceptions which are filed in connection with any proceeding concerning confidential treatment shall, unless otherwise ordered by the Commission, be for the confidential use only of the hearing officer, the Commission, the parties and counsel. The initial page of copies of such a recommended decision will contain a statement that such decision is nonpublic. The order of the Commission sustaining or denying the application for confidential treatment shall be made available to the public. Any findings or opinion issued by the Commission in any proceeding relating to confidential treatment shall be made public at such time as the material filed confidentially is made available to the public.

(c) *Information obtained in investigations.* Information or documents obtained by the Commission in the course of any examination or investigation shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information or documents available to anyone other than a member, officer, or employee of the Commission, unless the Commission authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this section. Any officer or employee who is served with such a subpoena shall promptly advise the Commission of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

(d) *Purchase of transcripts of private hearings.* Transcripts of private hearings will be supplied to the parties at the prescribed rates.

TABLE I SHOWING DERIVATION OF REVISED RULES IN RELATION TO PRESENT RULES

Revised Rules (17 CFR)—Old Rules (17 CFR)

I; 201.1—; 201.2—II; 201.2.
 III; 201.3—XX; 201.20.
 IV; 201.4—XIX; 201.19.
 V; 201.5—I; 201.1.
 VI (a), (b), (c); 201.6 (a), (b), (c)—III (a), (b), (c); 201.3 (a), (b), (c).
 VI (d); 201.6 (d)—IV (a), (b); 201.4 (a), (b).
 VII; 201.7—III (d); 201.3 (d).
 VIII (a); 201.8 (a)—; 201.8 (b), (c); 201.8 (b), (c)—III (e); 201.3 (e).
 VIII (d); 201.8 (d)—V (e); 201.5 (e).
 IX (a); 201.9 (a)—XVII (a); 201.17 (a).

IX (b); 201.9 (b)—Rule 15b-9—SEA of 1934; 240.15b-9.
 IX (c), (d), (e), (f), (g), (h); 201.9 (c), (d), (e), (f), (g), (h)—XVII (b), (c), (d), (e), (f), (g); 201.17 (b), (c), (d), (e), (f), (g).
 X; 201.10—XVIII; 201.18.
 XI (a), (b); 201.11 (a), (b)—V (a), (b); 201.5 (a), (b).
 XI (c); 201.11 (c)—V (d); 201.5 (d).
 XI (d); 201.11 (d)—V (e); 201.5 (e).
 XI (e); 201.11 (e)—V (h); 201.5 (h).
 XI (f); 201.11 (f)—V (c); 201.5 (c).
 XII (a); 201.12 (a)—V (b); 201.5 (b).
 XII (b), (c); 201.12 (b), (c)—VI (a), (b); 201.6 (a), (b).
 XIII; 201.13—VII; 201.7.
 XIV (a); 201.14 (a)—V (c), (e); 201.5 (c), (e).
 XIV (b), (c); 201.14 (b), (c)—V (f), (g); 201.5 (f), (g).
 XIV (d); 201.14 (d)—; 201.5 (d).
 XV; 201.15—VIII; 201.8.
 XVI (a); 201.16 (a)—; 201.16 (b), (c); 201.16 (b), (c)—IX (b), (c); 201.9 (b), (c).
 XVI (d); 201.16 (d)—IX (f), XI (a), (c); 201.9 (f), 201.11 (a), (c).
 XVI (e); 201.16 (e)—IX (f), XI (e); 201.9 (f), 201.11 (e).
 XVI (f); 201.16 (f)—IX (e); 201.9 (e).
 XVI (g); 201.16 (g)—IX (d); 201.9 (d).
 XVII; 201.17—X, XI (a), (c), (e); 201.10, 201.11 (a), (c), (e).
 XVIII; 201.18—XI (b), (f); 201.11 (b), (f).
 XIX; 201.19—; 201.20 (a)—V (c), (h), IX (a); 201.5 (c), (h), 201.9 (a).
 XX (b); 201.20 (b)—; 201.20 (c)—; 201.20 (d)—XI (b); 201.11 (b).
 XXI; 201.21—XII; 201.12.
 XXII (a), (b); 201.22 (a), (b)—XIII (a), (b); 201.13 (a), (b).
 XXII (c); 201.22 (c)—XIII (e); 201.13 (e).
 XXII (d); 201.22 (d)—XI (d); 201.11 (d).
 XXII (e), (f), (g); 201.22 (e), (f), (g)—XV (a), (b), (c); 201.15 (a), (b), (c).
 XXII (h); 201.22 (h)—XVI (a); 201.16 (a).
 XXII (i), (j); 201.22 (i), (j)—XIII (c), (d); 201.13 (c), (d).
 XXIII (a), (b); 201.23 (a), (b)—XI (e), XIV (a), (b); 201.11 (e), 201.14 (a), (b).
 XXXII (c); 201.23 (c)—; 201.23 (d)—XVI (b); 201.16 (b).
 XXIV; 201.24—; 201.25 (a); 201.25 (a)—XIII (f); 201.13 (f).
 XXV (b), (c); 201.25 (b), (c)—XIII (j), (k); 201.13 (j), (k).
 XXV (d); 201.25 (d)—V (c); 201.5 (c).
 XXVI (a), (b), (c); 201.26 (a), (b), (c)—XIII (g), (h), (i); 201.13 (g), (h), (i).
 XXVI (d); 201.26 (d)—V (c); 201.5 (c).

TABLE II SHOWING LOCATION IN REVISED RULES OF PROVISIONS OF PRESENT RULES

Present Rules (17 CFR)—Revised Rules (17 CFR)

I; 201.1—V; 201.5.
 II; 201.2—II; 201.2.
 III (a), (b), (c); 201.3 (a), (b), (c)—VI (a), (b), (c); 201.6 (a), (b), (c).
 III (d); 201.3 (d)—VII; 201.7.
 III (e); 201.3 (e)—VIII (b), (c); 201.8 (b), (c).
 IV; 201.4—VI (d); 201.6 (d).
 V (a), (b); 201.5 (a), (b)—XI (a), (b); 201.11 (a), (b).
 V (c); 201.5 (c)—XI (f), XIV (a), XX (a), XXV (d), XXVI (d); 201.11 (f), 201.14 (a), 201.20 (a), 201.25 (d), 201.26 (d).
 V (d); 201.5 (d)—XI (c); 201.11 (c).
 V (e); 201.5 (e)—VIII (d), XI (d), XIV (a); 201.8 (d), 201.11 (d), 201.14 (a).
 V (f); 201.5 (f)—XIV (b); 201.14 (b).
 V (g); 201.5 (g)—XIV (c); 201.14 (c).
 V (h); 201.5 (h)—XI (e), XII (a), XX (a); 201.11 (e), 201.12 (a), 201.20 (a).
 V (i); 201.5 (i)—; 201.5 (j); 201.5 (j)—XII (b); 201.12 (b).
 VI (b); 201.6 (b)—XII (c); 201.12 (c).
 VII; 201.7—XIII; 201.13.
 VIII; 201.8—XV; 201.15.

IX (a); 201.9 (a)—XX (a); 201.20 (a).
 IX (b), (c); 201.9 (b), (c)—XVI (b), (c); 201.16 (b), (c).
 IX (d); 201.9 (d)—XVI (g), XXVI (b); 201.16 (g), 201.26 (b).
 IX (e); 201.9 (e)—XVI (f); 201.16 (f).
 IX (f); 201.9 (f)—XVI (d), (e); 201.16 (d), (e).
 X (a), (b); 201.10 (a), (b)—XVII (a), (b), (c); 201.17 (a), (b), (c).
 XI (a); 201.11 (a)—XVI (d), XVII (b); 201.16 (d), 201.17 (b).
 XI (b); 201.11 (b)—XVII, XX (d); 201.18, 201.20 (d).
 XI (c); 201.11 (c)—XVI (d), XVII (b); 201.16 (d), 201.17 (b).
 XI (d); 201.11 (d)—XXII (d); 201.22 (d).
 XI (e); 201.11 (e)—XVII (b), XXIII (a); 201.17 (b), 201.23 (a).
 XI (f); 201.11 (f)—XVIII; 201.18.
 XII (a), (b), (c), (d), (e); 201.12 (a), (b), (c), (d), (e)—XXI (a), (b), (c), (d), (e); 201.21 (a), (b), (c), (d), (e).
 XIII (a), (b); 201.13 (a), (b)—XXII (a), (b); 201.22 (a), (b).
 XIII (c), (d); 201.13 (c), (d)—XII (i), (j); 201.12 (i), (j).
 XIII (e); 201.13 (e)—XXII (c); 201.22 (c).
 XIII (f); 201.13 (f)—XXV (a); 201.25 (a).
 XIII (g), (h), (i); 201.13 (g), (h), (i)—XXVI (a), (b), (c); 201.26 (a), (b), (c).
 XIII (j), (k); 201.13 (j), (k)—XXV (b), (c); 201.25 (b), (c).
 XIV (a), (b); 201.14 (a), (b)—XXIII (a), (b); 201.23 (a), (b).
 XV (a), (b), (c); 201.15 (a), (b), (c)—XXII (e), (f), (g); 201.22 (e), (f), (g).
 XVI (a); 201.16 (a)—XXII (h); 201.22 (h).
 XVI (b); 201.16 (b)—XXIII (d); 201.23 (d).
 XVI (a); 201.17 (a)—IX (a); 201.9 (a).
 XVII (b), (c), (d), (e), (f), (g); 201.17 (b), (c), (d), (e), (f), (g)—IX (c), (d), (e), (f), (g), (h); 201.9 (c), (d), (e), (f), (g), (h).
 XVIII; 201.18—X; 201.10.
 XIX; 201.19—IV; 201.4.
 XX; 201.20—III; 201.3.

PART 202—INFORMAL AND OTHER PROCEDURES

Sec.

- 202.1 General.
 202.2 Pre-filing assistance and interpretative advice.
 202.3 Processing of filings.
 202.4 Facilitating administrative hearings.
 202.5 Enforcement activities.
 202.6 Adoption, revision and rescission of rules and regulations of general application.
 202.7 Submittals.

AUTHORITY: §§ 202.1 to 202.7 issued under secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 77ss, 78w, 79t, 80a-37, 80b-11.

§ 202.1 General.

(a) The statutes administered by the Commission provide generally (1) for the filing with it of certain statements, such as registration statements, periodic and ownership reports, and proxy solicitation material, and for the filing of certain plans of reorganization, applications and declarations seeking Commission approvals; (2) for Commission determination through formal procedures of matters initiated by private parties or by the Commission; (3) for the investigation and examination of persons and records where necessary to carry out the purposes of the statutes and for enforcement of statutory provisions; and (4) for the adoption of rules and regulations

where necessary to effectuate the purposes of the statutes.

(b) In addition to the Commission's rules of practice set forth in Part 201 of this chapter, the Commission has promulgated rules and regulations pursuant to the several statutes it administers (Parts 230, 240, 250, 260, 270 and 275 of this chapter). These parts contain substantive provisions and include as well numerous provisions detailing the procedure for meeting specific standards embodied in the statutes. The Commission's rules and regulations under each of the statutes are available in pamphlet form upon request to the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C.

(c) The statutes and the published rules, regulations and forms thereunder prescribe the course and method of formal procedures to be followed in Commission proceedings. These are supplemented where feasible by certain informal procedures designed to aid the public and facilitate the execution of the Commission's functions. There follows a brief description of procedures generally followed by the Commission which have not been formalized in rules.

(d) The informal procedures of the Commission are largely concerned with the rendering of advice and assistance by the Commission's staff to members of the public dealing with the Commission. While opinions expressed by members of the staff do not constitute an official expression of the Commission's views, they represent the views of persons who are continuously working with the provisions of the statute involved. And any statement by the director, associate director, assistant director, chief accountant, chief counsel, or chief financial analyst of a division can be relied upon as representing the views of that division. In certain instances an informal statement of the views of the Commission may be obtained. The staff, upon request or on its own motion, will generally present questions to the Commission which involve matters of substantial importance and where the issues are novel or highly complex, although the granting of a request for an informal statement by the Commission is entirely within its discretion.

§ 202.2 Pre-filing assistance and interpretative advice.

The staff of the Commission renders interpretative and advisory assistance to members of the general public, prospective registrants, applicants and declarants. For example, persons having a question regarding the availability of an exemption may secure informal administrative interpretations of the applicable statute or rule as they relate to the particular facts and circumstances presented. Similarly, persons contemplating filings with the Commission may receive advice of a general nature as to the preparation thereof, including information as to the forms to be used and the scope of the items contained in the forms. Inquiries may be directed to an appropriate officer of the Commission's staff. In addition, informal discussions with members of the staff may be arranged whenever feasible, at the Commission's central

office or, except in connection with matters under the Public Utility Holding Company Act of 1935 and certain matters under the Investment Company Act of 1940, at one of its regional offices.

§ 202.3 Processing of filings.

(a) Registration statements, proxy statements, letters of notification, periodic reports, applications for qualification of indentures, and similar documents filed with the Commission under the Securities Act of 1933 and the Trust Indenture Act of 1939, and certain filings under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 are routed to the Division of Corporation Finance, which passes initially on the adequacy of disclosure and recommends the initial action to be taken. If the filing appears to afford inadequate disclosure, as for example through omission of material information or through violation of accepted accounting principles and practices, the usual practice is to bring the deficiency to the attention of the person who filed the document by a letter from the Assistant Director assigned supervision over the particular filing, and to afford a reasonable opportunity to discuss the matter and make the necessary corrections. This informal procedure is not generally employed where the deficiencies appear to stem from careless disregard of the statutes and rules or a deliberate attempt to conceal or mislead or where the Commission deems formal proceedings necessary in the public interest. Where it appears that the filing affords adequate disclosure, acceleration of its effectiveness when appropriate normally will be granted.

A similar procedure is followed with respect to filings under the Public Utility Holding Company Act of 1935 and the Investment Company Act of 1940, which are routed to the Division of Corporate Regulation.

(b) Applications for registration as brokers, dealers and investment advisers are submitted to the Division of Trading and Exchanges where they are examined to determine whether all necessary information has been supplied and whether all required financial statements and other documents have been furnished in proper form. Defective applications may be returned with a request for correction or held until corrected before being accepted as a filing. The files of the Commission and other sources of information are considered to determine whether any person connected with the applicant appears to have engaged in activities which would warrant commencement of proceedings on the question of denial of registration. The staff confers with applicants and makes suggestions in appropriate cases for amendments and supplemental information. Where it appears appropriate in the public interest and where a basis therefor exists, denial proceedings may be instituted. Normally, absent indications of willful violations, the Commission will accelerate the effective date of registration upon request and after correction of all deficiencies.

§ 202.4 Facilitating administrative hearings.

(a) Applications, declarations, and other requests involving formal Commission action after opportunity for hearing are scrutinized by the appropriate division for conformance with applicable statutory standards and Commission rules and generally the filing party is advised of deficiencies. Prior to passing upon applications and declarations the Commission receives the views of all interested persons at public hearings whenever appropriate; hence, any applicant or declarant seeking Commission approval of proposed transactions by a particular time should file his application or declaration in time to allow for the presentation and consideration of such views.

(b) After the staff has had an opportunity to study an application or declaration, interested persons may informally discuss the problems therein raised to the extent that time and the nature of the case permit (e.g., consideration is usually given to whether the proceeding is contested and if so to the nature of the contest). In such event, the staff will, to the extent feasible, advise as to the nature of the issues raised by the filing, the necessity for any amendments to the documents filed, the type of evidence it believes should be presented at the hearing and, in some instances, the nature, form, and contents of documents to be submitted as formal exhibits. The staff will, in addition, generally advise as to Commission policy in past cases which dealt with the same subject matter as the filing under consideration.

(c) During the course of the hearings, the staff is generally available for informal discussions to reconcile bona fide divergent views not only between itself and other persons interested in the proceedings, but among all interested persons; and, when circumstances permit, an attempt is made to narrow, if possible, the issues to be considered at the formal hearing.

(d) In some instances the Commission in the order accompanying its findings and opinion reserves jurisdiction over certain matters relating to the proceeding, such as payment of fees and expenses, accounting entries, terms and conditions relating to securities to be issued, and other matters. In such cases, upon receipt of satisfactory information and data the Commission considers whether further hearing is required before releasing jurisdiction.

§ 202.5 Enforcement activities.

(a) Where, from complaints received from members of the public, communications from Federal or State agencies, examination of filings made with the Commission, or otherwise, it appears that there may be violation of the acts administered by the Commission or the rules or regulations thereunder, a preliminary investigation is generally made. In such preliminary investigation no process is issued or testimony compelled. When it appears from information obtained either with or without a preliminary investigation that there is a likeli-

hood that a violation has been or is about to be committed and that the issuance of process may be necessary, the matter is reported to the Commission, which may then order a formal investigation or examination if it is deemed necessary. Unless otherwise ordered by the Commission, the investigation or examination is nonpublic and the reports thereon are for staff and Commission use only.

(b) Where it appears after investigation or otherwise that there has been a violation of any of the provisions of the acts administered by the Commission or the rules or regulations thereunder, the Commission may take one or more of the following actions: institution of administrative proceedings looking to the imposition of remedial sanctions, initiation of injunction proceedings in the courts, and, in the case of a willful violation, reference of the matter to the Department of Justice for criminal prosecution. The Commission may also on some occasions refer the matter to other Federal agencies, State authorities or organizations such as the stock exchanges or the National Association of Securities Dealers, Inc.

§ 202.6 Adoption, revision, and rescission of rules and regulations of general application.

(a) The procedure followed by the Commission in connection with the adoption, revision, and rescission of rules of general application necessarily varies

in accordance with the nature of the rule, the extent of public interest therein, and the necessity for speed in its adoption. Rules relating to Commission organization, procedure and management, for example, are generally adopted by the Commission without affording public discussion thereof. On the other hand, in the adoption of substantive rules materially affecting an industry or a segment of the public, such as accounting rules, every feasible effort is made in advance of adoption to receive the views of persons to be affected. In such cases, proposals for the adoption, revision, or rescission of rules are initiated either by the Commission or by members of the public, and to the extent practicable, the practices set forth in paragraph (b) of this section are observed.

(b) After preliminary consideration by the Commission a draft of the proposed rule is published in the FEDERAL REGISTER and mailed to interested persons (e.g., other interested regulatory bodies, principal registrants or persons to be affected, stock exchanges, professional societies and leading authorities on the subject concerned, and other persons requesting such draft) for criticism and suggestions. Unless otherwise requested written comments and suggestions received become a part of the public record upon the proposed rule. Following analysis of comments and suggestions received, the rule may be adopted in the form published or in re-

vised form in the light of such comments. In some cases a revised draft is prepared and published and, where appropriate, a public hearing may be held before final action upon the proposal. Any interested person may appear at the hearing or may submit written comment for consideration in accordance with the Commission's notice of the rule-making procedure to be followed. The rule in the form in which it is adopted by the Commission is publicly released and is published in the FEDERAL REGISTER.

§ 202.7 Submittals.

All required statements, reports, applications, etc., must be filed with the central office of the Commission, except that letters of notification filed pursuant to §§ 230.251 et seq. of this chapter, under the Securities Act of 1933 and reports of financial condition by exchange members, brokers, and dealers required by § 240.17a-5 of this chapter under the Securities Exchange Act of 1934 must be filed with the appropriate regional office as provided in § 230.255(a) of this chapter under the Securities Act of 1933 and § 240.17a-5(a) of this chapter under the Securities Exchange Act of 1934, respectively.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

JUNE 30, 1960.

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