

PART I

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Rules and Regulations

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 718—DETERMINATION OF ACREAGE AND COMPLIANCE

Late Notification of Acreage Adjustment

1. *Basis and purpose.* This amendment is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1301, et seq.), the Sugar Act of 1948, as amended (7 U.S.C. 1100, et seq.), the Agricultural Adjustment Act of 1949, as amended (7 U.S.C. 1441, et seq.), the Soil Bank Act (7 U.S.C. 1801, et seq.), and the Food and Agriculture Act of 1962 (Public Law 87-703, approved September 27, 1962, and Public Law 87-801, approved October 11, 1962) for the purpose of including adjustments of deficient diverted acreage under the provisions for accepting adjustments of acreage even though timely notice for such adjustments was not made.

2. Section 718.14 (28 F.R. 8117) (28 F.R. 10899) is amended by revising the title of paragraph (h) and adding paragraph (h) (3) to read as follows:

§ 718.14 Adjustment of acreage.

(h) Failure to notify county office of intent or completion of disposition of excess acreage, of adjustment of excess diverted acreage, or of adjustment of deficient diverted acreage.

(3) *Failure to notify county office of adjustment of deficient diverted acreage.* If all program requirements relating to eligibility for diversion payment are met except for timely notifying the county office of the adjustment of deficient diverted acreage, additional eligible acreage may be designated if the county committee determines that the producer failed to make timely notification of the adjustment of acreage due to a misunderstanding of his responsibility under the program regulations.

(Secs. 374, 375, 52 Stat. 65, 66, sec. 401, 63 Stat. 1054, sec. 403, 61 Stat. 932, sec. 124, 70 Stat. 198; 7 U.S.C. 1374, 1375, 1421, 1153, 1812; sec. 16(g), 76 Stat. 612; 16 U.S.C. 590p (g); sec. 16(h), 77 Stat. 45; 16 U.S.C. 590p (h); sec. 307, 76 Stat. 615)

Effective date. The adjustment of deficient diverted acreage has been and is now being carried out on farms throughout the United States. Evidence has been presented from various sections of the country that the present requirement is inconsistent with effective program administration. Accord-

ingly it is hereby found that compliance with the notice, public procedure, and effective date provisions of the Administrative Procedures Act (5 U.S.C. 1003) is impractical and contrary to the public interest and the provisions of this amendment shall become effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on December 20, 1963.

E. A. JAENKE,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 63-13365; Filed, Dec. 26, 1963; 8:47 a.m.]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 40—LICENSING OF SOURCE MATERIAL

Exemption of Uranium in Fire Detection Units

On July 27, 1963, the Commission published in the FEDERAL REGISTER (28 F.R. 7677) a proposed amendment to 10 CFR Part 40. This action was taken in response to a petition for rule making (PRM-40-5) filed by Electra-Tronics, Inc., Cocoa, Florida.

The proposed amendment would exempt from the licensing requirements of Part 40 the receipt, possession, use, transfer, and import into the United States of uranium contained in detector heads for use in fire detection units, provided that not more than 0.005 microcurie of uranium is contained in each detector head. The proposed exemption would not authorize the manufacture of any detector head containing uranium. Manufacture would have to be authorized by Commission specific or general license or similar license from an agreement State.

The Commission has determined that the fire detector unit is a product intended for use by the general public. Accordingly, the transfer of possession or control by a manufacturer of a fire detection unit containing uranium would not be subject to the licensing and regulatory authority of an agreement State even though the unit is manufactured pursuant to an agreement State license.

All interested persons were invited to submit written comments and suggestions for consideration in connection with the proposed amendments within sixty days after publication of the notice in the FEDERAL REGISTER. No comments were received.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act, the following amendment of 10 CFR Part 40 is published as a document subject to codification to be

effective thirty (30) days after publication in the FEDERAL REGISTER.

A new paragraph (d) is added to § 40.13 to read as follows:

§ 40.13 Unimportant quantities of source material.

(d) Any person is exempt from the regulations in this part and from the requirements for a license set forth in section 62 of the Act to the extent that such person receives, possesses, uses, transfers, or imports into the United States uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie of uranium. The exemption in this paragraph does not authorize the manufacture of any detector head containing uranium.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Washington, D.C., this 18th day of December, 1963.

For the Atomic Energy Commission.

WOODFORD B. MCCOOL,
Secretary.

[F.R. Doc. 63-13334; Filed, Dec. 26, 1963; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER E—AIRSPACE [NEW]

[Airspace Docket No. 63-CE-130]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

Alteration of Control Zone

The purpose of this amendment to § 71.171 of the Federal Aviation Regulations is to alter the description of the Huron, S. Dak., control zone.

The Huron control zone is designated, in part, with reference to the Huron radio range and the Pierre, S. Dak., radio range. The Pierre radio range has been converted to a radio beacon and the Federal Aviation Agency (FAA) has scheduled the conversion of the Huron radio range to a radio beacon on or about January 9, 1964. The action taken herein reflects the conversion of these facilities. Controlled airspace requirements for this area will be reviewed at a later date under the CAR Amendments 60-21/60-29 implementation program.

Since this amendment is editorial in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and it may be made effective January 9, 1964.

In consideration of the foregoing, § 71.171 (27 F.R. 220-91, November 10, 1962) is amended as follows:

In the Huron, S. Dak., control zone "within 2 miles either side of the Huron RR SW course extending from the 5-mile radius zone to the INT of the Pierre, S. Dak., RR E course," is deleted and "within 2 miles each side of the Huron RBN 235° bearing, extending from the 5-mile radius zone to 12 miles SW of the RBN," is substituted therefor.

This amendment shall become effective 0001 e.s.t., January 9, 1964.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 18, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13342; Filed, Dec. 26, 1963; 8:46 a.m.]

[Airspace Docket No. 63-EA-108]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

PART 75—ESTABLISHMENT OF JET ROUTES

Alteration of Control Area, Reporting Point and High Altitude Navigation Aid

The purpose of these amendments to §§ 71.163, 71.209 and 75.13 of the Federal Aviation Regulations is to substitute the Newark, N.J., radio beacon for the Newark, N.J., radio range station in the descriptions of Control 1147, the Tuna intersection and the high altitude navigation aids.

On February 6, 1964, the Newark, N.J., radio range station will be converted to a nondirectional radio beacon; therefore, action is being taken herein to reflect this modification in the affected descriptions.

Since these changes are editorial in nature and do not involve the designation of airspace, notice and public procedure hereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit necessary changes to be made on aeronautical charts, these amendments will become effective more than thirty days after publication.

For the reasons stated above, the following actions are taken:

1. In the text of Control 1147 in § 71.163 (27 F.R. 220-55, November 10, 1962) "the Newark, N.J., RR SE course" is deleted and "the 137° bearing from the Newark, N.J., RBN" is substituted therefor.

2. In the text of Tuna INT: in § 71.209 (27 F.R. 220-172, November 10, 1962) "INT SE course Newark, N.J., RR," is deleted and "INT 137° bearing Newark, N.J., RBN," is substituted therefor.

3. In the text of § 75.13 (28 F.R. 19-50, January 26, 1963) "Newark, N.J.—RR," is deleted and "Newark, N.J.—RBN," is substituted therefor.

These amendments shall become effective 0001 e.s.t., February 6, 1964.

(Secs. 307(a), and 1110, 72 Stat. 749 and 800; 49 U.S.C. 1348 and 1510, and Executive Order 10854, 24 F.R. 9565)

Issued in Washington, D.C., on December 18, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13343; Filed, Dec. 26, 1963; 8:46 a.m.]

[Airspace Docket No. 63-WA-73]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

PART 75—ESTABLISHMENT OF JET ROUTES [NEW]

Alteration of Positive Control Area and Jet Advisory Areas

On October 30, 1963, a notice of proposed rule making was published in the FEDERAL REGISTER (28 F.R. 11567) stating that the Federal Aviation Agency (FAA) proposed to include portions of the airspace from flight level 240 to and including flight level 600 which are under the jurisdiction of the Salt Lake City and Denver air route traffic control centers in positive control area. In addition action is taken herein to alter the description of those en route jet advisory areas which were pre-empted in part by the increased positive control area. This additional action is editorial in nature, therefore, notice and public procedure were unnecessary.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

The substance of the proposed amendment having been published and for the reasons stated herein and in the notice, the following actions are taken:

1. In § 71.193 (27 F.R. 220-157, November 10, 1962, 28 F.R. 4945) the description of the Denver, Colorado, positive control area is changed to read:

Denver, Colorado

That airspace within the continental control area, from flight level 240 to and including flight level 600, bounded by a line beginning at: latitude 36°33'00" N., longitude 101°04'30" W.; thence to latitude 36°46'00" N., longitude 102°28'00" W.; thence to latitude 37°44'00" N., longitude 102°20'00" W.; thence to latitude 36°43'00" N., longitude 106°05'00" W.; thence to latitude 38°08'00" N., longitude 106°38'00" W.; thence to latitude 37°48'00" N., longitude 110°46'00" W.; thence to latitude 38°27'00" N., longitude 110°57'00" W.; thence to latitude 38°59'00" N., longitude 111°07'00" W.; thence to latitude 39°39'00" N., longitude 110°39'00" W.; thence to latitude 40°11'00" N., longitude 110°22'00" W.; thence to latitude 40°45'00" N., longitude 109°35'00" W.; thence to latitude 41°05'00" N., longitude 106°10'00" W.; thence to latitude 42°00'00" N., longitude 106°15'00" W.; thence to latitude 42°40'00" N., longitude 107°05'00" W.; thence to latitude 43°00'00" N., longitude 107°00'00" W.; thence to latitude 43°30'00" N., longitude 106°30'00" W.; thence to latitude 43°47'10" N., longitude 106°31'00" W.; thence to latitude 43°50'00" N., longitude 107°45'00" W.; thence to latitude 45°20'00"

N., longitude 107°45'00" W.; thence to latitude 45°07'00" N., longitude 104°15'00" W.; thence to latitude 44°37'00" N., longitude 101°00'00" W.; thence to latitude 44°20'00" N., longitude 101°00'00" W.; thence to latitude 43°30'00" N., longitude 100°26'00" W.; thence to latitude 43°30'00" N., longitude 99°00'00" W.; thence to latitude 39°23'00" N., longitude 99°04'00" W.; thence to latitude 38°36'00" N., longitude 101°28'00" W.; thence to latitude 37°39'00" N., longitude 101°03'00" W.; thence to the point of beginning.

2. In § 75.200 (28 F.R. 19-60, January 26, 1963, 10418, 11616) the following changes are made:

Jet Route No. 13 jet advisory area is changed to read:

Jet Route No. 13 jet advisory area. Radar—From the positive control area boundary NW of Crazy Woman, Wyo., to the United States/Canadian Border.

Jet Route No. 32 jet advisory area is changed to read:

Jet Route No. 32 jet advisory area. Radar—From the positive control area boundary SW of Dupree, S. Dakota, to the positive control area boundary NE of Aberdeen, S. Dakota. Nonradar—From the positive control area boundary NE of Duluth, Minn., to the United States/Canadian Border only from FL 370 to FL 390, inclusive.

Jet Route No. 107 jet advisory area is changed to read:

Jet Route No. 107 jet advisory area. Radar—From the positive control area boundary SW of Dickinson, N. Dak., to 26 nmi NE of Pembina, N. Dak., Nonradar—From 81 nmi NE of Pembina, N. Dak., to 93 nmi NE of Pembina.

These amendments shall become effective 0001 e.s.t., February 6, 1964.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 19, 1963.

MICHAEL J. BURNS,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13344; Filed, Dec. 26, 1963; 8:46 a.m.]

[Airspace Docket No. 63-SW-99]

PART 73—SPECIAL USE AIRSPACE [NEW]

Redesignation of Restricted Area

On November 21, 1963, a notice of proposed rule making was published in the FEDERAL REGISTER (28 F.R. 12328) stating that the Federal Aviation Agency was considering an amendment to § 73.51 of the Federal Aviation Regulations which would redesignate the Fort Wingate, New Mexico, Restricted Area R-5114 for the month of February 1964, in continuing support of a classified project.

Interested persons were afforded an opportunity to participate in the rule-making through submission of comments, but no adverse comments were received.

In consideration of the foregoing, and for the reasons stated in the notice, the following action is taken:

In § 73.51 New Mexico (28 F.R. 19-31, January 26, 1963), the following is added:

R-5114 Fort Wingate, New Mexico

Boundaries. Beginning at latitude 35°-27'00" N., longitude 108°35'00" W.; to latitude 35°11'00" N., longitude 108°13'00" W.; to latitude 35°04'40" N., longitude 108°24'00" W.; to latitude 35°24'00" N., longitude 108°38'00" W.; to the point of beginning.

Designated altitudes. Surface to unlimited.

Time of designation. Continuous, February 1, 1964, through March 1, 1964.

Controlling agency. Federal Aviation Agency, Albuquerque ARTC Center.

Using agency. Commander, Air Force Missile Development Center, Holloman AFB, New Mexico.

This amendment shall become effective 0001 e.s.t. February 1, 1964.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 18, 1963.

CLIFFORD P. BURTON,
Acting Director, Air Traffic Service.

[F.R. Doc. 63-13345; Filed, Dec. 26, 1963; 8:46 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER A—GENERAL

PART 8—COLOR ADDITIVES

Postponement of Closing Date of Provisional Listings of Certain Items

MISCELLANEOUS AMENDMENTS

The color additives amendments of 1960 (Public Law 86-618; 74 Stat. 404; 21 U.S.C. 376, note) authorizes the Secretary of Health, Education, and Welfare to postpone the closing date of a provisional listing (including a deemed provisional listing) of a color additive on his own initiative, or upon application of an interested person.

By orders published in the FEDERAL REGISTER on January 11, 1963 (28 F.R. 317), March 19, 1963 (28 F.R. 2674), and July 20, 1963 (28 F.R. 7424), the closing date of the provisional listing of a number of color additives were postponed to January 1, 1964. Requests to further postpone the closing dates of a number of color additives previously so postponed have been received because the scientific investigations necessary for listing these color additives under section 706 of the Federal Food, Drug, and Cosmetic Act have not been completed. It is found that postponement of the closing date of the provisionally listed color additives in this order will not be contrary to the interests of the public health. Any extensions so granted are conditioned upon a requirement that progress reports be supplied on July 1, 1964, and at 6-month intervals thereafter.

Therefore, pursuant to the authority of the Federal Food, Drug, and Cosmetic Act (sec. 203(a) (2), Public Law 86-618; 74 Stat. 404; 21 U.S.C., note under 376) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), § 8.501 of the color additives reg-

ulations (21 CFR 8.501) is amended as set forth below.

1. The introduction to the section is amended to read:

§ 8.501 Provisional lists of color additives.

The Commissioner of Food and Drugs finds that the following lists of color additives are provisionally listed under section 203(b) of the Color Additives Amendments of 1960 (sec. 203(b), 74 Stat. 405; 21 U.S.C. 376, note). Except for color additives for which petitions have been filed, progress reports are required by July 1, 1964, and at 6-month intervals thereafter. Specifications for color additives listed in paragraphs (a), (b), and (c) of this section appear in Part 9 of this chapter.

2. The heading of paragraph (a) is changed to read: "(a) *Color additives previously and presently subject to certification and provisionally listed for food, drug, and cosmetic use.*"

3. Paragraph (b) is amended as follows:

a. The paragraph heading is changed to read: "(b) *Color additives previously and presently subject to certification and provisionally listed for drug and cosmetic use.*"

b. The closing date of the item D&C Red No. 39 * * * is changed to Jan. 1, 1965; the closing date of the item D&C Orange No. 17 * * * is changed to Feb. 1, 1965; the closing date of the item D&C Blue No. 9 * * * is changed to Jan. 1, 1965.

4. The heading of paragraph (c) is changed to read: "(c) *Color additives previously and presently subject to certification and provisionally listed for use in externally applied drugs and cosmetics.*"

5. Paragraph (e) is amended as follows:

a. The paragraph heading is changed to read: "(e) *Color additives provisionally listed for food use on the basis of prior commercial sale but which have not been nor are now subject to certification.*"

b. The closing date of all items is changed to Jan. 1, 1965.

6. Paragraph (f) is amended as follows:

a. The paragraph heading is changed to read: "(f) *Color additives provisionally listed for drug use on the basis of prior commercial sale but which have not been nor are now subject to certification.*"

b. The closing date of all items is changed to Jan. 1, 1965.

7. Paragraph (g) is amended as follows:

a. The paragraph heading and the introduction to the paragraph are changed to read:

(g) *Color additives provisionally listed for cosmetic use on the basis of prior commercial sale but which have not been nor are now subject to certification.* The color additives provisionally listed in this paragraph are so listed only for the uses and purposes commercially employed prior to July 12, 1960. Thus, a

color additive previously used for coloring cosmetics to be applied to portions of the body other than the eye area (as defined in § 8.1(s)) is not provisionally listed for eye-area use.

b. The closing date of all items is changed to Jan. 1, 1965.

Effective date. This order shall become effective January 1, 1964.

Notice and public procedure and delayed effective date are not necessary prerequisites to the promulgation of this order, and I so find, because section 203(d) (2) of Public Law 86-618 provides for this issuance.

(Sec. 203(a) (2), Public Law 86-618; 74 Stat. 404; 21 U.S.C., note under 376)

Dated: December 23, 1963.

JOHN L. HARVEY,
Deputy Commissioner of
Food and Drugs.

[F.R. Doc. 63-13379; Filed, Dec. 26, 1963; 8:47 a.m.]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 16—MACARONI AND NOODLE PRODUCTS; DEFINITIONS AND STANDARDS OF IDENTITY

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

PART 121—FOOD ADDITIVES

Miscellaneous Amendments

The regulations in Title 21 of the Code of Federal Regulations are amended in the following respects:

1. The heading of Part 16 is changed to read "Part 16—Macaroni and Noodle Products; Definitions and Standards of Identity".

2. In § 120.37, the item "2,4,5-Trichlorophenoxyacetic acid or its butyl ester. On grapefruit * * *" is obsolete and is deleted from the table.

3. Section 120.171 is amended by changing the section heading to read "§ 120.171 Dioxathion; tolerances for residues", and by inserting the word "dioxathion" preceding "(2,3-p-dioxanedithiol-S,S-bis (O,O-diethylphosphorodithioate))".

4. Section 121.7 is changed in the following respects:

a. In paragraph (a), fourth sentence, the phrase "permitted to become effective" is changed to read "approved"; in the fifth sentence "made effective" is changed to read "approved".

b. In paragraph (b), second sentence, the phrase "effective date" is changed to read "date of approval"; in the third sentence the word "effective" is changed to read "approved"; in the fourth sentence the word "permit" is changed to read "approve", and the phrase "to become effective" is deleted.

5. Section 121.204 is amended by changing the section title and by inserting the common name of the pesticide chemical. As amended, this section reads as follows:

§ 121.204 Dioxathion.

A tolerance of 18 parts per million (0.0018 percent) is established for residues of dioxathion (2,3-*p*-dioxanedi-thiol-*S,S*-bis (*O,O*-diethylphosphorodi-thioate)) in dehydrated citrus pulp for cattle feed when present therein as a result of the application of the pesticide to the growing agricultural crop.

6. In § 121.1022, the title is changed to read "§ 121.1022 Tolerances for residues of amprolium."

7. Section 121.2511 is amended by changing the section heading to read: "§ 121.2511 Plasticizers in polymeric substances."

Notice and public procedure and delayed effective date are not necessary prerequisites to the promulgation of this order since the amendments deal only with editorial changes.

(Sec. 701, 52 Stat. 1055; 21 U.S.C. 371)

Dated: December 23, 1963.

JOHN L. HARVEY,
Deputy Commissioner of
Food and Drugs.

[F.R. Doc. 63-13380; Filed, Dec. 26, 1963;
8:48 a.m.]

PART 121—FOOD ADDITIVES

Deletion of Obsolete Material; Further Extension of Effective Date of Statute

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 6(c), Public Law 85-929, as amended sec. 2, Public Law 87-19; 72 Stat. 1788, as amended 75 Stat. 42; 21 U.S.C., note under sec. 342) and delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the food additive regulations (21 CFR 121.90, 121.91) are amended as indicated below:

1. Section 121.90 is amended by deleting the following obsolete items that are either (1) items for which food additive regulations have issued; (2) items for which no further requests for extension have been received by the Commissioner; or (3) items for which requests for extension received have not, to date, included sufficient information to justify further extension:

Aluminum stearate.
Bithionol * * *.
BHA * * *.
BHT * * *.
Butyl stearate.
Dimethylpolysiloxane * * *.
Eugenol.
Fat, animal and vegetable, hydrolyzed * * *.
Ferric choline citrate.
Fluorine * * *.
Folic acid.
Formaldehyde.
Fumaric acid.
Glyceryl abietate * * *.
Hydrobiotite, exfoliated * * *.
Iodine * * *.
Isopropyl alcohol.
Lecithin, hydroxylated.
Mannitol.
Methyl ethyl cellulose.
Mineral oil * * * In animal feed; 600 p.p.m. in total daily ration * * *.
Molybdenum (from sodium molybdate) * * * In feed supplements for ruminants; limit

3 p.p.m. * * *.
Monoglycerides and diglycerides and their lactic acid monoesters.
Oxystearin.
Petrolatum * * * Component of defoamer * * *.
Pimaric and abietic acids * * *.
Polyacrylic acid * * *.
Polyethylene glycol 400 through 6,000.
Polyoxyethylene glycol (mol. wt. 400-2,000).
Polyoxyethylene glycol (600) dioleate.
Polyoxyethylene glycol (800) ester of edible cottonseed oil fatty acids.
Polyoxyethylene glycol (600) monoricinoleate.
Polyoxyethylene (40) monostearate.
Polyoxypropylene glycol.
Polysorbate 80 * * *.
Propylene glycol and glyceryl mono- and diesters * * *.
Rosin, methyl ester of hydrogenated.
Sodium dodecylbenzene sulfonate.
Sodium nitrate and/or sodium nitrite.
Sodium nitrate.
Sorbitan monostearate.
Soybean fatty acids, hydroxylated.
Tallow alcohol, hydrogenated.
Tallow, oxidized.
Tallow, sulfated.
Torula yeast, dried.
Wax, microcrystalline * * * Component of defoamer used in the production of beet sugar * * *.
Component of defoamer used in production of yeast * * *.
Yeast, dried.

2. Section 121.91 is amended by deleting the following obsolete items that are either (1) items for which food additive regulations have issued; (2) items for which no further requests for extension have been received by the Commissioner; or (3) items for which requests for extension received have not, to date, included sufficient information to justify further extension:

N-Acetyl, *N'*- β -hydroxyethyl, *N*-oleyl ethylenediamine.
Acrylonitrile.
Acrylonitrile-butadiene polymer.
Aldol- α -naphthylamine condensate.
Alkyl naphthylene sulfonic acids * * *.
Aluminum hydrate.
Aluminum silicate.
Aluminum stearate * * *.
Adjuvant or laminant * * *.
Aluminum sulfate.
Amyldeyl phthalate.
Antimony trioxide.
Aromatic amine resin * * *.
Asbestos fiber, blue crocidolite.
Asbestos fiber, white, crysolite.
Asphalt, steam refined, air blown * * *.
Asphalt, steam refined: * * *.
Azodicarbonamide.
Barium sulfate.
2-Benzothiazyl *N,N*-diethylthiocarbamysulfide.
2-Benzothiazyl disulfide.
Benzoyl peroxide * * *.
Accelerator in vulcanization of rubber products * * *.
BHT * * *.
Bismuth dimethyldithiocarbamate.
Butadiene-acrylonitrile-methacrylic acid.
Butoxy polypropylene (20) glycol * * *.
Butoxy polypropylene (40) glycol * * *.
Butoxy polypropylene (20) glycol monooleate.
Butoxy polypropylene (40) glycol mono-stearate.
n-Butyl acetate.
Butyl acetyl ricinoleate.
Butyl acrylate.
Butyl alcohol.
n-Butyl alcohol.
tert-Butyl alcohol.
n-*tert*-Butyl-2-benzothiazole-sulfonamide.
tert-Butyl hydroxyperoxide.
4,4-Butylidene bis(6-*tert*-butyl-*m*-cresol).

Butyl laurate.
Butyl oleate.
Butyl palmitate.
Butyl, propyl, and isobutyl oleate, sulfated.
tert-Butylperacetate.
Butyl stearate.
Butyraldehyde-aniline resin, iodine number 670-705.
Cadmium sulfide (red).
Cadmium sulfide (yellow).
Calcium oxide.
Calcium silicate.
Calcium stearate.
Calcium sulfate (white).
Carbon black * * *.
Carbon disulfide.
Carbon tetrachloride . . . Fumigant for grain-mill machinery * * *.
Carboxyvinyl polymer (high molecular weight).
Carnauba wax.
Casein.
Castor oil.
Castor oil, hydrogenated.
Castor oil, sulfated, potassium soap * * *.
Adjuvant or laminant * * *.
p-Chlorometacresol.
4-Chloro-3,5-dimethylphenol.
Chloroprene polymer.
Chrome oxide (green).
Clay.
Coconut fatty acids, distilled.
Coconut oil fatty acid (C₁₂-C₁₆) * * *.
Copper dimethyldithiocarbamate.
Copper phthalocyanine (blue).
Corn fatty acids, distilled.
Coumarone-indene resins.
Cyclohexane.
Cyclohexanol * * *.
N-Cyclohexyl-2-benzothiazole sulfenamide.
N-Cyclohexyl-*N'*-phenylphenylenediamine.
Diacetyl sodium sulfosuccinate.
Dialkyl (C₈-C₁₈) dimethyl * * *.
Diallyl phthalate.
p,p'-Diamine diphenylmethane.
p,p'-Diaminodiphenylmethane.
2,5-Di-*tert*-amylhydroquinone.
Dibenzoyl *p*-quinone dioxime.
Dibenzyl adipate.
Dibenzylamine.
Dibutoxy ethoxy ethyl adipate.
Dibutyl ammonium oleate.
Di-*tert*-butyl *p*-cresol.
Di-*tert*-butyl-4-methylphenol.
Di-*tert*-butyl peroxide.
Dibutyl phthalate . . . Plasticizer in rubber * * *.
Dibutyl sebacate.
Dibutyl tin dilaurate.
2,4-Dichlorobenzoyl peroxide.
Dicumyl peroxide.
Dicyandiamide. * * * Component of wet-strength agent used in manufacture of paper and paperboard for food packaging.
Dicyclohexyl phthalate . . . Plasticizer in resins used in packaging, handling, storing, or transporting food.
Didecyl adipate.
Didecyl phthalate.
Diethylamine.
Diethylene glycol monolaurate.
1,2-Dihydro-2,2,4-trimethyl-6-phenylquinoline.
1,2-Dihydro-2,2,4-trimethylquinoline, polymerized . . . Antioxidant and/or antiozonant as a protective agent in rubber and rubber products * * *.
N,N-Di-(2-hydroxyethyl) glycine, monosodium salt.
Diisobutyl fumarate-vinyl chloride copolymer.
Diisodecyl adipate.
Diisodecyl phthalate.
Diisooctyl adipate.
Diisooctyl sebacate.
Diisopropyl fumarate-vinyl chloride copolymer.
Di-*p*-methoxydiphenylamine.
Dimethyl dialkyl (C₈ to C₁₈) ammonium chloride.

- 2,6-Dimethyl morpholine thiobenzothiazole.
Dimethylpolysiloxane, 100 centistokes minimum.
Dimethylpolysiloxane . . . Adjuvant or laminant used in manufacture * * *
Di- β -naphthyl-*p*-phenylenediamine.
Diocetyl adipate.
4,4'-Diocetyldiphenylamine.
Diocetylphenylenediamine.
Diocetyl phthalate.
Diocetyl sebacate.
N,N'-Diorthotolyl guanidine.
Diorthotolyl guanidine salt of pyrocatechol borate.
Dipentamethylene thiuram tetrasulfide.
Diphenylamine-acetone formaldehyde * * *
Diphenylamine-acetone resin * * *
Diphenylethylenediamine.
Diphenylguanidine.
Diphenylguanidine phthalate.
Diphenylketone.
Diphenyl phthalate.
Diphenylsulfone-3,3'-disulfohydrazide.
N,N'-Disalicylal propylenediamine.
4,4'-Dithiodimorpholine.
Di-*o*-tolyl ethylenediamine.
m-Divinylbenzene.
Dodecyl mercaptan.
n-Dodecyl mercaptan.
tert-Dodecyl mercaptan.
tert-Dodecyl mercaptan and ethylene oxide condensation product * * *
Dodecyl phenyl sodium sulfonate.
6-Dodecyl-2,2,4-trimethyl-1,2-dihydroquinoline.
Epichlorohydrin resin of adipic acid * * *
6-Ethoxy-1,2-dihydro-2,2,4-trimethylquinoline.
Ethyl acrylate polymer.
Ethylenediamine carbamate.
Ethylenediamine tetraacetic acid.
Ethylenediamine tetraacetic acid, sodium salt.
Ethylenediamine tetraacetic acid, sodium salt of, and glycine.
Ethylenediamine tetraacetic acid, tetrasodium salt.
Ethylene dichloride.
Ethylene glycol.
Ethyl-*p*-hydroxybenzoate.
Ethyleneimine, polymerized.
Ethyl formate.
Ethyl silicate.
Fatty acids.
Fatty acid amines, mixed.
Fatty acids, hydrogenated.
Fatty acids, sodium and potassium salts.
Fatty acid (C_{10} - C_{18}) Diethanolamide condensate.
Fatty acid (C_{10} - C_{18}) mono- and diesters * * *
Fatty acid (C_{10} - C_{18}) triethanolamide condensate.
Fatty triglycerides, fatty acids, or fatty alcohols * * *
Fatty triglycerides and marine oils * * *
Formaldehyde . . . Adjuvant or laminant used in manufacture of textile fibers * * *
Glycerol-citric acid rosin ester.
Glycerol mono-12-hydroxystearate.
Gum rosin.
Gum turpentine.
Heptaldehyde-anilene resin * * *
Hexamethylene tetramine . . . Accelerator in vulcanization of rubber and rubber products * * *
Hexane.
Hexylene glycol (2-methyl-2,4-dihydroxyphenyl).
Hydrated lime.
Hydroquinone monobenzyl ether.
Iron oxide (red).
Iron oxide (yellow).
Isobutyl alcohol. . . Adjuvant or laminant used in manufacture of textile fibers * * *
Isobutylene-isoprene copolymer * * * In rubber products * * *
Isobutyl palmitate.
Isobutyl stearate.
Isooctylphenylpolyethoxy (9-10) ethanol.
Isopropoxy diphenylamine.
Isopropyl alcohol.
p,p'-Isopropylidene diphenyl and carbonyl chloride copolymer.
Isopropyl naphthalene sodium sulfonate.
N-Isopropyl-*N'*-phenyl-*p*-phenylenediamine.
Itaconic acid.
Kerosene * * * Component of paper and paperboard for food packaging.
Adjuvant or laminant used in manufacture of textile fibers or fabrics * * *
Kerosene, deodorized * * * Adjuvant or laminant * * *
Lanolin.
Lauric acid.
Lauryl alcohol sulfate.
Lecithin, hydroxylated.
Linseed oil.
Magnesium carbonate.
Magnesium oxide, light and heavy.
Malic acid.
p-Menthane hydroperoxide.
2-Mercaptobenzothiazole.
2-Mercaptoimidazole.
2-Mercaptothiazoline.
2-Mercapto-4,4,6-trimethyldihydropyrimidine.
4-Methyl-6-*tert*-butylphenol.
2,2'-Methylene bis(4-methyl-6-*tert*-butylphenol).
2,2-Methylene bis(4-methyl-6-nonylphenol).
Methyl esters of fatty acids (C_{10} - C_{18}).
Methyl ethyl ketone.
Methyl silicone resin.
Mica.
Mineral oil meeting the following specifications: * * *
Secondary plasticizing agent * * *
Component of a textile-processing lubricant * * *
Plasticizer in rubber and rubber products * * *
Mixture of monoocetyl and dioctyl diphenylamines.
Montan wax.
Myristyl alcohol.
Naphtha.
2-Naphthalenethiol.
 β -Naphthol.
Nylon (floc, fibers, fabric).
Octyldecyl adipate.
Octyldecyl phthalate.
Octylphenoxypolyethoxy ethanol * * *
Oleic acid (red oil).
N-Oxidethylen-2-benzothiazole-2-sulfenamide.
N-Oxidethylen-2-benzothiazole sulfenamide.
Parafenthane hydroperoxide.
Pentachlorophenol, sodium salt.
Petrolatum * * *
Plasticizer in rubber and rubber products * * *
Petrolatum, N.F. and U.S.P. * * *
Secondary plasticizing agents in rubber articles * * *
Petroleum oil, aromatic, sp. gr. 0.98 to 1.032 * * *
Petroleum sulfonate * * *
Phenol-formaldehyde resins.
Phenyl- α -naphthylamine.
Phenyl- β -naphthylamine.
o- and *p*-Phenylphenol.
Phthalic anhydride.
Phthalocyanine (green).
Pine oil. * * *
Component of sizing * * *
Adjuvant or laminant * * *
Pine tar.
Piperidinium pentamethylene-dithiocarbamate.
Polybutene.
Polybutylated 4,4'-iso * * *
Poly bis(chloromethyl) oxetane.
Polyester resin formed by * * *
Polyethylene. Component of articles intended for packing * * *
Polyethylene glycol (mol. wt. 6,000).
Polyethylene oxide (5 mols) * * *
Polyoxyethylene (9-10 mols) ether of isooctyl phenol.
Polyoxyethylene (9-10 mols) ether of nonyl phenol.
Polyoxyethylene (1,500) glycol monostearate.
Polyoxyethylene (40) monostearate.
Polyoxyethylene (20) sorbitan monolaurate.
Polyoxyethylene (20) sorbitan tristearate.
Poly-1,4,7,10,13-penta-aza-15 * * *
Polysorbate 80 (polyoxyethylene (20) sorbitan monooleate). * * *
In films used in food packaging.
Potassium abietate.
Potassium pentachlorophenate.
Potassium and pentamethylenedithiocarbamate.
Potassium persulfate. * * *
In rubber and rubber products used for food-handling equipment.
Potassium rosin acid * * *
Potassium salts of fatty acids * * *
Potassium trichlorophenate.
Propylene glycol.
Propylene glycol monoester of hydrogenated tallow fatty acids.
Propylene glycol monoester of soybean oil fatty acids.
Pyrazolone * * *
p-Quinone dioxime.
Rice bran oil.
Rice bran oil, sulfated, methyl ester.
Rosin, modified with saligenin.
Rosin oil.
Rosin, wood, modified with hydrated lime.
Rosin, wood, and derivatives.
Rubber, natural.
Safflower oil, edible type.
Salicylic acid.
Silica.
Silicone basic polymer.
Silicone basic polymers as described in ASTM * * *
Sodium acetate.
Sodium alkyl (*tert*-butyl, * * *
Sodium diamyl sulfo succinate.
Sodium dibutyl dithiocarbamate.
Sodium diisobutylphenoxy-diethoxyethyl sulfonate.
Sodium dimethyl dithiocarbamate.
Sodium dioctylsulfo succinate.
Adjuvant or laminant used in manufacture of textile * * *
Component of pigment * * *
Sodium dodecylbenzene sulfonate. * * *
Emulsifier in rubber and rubber products used for food-handling equipment.
Sodium formaldehyde sulfoxylate.
Sodium hydrosulfite.
Sodium lignosulfonate.
Sodium mercaptobenzothiazole.
Sodium 2-mercaptobenzothiazole.
Sodium nitrite.
Sodium pentachlorophenate. * * *
Antioxidant and/or antiozonant as a protective agent in rubber and rubber products used for food-handling equipment.
Sodium polysulfide.
Sodium rosin acid soap (rosin acid * * *
Sodium salts of fatty * * *
Sodium salt of naphthalenesulfonic acid * * *
Saturant for cotton belts used for transportation of foods.
Sodium stearate.
Sodium sulfide.
Sodium thiosulfate.
Sodium trichlorophenate.
Sorbitan monolaurate.
Sorbitan monostearate.
Soybean lecithin-*p*- * * *
Soybean oil vulcanized * * *
Stannous chloride.
Stannous oleate.
Stearic acid.
Stearyl palmitate and/or * * *
Stearic acid and/or oleic * * *
Styrene butadiene copolymer.

RULES AND REGULATIONS

FLAVORING SUBSTANCES AND NATURAL SUBSTANCES USED IN CONJUNCTION WITH FLAVORS

Styrene monomer.
Styrene polymer.
Sulfate wood turpentine.
Sulfur, ground.
Talc.
Tall oil fatty acids.
Tall oil mixed soap * * *
Tall oil rosins.
Tellurium.
Tellurium diethyldithiocarbamate.
Terpene resin (α - and β -pinene).
Terpene resins.
Tetrabutyl * * *
Tetraethyl thiuram disulfide.
Tetramethyl thiuram disulfide.
Tetramethyl thiurammonosulfide.
Tetrasodium-N- * * *
Thiobis (di-sec-amyphenol).
4,4'-Thiobis (6-tert- * * *
Tin octoate.
Tin oleate.
Titanium dioxide. * * *
Filler in rubber and rubber products used for food-handling equipment.
Component of pigment dispersion for celophane food-packaging
Toluene.
2,4-Toluenediamine.
m-Toluenediamine.
N-o-Tolyl-N'-phenyl * * *
p-(p-Tolyl sulfanilamide) * * *
Triethanolamine.
Triethylenetetramine. * * *
Accelerator in vulcanization of rubber and rubber products used for food-handling equipment.
Triethyl-trimethyltri-amine.
Triethyl-trimethylenetri-amine.
Triisopropanolamine.
Trimeric aromatic amine * * *
2,2,4-Trimethyl dihydroquinoline.
Tri(mixed mono- and dinonylphenyl) phosphite * * *
Triphenyl guanidine.
Ultramarine blue (complex sodium aluminosulfosilicate).
Ultramarine blue (double silicate of sodium * * *
Vinylidene chloride-methyl acrylate itaconic acid terpolymer.
Wax, microcrystalline and paraffin: * * *
Plasticizer in rubber and rubber products used for food-handling equipment.
Wood flour.
Zinc carbonate.
Zinc chromate (yellow).
Zinc dibutyldithiocarbamate.
Zinc diethyldithiocarbamate.
Zinc dimethyldithiocarbamate.
Zinc hydrosulfite.
Zinc-2-mercaptobenzothiazole.
Zinc oxide.
Zinc salt of fatty acids.
Zinc stearate.
Zinc sulfide.

3. Section 121.90 is further amended in the following respects:

a. The effective date of the following items is extended to June 30, 1964, with no progress report being required:

MISCELLANEOUS

Coumarone-indene resin.
Ethylene oxide.
Petroleum hydrocarbon resin * * *
Propylene oxide.
Starch, modified with propylene oxide * * *.

SYNTHETIC FLAVORING SUBSTANCES AND ADJUNCTS

Methyl salicylate

FLAVORING SUBSTANCES AND NATURAL SUBSTANCES USED IN CONJUNCTION WITH FLAVORS

Birch, sweet, oil * * *
Wintergreen extract and oil * * *.

b. The following items are extended to June 30, 1964:

Product	Specified uses or restrictions	Effective date of statute extended to—	Progress report required by—
Camphor, Japanese oil, white and camphor leaves and oil; <i>Cinnamomum camphora</i> Sieb.		June 30, 1964	
Chestnut leaves, leaves extract, and leaves extract, solid; <i>Castanea dentata</i> (Marsh.) Borkh.		do	
Dragon's blood; <i>Daemonorops</i> spp.		do	
Oak chips, extract; <i>Quercus alba</i> L.		do	
Orris root, extract and orris concrete, liquid, oil; <i>Iris</i> spp.		do	
Passion flower herb extract; <i>Passiflora incarnata</i> L.		do	
Sarsaparilla bark and extract; <i>Smilax aristolochiaefolia</i> Mill. (Mexican sarsaparilla), <i>S. regelii</i> Killip et Morton (Honduras sarsaparilla), <i>S. febrifuga</i> Kunth (Ecuadorian sarsaparilla), or undetermined spp. of <i>Smilax</i> (Ecuadorian and Central American sarsaparilla).		do	
Sassafras leaves; <i>Sassafras albidum</i> (Nutt.) Nees.	Safrole free.	do	

4. Section 121.91 is further amended by changing the effective date of the following items to June 30, 1964:

Anhydroformaldehyde aniline resin.
Anthracite, ground.
Asbestos fiber.
Barium hydroxide.
Dibutyl phthalate—Component of phenolic molding compounds * * *
Hexamethylene tetramine—Component of phenolic molding compounds * * *
Oxalic acid.
Paraldehyde.
Phenylethyl phenol.
Polyamide resin (thermoplastic) * * *
Rosin, wood, gum, tall oil and dark wood modified with hydrogen.
Rosin, wood, gum, and tall oil and the dimers thereof * * *
Rosin (gum, wood, or tall oil) * * *
Sodium dodecylbenzene sulfonate as an ingredient * * *
Starch modified with propylene oxide * * *
Styrenated phenol.

Notice and public procedure and delayed effective date 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 food additive amendment to the Federal Food, Drug, and Cosmetic Act were contemplated by Public Law 87-19 as a relief of restrictions on the food-processing industry.

Effective date. This order shall become effective on the date of signature. (Sec. 6(c), Public Law 85-929, as amended sec. 2, Public Law 87-19; 72 Stat. 1788, as amended 75 Stat. 42; 21 U.S.C. note under sec. 342)

Dated: December 23, 1963.

JOHN L. HARVEY,
Deputy Commissioner of
Food and Drugs.

[F.R. Doc. 63-13381; Filed, Dec. 26, 1963; 8:48 a.m.]

SUBCHAPTER D—HAZARDOUS SUBSTANCES

PART 191—HAZARDOUS SUBSTANCES; DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

Miscellaneous Amendments

A. Section 191.63 *Exemptions for small packages, minor hazards, and special circumstances* is amended in the following respects:

1. The introductory text of the section is designated as paragraph (a), and paragraphs (a) through (u) are redesignated as subparagraphs (1) through (21), inclusive.

2. In redesignated subparagraph (14), the word "kerosene" should be changed to read "kerosene (kerosine)."

B. Section 191.215 *Transitional period for relabeling* is revoked, the material therein being obsolete.

Notice and public procedure and delayed effective date are not necessary prerequisites to the promulgation of this order since the amendments deal only with editorial changes.

Dated: December 23, 1963.

JOHN L. HARVEY,
Deputy Commissioner of
Food and Drugs.

[F.R. Doc. 63-13378; Filed, Dec. 26, 1963; 8:47 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER W—AIR FORCE PROCUREMENT INSTRUCTION

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

Subchapter W of Title 32 is amended as follows:

PART 1001—GENERAL PROVISIONS

Subpart B—Definition of Terms

Revise § 1001.201-18(a) (3) to read as follows:

§ 1001.201-18 Sources of supplies.

(a) * * *

(3) Regular dealers in the supplies to be procured, as defined in § 1.302 of this title.

Subpart C—General Policies

Revise § 1001.305-52(c) (1) (ii) to read as follows:

§ 1001.305-52 Amendment of delivery schedules in supply or research and development contracts.

(c) * * *

(1) * * *

(ii) Spare parts, aerospace ground equipment, and training parts exhibits which are made a part of the contract by means of a supplemental agreement signed by the ACO. See Subpart D, Part 1055 of this subchapter.

Subpart D—Procurement Responsibility and Authority

1. In § 1001.453:
 a. Revise paragraph (j) (1) (ii) to correct the reference in line 2, as follows:
 § 1001.453 Delegations of authority.

(j) * * *
 (1) * * *
 (ii) The staff judge advocate designated in subdivision (i) of this subparagraph will review the file, obtain any additional evidence required and prepare a recommendation as to whether the transaction should be ratified stating reasons therefor. Recommendations in support of ratification will cite appropriate negotiation authority. Advice against ratification will include a recommendation as to whether the matter should be processed according to Part 17 of this title. Following action by the staff judge advocate, the complete file will be forwarded to the individual responsible for ratification as indicated in subparagraph (1) of this paragraph.

b. In paragraph (m) (4), delete the reference, as follows:

- (m) * * *
 (4) Contract change notifications.

2. Revise § 1001.457(a) to delete the reference in line 11, as follows:

§ 1001.457 Authority to enter into, execute and approve contracts.

(a) The authority to enter into, manually execute or approve contracts has been delegated by the Director of Procurement and Production, Hq AMC, to the persons listed below. Awards made and contracts executed in excess of dollar limitations shown herein or as provided for in paragraph (b) of this section, and §§ 1001.458, 1001.459 and 1001.461, require approval of higher authority. Properly authorized letter contracts do not require manual approval, irrespective of dollar amount, except letter contracts for personal and professional services as described in § 1001.458 (§ 1003.408 of this subchapter).

3. Revise § 1001.460 (b) and (c) to correct the references therein, as follows:

§ 1001.460 Priorities authority; DO and DX ratings; allotments, and rescheduling deliveries.

(b) The Commander, AFLC and the Commander, AFSC have redelegated through their respective procurement (and production) directors the authority described in paragraph (a) (3) (1) through (iii) of this section to and through successive echelons of command to all contracting officers of the Air Force, including procuring and administrative contracting officers.

(c) Authorities described in paragraph (a) (3) (iv) through (vi) of this section have been redelegated by the Commander, AFSC, to the Director and Deputy Director of Procurement, Hq AFSC, with power of redelegation. The

AFSC Deputy Director of Procurement has redelegated these authorities to the Chief and Deputy Chief of the Industrial Resources Division (ASXKM) and Industrial Materials Branch (ASXKMM).

Subpart H—Labor Surplus Area Concerns

1. Revise § 1001.902(b) (5) to read as follows:

§ 1001.902 General policy.

(5) A survey is needed to verify the adequacy of a bid or proposal.

2. In § 1001.902-1(e) delete the last sentence and the reference, as follows:

§ 1001.902-1 General requirements for obtaining FCR.

(e) Regardless of the dollar amount of the procurement or exemptions outlined in § 1001.902-2, an FCR may be required by purchasing activities, if deemed necessary because of the critical nature of the item or service, peculiar nature of the procurement, or past experience of the command.

Subpart J—Publicizing Procurement Actions

1. Revise § 1001.1005-7 to correct the reference therein, as follows:

§ 1001.1005-7 Preparation of advertisement.

Any unnecessary expense to the Government, resulting from failure to observe the requirements stated in § 1.1002-6 of this title, may be made a charge against the pay of the officer responsible therefor.

2. Revise § 1001.1005-8 to read as follows:

§ 1001.1005-8 Insertions.

Insertions, and limitations thereon, in connection with advertising for the purpose of recruiting civilian employees, will be according to paragraph 7, section 6, chapter X-1, AFM 40-1.

3. Revise § 1001.1005-11 to read as follows:

§ 1001.1005-11 Forms.

(a) Applications for authority to advertise: AFPI Form 25, "Request for Authority to Advertise," will be used in applying for authority to advertise invitations for bids. Applications for authority to advertise for the purpose of recruiting civilian employees will be effected by letter. These instruments will be prepared in triplicate and sent through channels to the appropriate official to whom authority has been delegated to authorize such advertising.

(1) The original of the instrument (AFPI Form 25 or letter) must be filed with the first voucher making payment thereunder. A copy will be filed with the duplicate voucher.

(2) Reference to the instrument will be made in the space provided on all subsequent advertising orders placed during the period covered in the authorization.

PART 1002—PROCUREMENT BY FORMAL ADVERTISING**Subpart B—Solicitation of Bids**

1. Revise § 1002.201(a) (17) (ii) to read as follows:

§ 1002.201 Preparation of invitations for bids.

(a) * * *
 (17) * * *
 (ii) Buy American certificate. See §§ 6.104-3 and 6.204-2 of this title and § 1006.104-3 of this subchapter.

2. Revise § 1002.205-51(a) to delete the reference therein as follows:

§ 1002.205-51 Commodity class catalogs (commodity lists).

(a) A commodity and services list or catalog broken down into property classes or services codes will be attached to each Standard Form 129 mailed to firms desiring to be placed on the bidders list. The purpose of this document is to allow potential suppliers to easily identify and select items or services they are capable of furnishing. The lists or catalogs will be revised when necessary and a semiannual review will be made to insure that they are up to date. The catalog or list may contain check blocks for marking by the supplier or AFPI Form 24 may be used.

PART 1003—PROCUREMENT BY NEGOTIATION**Subpart A—Use of Negotiation**

Revise § 1003.103(b) to delete the last sentence, as follows:

§ 1003.103 Records and reports of negotiated contracts.

(b) Records for individual negotiated contracts. A record of each negotiated procurement will be maintained in the contracting office. The record will indicate the extent of competition, including the names and addresses of the sources requested to submit quotations, and the results thereof; and whether contact was made in writing, in person, by telephone, or other means; or will explain the absence of competition.

Subpart B—Circumstances Permitting Negotiation

Revise § 1003.210-2(m) to delete the reference therein and the last sentence, as follows:

§ 1003.210-2 Application.

(m) "When it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services"—This authority will not be used for procurement of any item covered by an approved specification. When full and free competition can be obtained with the specifications, exhibits, or pur-

chase description and award is contemplated to be made to the lowest responsible bidder, the procurement will be formally advertised. Cases of doubt will be resolved in favor of formal advertising.

Subpart H—Price Negotiation Policies and Techniques

Add new § 1003.850 as follows:

§ 1003.850 Special pricing instructions.

Subpart T—Repricing of Fixed-Price Contracts Providing for Price Determination or Incentive Revision of Price, and Reporting of Cost and Price Data

Revise § 1003.2004(c) to delete the reference in line 6 as follows:

§ 1003.2004 Conduct of negotiations.

(c) After obtaining agreement, the buyer will get written confirmation from the contractor and will be responsible for preparing the record of price negotiation according to § 3.811 of this title (price analyst's report of negotiations will fulfill this requirement provided the buyer's concurrence is indicated thereon). According to § 1001.457(b) of this subchapter and all applicable subparts of Part 1053 of this subchapter, the buyer also will be responsible for having the supplemental agreement prepared (including preparation of an ACD if additional funds are required) and for forwarding it for review, manual approval and distribution, except that the coordination of the staff judge advocate is not required if the supplemental agreement accomplishes only repricing action.

PART 1004—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart A—Procurement of Construction

Revise § 1004.103 as follows:

§ 1004.103 Negotiation.

The general principles and procedures pertaining to costs as set forth in Subparts D and F, Part 15 of this title will be adhered to in all construction negotiations.

Subpart V—Utility Service Contracts

Revise § 1004.2202(a) (1) to delete the second reference, as follows:

§ 1004.2202 Execution and administration of utility service contracts and processing of payments for services rendered.

(a) ***

(1) General Services Administration, Area Contracts according to Subpart H, Part 5 of this title.

Subpart W—Food Services Contracts

Section 1004.2302(a) is revised by deleting the reference to paragraph (c) as follows:

§ 1004.2302 Use and administration of food services contracts.

(a) *General.* (1) Base utilization of contractual feeding is subject to Hq USAF approval. No procurement will be initiated until approval according to AFR 146-8 (Contractual Feeding), has been attained. Section 1007.5005 of this subchapter and subparagraph (2) of this paragraph are not mandatory outside the United States. However, if a requirement type contract is used, the use of Schedules clause in § 1007.5005 of this subchapter is mandatory.

PART 1006—FOREIGN PURCHASES

Subpart C is deleted and Reserved.

Subpart T—Offshore Procurement

Revise § 1006.2005(a) to delete the reference therein:

§ 1006.2005 Prohibitions.

(a) *Supplies originating in the United States.* Unless otherwise authorized by the Air Force, no oversea commander will engage in the procurement of supplies normally centrally procured, from oversea manufacturers or suppliers if the supplies in complete and finished form, are to be obtained by such oversea manufacturers or suppliers from sources within the continental United States, its Territories or possessions. This prohibition does not apply to supplies which are coded for local purchase in USAF Supply Catalogs, or as otherwise authorized by applicable AF regulation.

PART 1007—CONTRACT CLAUSES

Subpart A—Clauses for Fixed-Price Supply Contracts

§ 1007.103-4 [Deletion]

1. Delete § 1007.103-4.

§ 1007.103-8 [Amendment]

2. Amend § 1007.103-8 by deleting the last sentence.

Subpart W—Clauses for Time and Materials Contracts

Revise § 1007.2304-2 to amend the first sentence, as follows:

§ 1007.2304-2 Government property.

Insert the clause in ASPR 13-508. Whenever any maintenance contract is initiated, awarded, and administered at base level as distinguished from air materiel area, the last sentence of paragraph (c), § 13.503 of this title will be deleted. * * *

Subpart BB—Clauses for Short-Form Facilities Contracts

§ 1007.2803-16 [Deletion]

Delete § 1007.2803-16.

Subpart NN—Special Clauses

In § 1007.4046 the introduction is set forth herein to delete the reference in the last sentence, as follows:

§ 1007.4046 Payments clause for fixed-price-type letter contracts.

The payments clause set forth below may be inserted by amendment into a fixed-price-type letter contract in which considerable deliveries are being made, and in which definitization has been delayed if it is determined by the procuring contracting officer that the delay is not due to the fault of the contractor. The use of this clause will require negotiation of an interim price. The price is for billing purposes only and should not be used in any way as a basis for fixed-price-type negotiations. It should not exceed 75 percent of the estimated unit cost. The clause should not be used in a letter contract for which progress payments have been authorized.

Subpart PP—Clauses for Contracts Issued by Foreign Procurement Activities

§§ 1007.4205-21, 1007.4205-22, 1007.4205-23 [Deletion]

Delete §§ 1007.4205-21, 1007.4205-22 and 1007.4205-23.

Subpart SS—Clauses for Fixed-Price Type Maintenance, Overhaul and Modification Contracts

§ 1007.4505-1 [Amendment]

Section 1007.4505-1 is amended by deleting the words "and § 1007.4023, Inspection and Audit."

Subpart ZZ—Clauses for Contracts for the Services of Auctioneers

§ 1007.5204-9 [Deletion]

Delete § 1007.5204-9.

Subpart AAA—Clauses for Contracts for the Rental of Supplies and Equipment

Revise § 1007.5304-10 to read as follows:

§ 1007.5304-10 Covenant against contingent fees.

Insert the clause in § 7.103-20 of this title.

PART 1008—TERMINATION OF CONTRACTS

Subpart B—General Principles Applicable to the Settlement of Fixed-Price-Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

Revise § 1008.202-52(a) to read as follows:

§ 1008.202-52 Special procedures pertaining to deletions of spare parts from AF contracts containing provisioning documents.

(a) This section deals with the deletion of both priced and unpriced spare

parts authorized under various types of Provisioning Documents. "Supply Component" as used herein includes, in addition to the supply components of the Air Force, the appropriate agencies of the other services whose requirements are being filled under AF contracts.

Subpart F—Termination for Default

§ 1008.601-50 [Amendment]

In § 1008.601-50, delete the final parenthetical phrase.

PART 1009—PATENTS, DATA, AND COPYRIGHTS

Subpart K—Processing and Clearance of Invention, Subcontract and Royalty Reports

§ 1009.1106 [Amendment]

In § 1009.1106, paragraph (e)(2) is amended by deleting the parenthetical phrase.

PART 1013—GOVERNMENT PROPERTY

Subpart D—Industrial Facilities

Revise § 1013.406-1 to delete the reference as follows:

§ 1013.406-1 Nondisposable nonseverable facilities.

Depreciation rates for use in agreements of the contractor to purchase nonseverable facilities will not be in excess of normal depreciation rates for Federal Income Tax purposes unless specifically authorized by MCPPB, or MCPT, for ICBM or IRBM No. 1 Programs. Such purchase agreements will provide for a residual value of the facilities at not less than 20 percent of the original installed cost of the item.

Subpart G—Use of Government-Owned Facilities and Special Tooling on Work for Foreign Governments

Revise § 1013.701 to read as follows:

§ 1013.701 Use without charge.

Requests by a foreign government for rent-free use of AF industrial facilities and special tooling should be forwarded through Director of Procurement and Production, Hq USAF (AFMPP), for consideration and recommendation to the Assistant Secretary of the Air Force (Materiel) for approval or disapproval. The submission will be prepared by the facilities or procurement office concerned and will contain the following: (a) A copy of the request of the foreign government for such use; (b) a statement that the AF facilities contract, lease, or supply contract under the facilities or special tooling are provided, authorizes or will be amended to authorize the rent-free use; and (c) statements in compliance with the requirements of § 13.702 (b) through (e) of this title.

Subpart X—Facility Expansion Procedure

In § 1013.2401-1(a), revise subparagraph (2) as follows:

§ 1013.2401-1 Delegation of authority.

(a) * * *

(2) Projects involving the location of nonseverable industrial facilities on land not owned or controlled by the Government will not be undertaken without the approval of the Secretary of the Air Force unless specifically exempted from that requirement.

PART 1014—INSPECTION AND ACCEPTANCE

Subpart A—Inspection

§ 1014.105-1 [Amendment]

In § 1014.105-1(a), delete the words "and § 1001.1302 of this chapter" in subparagraphs (1), (2), (3), and (4).

PART 1016—PROCUREMENT FORMS

Subpart A—Forms for Advertised Supply Contracts

Revise § 1016.150-3 to read as follows:

§ 1016.150-3 Optional forms.

Optional form 17, "Sealed bid label": See § 1002.203-1 of this subchapter.

Subpart B—Forms for Negotiated Procurement

§ 1016.207-55 [Deletion]

Delete § 1016.207-55.

PART 1030—APPENDIXES TO AIR FORCE PROCUREMENT INSTRUCTION

§ 1030.2 Appendix B—Manual for control of Government property in possession of contractors.

1. In item B-205.1, paragraph (a)(6) is revised to delete the reference; and in paragraph (b)(6), section (ii) is set forth to correct the error in 28 F.R. 4703, May 10, 1963, which shows this subsection (ii) as belonging to (b)(6) rather than to (b)(7):

B-205.1 Military installations or other contractors' plants.

(a) * * *

(6) The property administrator designated by the cognizant AF representative will be responsible for the adequacy of controls that are exercised over the property by the contractor. In this connection, he will establish administrative record of each authorized transaction. The records related to each authorized transaction will be periodically reviewed to verify that the contractor's work is completed in reasonable approximation to the time limits agreed upon and that the property is correctly returned or otherwise properly disposed of.

* * *

(b) * * *

(6) * * *

(ii) Ascertain whether the contractor is willing to replace or repair the exhibit at no cost to the Government, and if so, authorize such action. (Note, this authority to permit the repair or replacement of UR exhibits is limited to the exhibit only and does not extend to any other property of the Government which may be affected by the product deficiency.)

(iii) * * *

2. Revise item B-403.3(a) to read as follows:

B-403.3 Approval of scrap procedure. (a) See responsibilities in § 1054.2303 of this subchapter.

* * *

§ 1030.3 Appendix C—Manual for control of Government property in possession of non-profit research and development contractors.

Item C-203(c) is revised to read as follows:

C-203 Duties and responsibilities of the property administrator.

* * *

(c) No implementation.

* * *

PART 1054—CONTRACT ADMINISTRATION

Subpart B—Secondary Administration

1. Revise § 1054.202(a) to read as follows:

§ 1054.202 Definitions.

(a) Secondary administration. (See § 1053.404-2(f) of this subchapter.)

2. In § 1054.206(b), revise subparagraph (1) to read as follows:

§ 1054.206 Functions which can be delegated.

* * *

(b) * * *

(1) Pricing functions. The basic responsibility for subcontract pricing rests with the prime contractor. The prime ACO must insure that the prime contractor is performing this management obligation effectively. He should remind the contractor that complete justification of subcontract awards is required with particular attention given, where appropriate, to price and/or cost analysis, including audit, and the currency, completeness, and correctness of cost and pricing data obtained from subcontractors (see § 3.903-4 of this title and § 1003.903-4 of this subchapter for discussion of ACO review of individual subcontracts).

* * *

(iii) Where a contractor advises its cognizant ACO that a subcontractor has refused to provide or give access to the contractor to cost data essential for negotiation purposes, and that all reasonable steps, including top management participation, have been taken to secure such information from the subcontractor, the ACO will request an assist analysis from the appropriate secondary ACO. If the subcontractor's proposal exceeds \$350,000, inclusion of a request for audit assistance is mandatory; however, requests for audit assistance also may be included where the subcontract proposal is less than \$350,000. Such assistance is considered desirable, and is encouraged to the fullest practicable extent. The request will be coordinated with and an information copy furnished to, the audit activity located at or responsible for audit of the prime contractor's facility.

* * *

(v) Where it is decided to request government audit reports but not an assist analysis, the ACO will forward the request to the audit activity located at, or

responsible for, audit of the prime contractor's facility for processing in accordance with departmental audit instructions.

Subpart CC—Processing of Claims Under Cost-Reimbursement Type Contracts

Revise § 1054.2910(b) to delete the reference, as follows:

§ 1054.2910 Cost-reimbursement type subcontracts, audits, and billings.

(b) The ACO should advise the contractor or subcontractor who let the cost-reimbursement type subcontract of his responsibility for the proper performance of the subcontract and the financial settlement with the subcontractor. While the prime contractor's or upper-tier subcontractor's responsibility for a proper financial settlement includes the obligation to perform an adequate audit of the subcontractor, in appropriate circumstances, audit of the subcontract by a military department auditor will be preferable or advisable. Adherence to this policy will insure consistent treatment of subcontractor's costs, reduce duplicate auditing of the same records by two or more groups of auditors, and reduce the costs incurred by the prime contractor in performance of subcontract audits.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314; 70A Stat. 127-133; 10 U.S.C. 2301-2314)

By order of the Secretary of the Air Force.

WILLIAM L. KOCH,
Lt. Colonel, U.S. Air Force,
Chief, Special Activities
Group, Office of The Judge
Advocate General.

CODY BAIN,
Certifying Officer.

[F.R. Doc. 63-13372; Filed, Dec. 26, 1963;
8:47 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter X—Oil Import Administration, Department of the Interior

[Reg. 1, Rev. 4]

OIL IMPORT REGULATION

In the FEDERAL REGISTER for October 3, 1963 (28 F.R. 10677), notice was given of proposals to add a new section 6 to Oil Import Regulation 1 (Revision 3), as amended (27 F.R. 12442; 28 F.R. 2677, 4953 and 6353) and to amend sections 5, 7, 8, 11, 12, 21 and 22 of that regulation. Comments were received from 16 companies, associations, or interested persons. A number of comments were addressed to matters not covered by the proposed rule making.

The proposed changes in sections 5, 7, 8, 11 and 21 generally were favorably received and the changes are adopted as proposed. The comments which were received with respect to the proposed

amendment to section 12 recommended a change considerably broader in scope than the one proposed, and after reconsideration of the proposed change in the light of the comments, it has been decided to make no change in section 12.

Several of the comments directed to the proposed new section 6 were to the effect that the section appeared to provide for inspection with respect to matters unrelated to the mandatory oil import program. Accordingly, the new section has been made more specific in this regard.

As a result of the comments on the proposed revision in the definition of "refinery capacity," the definition has been further revised to include a plant which manufacturers two or more unfinished oils or at least one finished product and one unfinished oil.

In sections 10 and 11, relating to allocations of crude oil and unfinished oils in Districts I-IV and in District V, the "percent of inputs" in the schedule in paragraph (b) of each section has been revised in the light of the levels of authorized imports established for the allocation period beginning January 1, 1964. Paragraph (c) of each of these sections provides for a reduction in "historical allocations" in conformity with the provisions of subparagraph (b) (1), section 3, of Proclamation 3279 as amended by Proclamation 3509, dated November 30, 1962 (27 F.R. 11985).

Since a number of amendments have been made to the regulation, it is desirable to revise and publish the regulation in full. Accordingly, Oil Import Regulation 1 (Revision 4) supersedes Oil Import Regulation 1 (Revision 3) and all outstanding amendments of Revision 3 (27 F.R. 12442; 28 F.R. 2677, 4953 and 6353). Because allocations of imports must be made and licenses issued before the beginning of the ensuing allocation periods, Oil Import Regulation 1 (Revision 4) shall become effective immediately.

Sec.

1. Purpose.
2. Oil Import Administration.
3. Allocation periods.
4. Eligibility for allocations.
5. Applications for allocations and licenses.
6. Records and inspections.
7. Licenses.
8. Small quantities.
9. Determination of quantities available for allocation.
10. Allocations of crude oil and unfinished oils—Districts I-IV.
11. Allocations of crude oil and unfinished oils—District V.
12. Allocations of residual fuel oil to be used as fuel in District I.
- 12a. Emergency advances.
13. Allocations of finished products—Districts I-IV, Districts II-IV, District V.
14. Determination of maximum level of imports—Puerto Rico.
15. Allocations of crude oil and unfinished oils—Puerto Rico.
16. Allocations of finished products—Puerto Rico.
17. Use of imported crude oil and unfinished oils.
18. Reports.
19. False statements.
20. Revocation or suspension of allocations or licenses.
21. Appeals.
22. Definitions.

AUTHORITY: Secs. 1 to 22 issued under Proclamation 3279, as amended, 24 F.R. 1781, 3527, 10133; 25 F.R. 13945; 26 F.R. 507, 811; 27 F.R. 9683, 11985; and 28 F.R. 4077, 5931; sec. 232, 76 Stat. 877.

Section 1. Purpose.

These regulations implement Presidential Proclamation 3279, "Adjusting Imports of Petroleum and Petroleum Products into the United States," dated March 10, 1959 (24 F.R. 1781), as amended, by providing for the discharge of the responsibilities imposed upon the Secretary of the Interior.

Sec. 2. Oil Import Administration.

There is in the Department of the Interior an Oil Import Administration under the direction of an Administrator designated by the Secretary of the Interior. The Administrator is hereby empowered to exercise, pursuant to this regulation, all of the authority conferred upon the Secretary by Proclamation 3279, as amended, and the Administrator may redelegate such authority.

Sec. 3. Allocation periods.

Allocations of imports of crude oil, unfinished oils and finished products will be made for periods of six months beginning July 1 and January 1, respectively, except that allocations of imports into District I and into Districts II-IV of residual fuel oil to be used as fuel will be made for periods of twelve months April 1 through March 31.

Sec. 4. Eligibility for allocations.

(a) To be eligible for an allocation of imports of crude oil and unfinished oils in Districts I-IV or in District V, a person must (1) have refinery capacity in the respective districts and (2) have had refinery inputs in the respective districts for the year ending three months prior to the beginning of the allocation period for which the allocation is requested.

(b) To be eligible for an allocation of imports of crude oil and unfinished oils for Puerto Rico, a person must have refinery capacity in Puerto Rico and must have had refinery inputs in Puerto Rico during the months of July, August, and September of the year 1958.

(c) To be eligible for an allocation of imports of finished products, other than residual fuel oil to be used as fuel, in Districts I-IV or District V, a person must have imported such products into the respective districts during the calendar year 1957.

(d) To be eligible for an allocation of imports into District I of residual fuel oil to be used as fuel a person must:

(1) Have imported residual fuel oil used as fuel into District I during the calendar year 1957; or

(2) Be in the business in District I of selling residual fuel oil to be used as fuel and, at the time an application for an allocation is made, have under his management and operational control a deep-water terminal located in District I, and have had terminal inputs into such deep-water terminal during the year ending three months prior to the beginning of the allocation period for which the allocation is requested.

(e) To be eligible for an allocation of imports into Districts II-IV or into District V of residual fuel oil to be used as fuel, a person must have imported residual fuel oil used as fuel into the respective districts during the calendar year 1957.

(f) To be eligible for an allocation of imports of finished products, other than residual fuel oil to be used as fuel, in Puerto Rico, a person must have imported such products into Puerto Rico during the last half of the calendar year 1958.

(g) To be eligible for an allocation of imports of residual fuel oil to be used as fuel in Puerto Rico, a person must have imported residual fuel oil used as fuel into Puerto Rico during the last half of the calendar year 1958.

(h) A person is not eligible individually for an allocation of crude oil and unfinished oils or finished products if the person is a subsidiary or affiliate owned or controlled, by reason of stock ownership or otherwise, by any other individual, corporation, firm or other business organization or legal entity. The controlling person and the subsidiary or affiliate owned or controlled will be regarded as one. Allocations will be made to the controlling person on behalf of itself and its subsidiary or affiliate but, upon request, licenses will be issued to the subsidiary or affiliate.

Sec. 5. Applications for allocations and licenses.

An application for allocations of imports of crude oil, unfinished oils, or finished products and for a license or licenses must be filed with the Administrator, in such form as he may prescribe, not later than 60 calendar days prior to the beginning of the allocation period for which the allocation is required. However, if the 60th day is a Saturday, Sunday, or holiday, the application may be filed on the next succeeding business day. However, no application for an allocation of imports of finished products need be filed for the allocation period January 1, 1964 through June 30, 1964. Allocation periods are provided for in section 3 of this regulation.

Sec. 6. Records and inspections.

All persons receiving allocations pursuant to these regulations shall maintain complete records of imports, refinery inputs, and terminal inputs. These records shall be maintained on a current basis so that they will be available for inspection by a representative of the Oil Import Administration. All records required to be maintained pursuant to this section shall be retained for a period of three (3) years. In connection with the performance of the Oil Import Administration's responsibility for assuring full compliance with these regulations and Proclamation 3279, as amended, the person shall permit representatives of the Oil Import Administration to enter upon his office, property, plants and facilities to examine such records and, if deemed necessary in order to verify such records, to inspect the refinery and terminal and all operations being performed within the facilities which include, but are not

necessarily limited to refining, receiving, shipping, testing and storage. If requested by the Oil Import Administration representatives, the person shall be required to assign an employee to accompany the representatives of the Oil Import Administration in all inspections, record evaluations, and verification operations. The Oil Import Administration representatives shall not be required to sign any releases prior to entering upon a person's property or installation.

Sec. 7. Licenses.

(a) When an allocation has been made to a person under this regulation, the Administrator shall issue a license or licenses based on the allocation, specifying the amount of crude oil and unfinished oils or finished products which may be imported, the period of time such license shall be in effect, and the districts (District I, Districts I-IV, Districts II-IV, District V, or Puerto Rico) into which the importation may be made. The Administrator may amend such licenses.

(b) No license issued pursuant to this section may be sold, assigned, or otherwise transferred.

Sec. 8. Small quantities.

(a) Collectors of Customs are authorized to permit without a license baggage entries, and entries for consumption of small quantities of crude oil, unfinished oils, or finished products which are certified as samples for testing or analysis and which do not exceed 110 gallons per entry.

(b) Persons desiring to import small quantities not covered by paragraph (a) of this section shall file with the Administrator a written request for an authorization for entry without a license for each shipment describing the oil and quantity to be imported and listing the port of entry.

Sec. 9. Determination or quantities available for allocation.

(a) Prior to the beginning of each allocation period the Administrator shall determine in accordance with the limitations imposed by section 2 of Proclamation 3279, as amended, the quantities of imports of crude oil and unfinished oils and finished products other than residual fuel oil to be used as fuel which are available for allocation in Districts I-IV and in District V.

(b) Prior to April 1 of each year and for the allocation period which will begin on that day, the Bureau of Mines shall estimate the demand in District I for residual fuel oil to be used as fuel and the domestic production of that product in District I, transfers from crude, and the domestic supply from other Districts and Puerto Rico of that product to District I. If the estimates of the Bureau indicate that domestic production and supply will not be sufficient to meet demand, an adjustment will be made, pursuant to paragraph (d) of section 2 of Proclamation 3279, as amended, in the maximum level of imports into District I of residual fuel oil to be used as fuel adequate to meet the deficit indicated for the ensuing allocation period.

Sec. 10. Allocations of crude oil and unfinished oils—Districts I-IV.

(a) The quantity of imports of crude oil and unfinished oils determined to be available for allocation in Districts I-IV for the allocation period January 1, 1964 through June 30, 1964, shall be allocated by the Administrator among eligible applicants as provided in paragraphs (b) and (c) of this section.

(b) Except as provided in paragraph (c) of this section, each eligible applicant shall receive an allocation based on refinery inputs for the year ending September 30, 1963, and computed according to the following schedule:

Average B/D Input:	Percent of Input
0-10,000	14.0
10-30,000	11.9
30-100,000	9.3
100,000 plus	5.45

(c) (1) Except as provided in subparagraph (2) of this paragraph, if an eligible applicant imported crude oil pursuant to an allocation under the Voluntary Oil Import Program and if an allocation computed under paragraph (b) of this section would be less than 63.0 percent of the applicant's last allocation of imports of crude oil under the Voluntary Oil Import Program, the applicant shall, nevertheless, receive an allocation under this section equal to 63.0 percent of his last allocation of imports of crude oil under the Voluntary Oil Import Program.

(2) If an applicant imported crude oil pursuant to an allocation under the Voluntary Oil Import Program which reflected imports of crude oil that would now be exempt from restrictions pursuant to clause (4) of paragraph (a) of section 1 of Proclamation 3279, as amended, and if an allocation computed under paragraph (b) of this section would be less than 55.75 percent of the applicant's last allocation of imports of crude oil under the Voluntary Oil Import Program, the applicant shall, nevertheless, receive an allocation under this section equal to 55.75 percent of his last allocation of imports of crude oil under the Voluntary Oil Import Program.

(d) No allocation made pursuant to this section shall entitle a person to a license which will allow the importation of unfinished oils in excess of 10 percent of the allocation.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

Sec. 11. Allocations of crude oil and unfinished oils—District V.

(a) The quantity of imports of crude oil and unfinished oils determined to be available for allocation in District V for the allocation period January 1, 1964 through June 30, 1964, shall be allocated by the Administrator among eligible applicants as provided in paragraphs (b) and (c) of this section.

(b) Except as provided in paragraph (c) of this section, each eligible applicant shall receive an allocation based on refinery inputs for the year ending September 30, 1963, and computed according to the following schedule:

Average B/D Input:	Percent of Input
0-10,000	52.0
10-30,000	29.0
30,000 plus	9.57

(c) (1) Except as provided in subparagraph (2) of this paragraph, if an eligible applicant imported crude oil pursuant to an allocation under the Voluntary Oil Import Program and if an allocation computed under paragraph (b) of this section would be less than 55.0 percent of the applicant's last allocation of imports of crude oil under the Voluntary Oil Import Program, the applicant shall, nevertheless, receive an allocation under this section equal to 55.0 percent of his last allocation of imports of crude oil under the Voluntary Oil Import Program.

(2) If an applicant imported crude oil pursuant to an allocation under the Voluntary Oil Import Program which reflected imports of crude oil that would now be exempt from restrictions pursuant to clause (4) of paragraph (a) of section 1 of Proclamation 3279, as amended, and if an allocation computed under paragraph (b) of this section would be less than 52.0 percent of the applicant's last allocation of imports of crude oil under the Voluntary Oil Import Program, the applicant shall, nevertheless, receive an allocation under this section equal to 52.0 percent of his last allocation of imports of crude oil under the Voluntary Oil Import Program.

(d) (1) No allocation made pursuant to this section shall entitle a person to a license which will allow the importation of unfinished oils in excess of 10 percent of the allocation. Each barrel of unfinished oil imported shall be deemed to be the equivalent of one barrel of crude oil and will be so charged against the person's license by the respective Collectors of Customs.

(2) The permissible percentage of imports of unfinished oils and the equivalence of unfinished oils to crude oil may be changed during the allocation period, if necessary to prevent impairing accomplishment of the purposes of the program. Such a change will be made only after notice of proposed rule making and will not become effective until the 30th calendar day following publication in the FEDERAL REGISTER of the amendment making such change.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

Sec. 12. Allocations of residual fuel oil to be used as fuel in District I.

(a) (1) An eligible applicant who has an allocation of imports of crude oil pursuant to section 10 of this regulation and who during the calendar year 1957 imported into District I residual fuel oil used as fuel shall be entitled, for the allocation period April 1, 1963 through March 31, 1964, to an allocation of imports into District I of residual fuel oil to be used as fuel equal to 80 percent of the ratio that the applicant's imports during the calendar year 1957 into District I of residual fuel oil used as fuel bore to all such imports into District I

during that year multiplied by the total amount of imports into District I of residual fuel oil to be used as fuel available for allocation during the allocation period minus the quantities of imports of such oil granted to petitioners by the Oil Import Appeals Board.

(2) An eligible applicant who does not have an allocation of imports of crude oil pursuant to section 10 of this regulation but who during the calendar year 1957 imported into District I residual fuel oil used as fuel shall be entitled, for the allocation period April 1, 1963 through March 31, 1964, to an allocation of imports into District I of residual fuel oil to be used as fuel equal to 83 percent of the ratio that the applicant's imports during the calendar year 1957 into District I of residual fuel oil used as fuel bore to all such imports into District I during that year multiplied by the total amount of imports into District I of residual fuel oil to be used as fuel available for allocation during the allocation period minus the quantities of imports of such oil granted to petitioners by the Oil Import Appeals Board.

(b) (1) Except as provided in paragraph (a) (1) of this section and unless an allocation under paragraph (a) (1) would be larger, each person who is an eligible applicant under subparagraph (2), paragraph (d), section 4 of this regulation who has an allocation of imports of crude oil pursuant to section 10 of this regulation shall receive for the allocation period April 1, 1963 through March 31, 1964, from the quantity of imports of residual fuel oil to be used as fuel which is available for allocation on the basis of terminal inputs (after allocations have been made pursuant to decisions of the Oil Import Appeals Board and on the historical basis as provided in paragraph (a) of this section) an allocation of imports into District I of residual fuel oil to be used as fuel based on the applicant's terminal inputs for the year ending December 31, 1962, and computed according to the following schedule:

Average B/D:	Percent of Input
0-5,000	60.0
5,000 plus	26.7

(2) Except as provided in paragraph (a) (2) of this section and unless an allocation under paragraph (a) (2) would be larger, each person who is an eligible applicant under subparagraph (2), paragraph (d), section 4 of this regulation and who does not have an allocation of imports of crude oil pursuant to section 10 of this regulation shall receive for the allocation period April 1, 1963 through March 31, 1964, from the quantity of imports of residual fuel oil to be used as fuel which is available for allocation on the basis of terminal inputs (after allocations have been made pursuant to decisions of the Oil Import Appeals Board and on the historical basis provided for in paragraph (a) of this section) an allocation of imports into District I of residual fuel oil to be used as fuel based on the applicant's terminal inputs for the year ending December 31, 1962, and computed according to the following schedule:

Average B/D Input:	Percent of Input
0-1,000	100.0
1-5,000	70.0
5,000 plus	35.4

(c) (1) During the year ending December 31, 1962, and succeeding years, terminal inputs shall be computed only as provided in this paragraph (c).

(2) In order to constitute a terminal input a delivery into a deep-water terminal (or a withdrawal as provided in subparagraph (6) of this paragraph) must have occurred during the year ending three months prior to the beginning of the allocation period for which an allocation is requested.

(3) Except as provided in subparagraphs (6) and (7) of this paragraph, an eligible applicant may count as a terminal input residual fuel oil to be used as fuel which was delivered into a deep-water terminal in District I under his management and operational control if he owned the oil when it was placed in the terminal and if the delivery constituted the first delivery of that oil to a deep-water terminal in District I. However, an eligible applicant must reduce his terminal inputs by the quantity of residual fuel oil to be used as fuel which he transfers from his deep-water terminal in District I:

(i) If that oil is delivered to a deep-water terminal in District I under the management and operational control of a person who is an eligible applicant under subparagraph (2), paragraph (d), section 4 of this regulation; and

(ii) If title to the oil passes to the transferee (buyer) when it is delivered to the transferee's deep-water terminal. In such an instance, the transferee (buyer) may claim as a terminal input the quantity of oil so transferred.

(4) An eligible applicant who has under his management and operational control a deep-water terminal in District I may also count as a terminal input residual fuel oil to be used as fuel which the applicant (i) owned, and (ii) sold to a person who was not in the business of selling residual fuel oil to be used as fuel, and (iii) delivered to a deep-water terminal in District I under the management and operational control of such person, provided that such delivery constituted the first delivery of that oil to a deep-water terminal in District I.

(5) In addition, an eligible applicant who has under his management and operational control a deep-water terminal in District I may count as a terminal input residual fuel oil to be used as fuel which the applicant (i) owned, and (ii) sold to a Federal agency, or to an agency of a State or a political subdivision of a State, and (iii) delivered to a deep-water terminal in District I for the account of such agency, provided that such delivery constituted the first delivery of that oil to a deep-water terminal in District I.

(6) No residual fuel oil to be used as fuel may be counted as a terminal input when it is placed, or so long as it remains, in bonded storage at a deep-water terminal in District I. An eligible applicant may count as a terminal input

residual fuel oil to be used as fuel which he owned when it was placed in bonded storage in a deep-water terminal under his management and operational control in District I when such oil is withdrawn from bonded storage for use in District I or for bunkering ships in the coastwise trade, except as provided in subparagraph (7) of this paragraph. However, if such oil is withdrawn from bonded warehouse for consumption and is transferred to another deep-water terminal in District I, then the provisions in subparagraph (3) of this paragraph relating to transfers shall apply.

(7) Residual fuel oil consumed by an applicant in refinery or terminal operations, as bunkers for his ships, or for any other purpose, may not be counted as a terminal input.

(d) The allocations under paragraphs (a) and (b) of this section shall be made for periods of twelve months. The Administrator shall, however, issue licenses in an amount not to exceed 22 percent of each allocation for the period of three months beginning April 1, 14 percent for the period of three months beginning July 1, 25 percent for the period of three months beginning October 1, and 39 percent for the period of three months beginning January 1. All licenses will be valid until March 31, 1964. The Administrator may, in his discretion, upon written petition adjust the percentages for a particular licensing period in licenses issued to the petitioner to such a degree as in the opinion of the Administrator is necessary to afford the petitioner a reasonable measure of relief in an instance in which the petitioner can demonstrate that: (1) It will be unable to import in full tanker cargoes; (2) it will be unable to import during a closed navigational season; (3) the rate of consumption in a particular area does not conform to that of District I as a whole; or (4) that the health, safety, or operations of consumers which petitioner serves will be imperiled. In connection with petitions under subparagraph (4) the Administrator shall require a full disclosure of the requirements of the consumers involved, the efforts of such consumers and of the petitioner to obtain supplies of residual fuel oil to be used as fuel, and the consumers' ability to utilize alternative fuels and the availability to them of such fuels.

(e) If any part of a deep-water terminal is removed from the management and operational control of an eligible applicant by sale, transfer, lease, or any other means, the part so removed shall not constitute a separate deep-water terminal for the purpose of computing allocations based on terminal inputs. An allocation will be computed as if the transaction had not taken place. After the allocation for a particular allocation period has been so computed, the Administrator may, in his discretion, divide the allocation between the eligible applicant from whose management and operational control the part of the terminal was removed and the person who assumed management and operational control, if these persons agree upon, and request, a division.

(f) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred. All residual fuel oil to be used as fuel which is imported into District I under an allocation made pursuant to this section shall be sold only in District I for use in that District or for use as ships bunkers.

Sec. 12a. Emergency advances.

Upon a showing, satisfactory to the Administrator, that such action is necessary to avoid imperiling the health, safety, or operations of consumers which the holder of an allocation serves, the Administrator may, in his discretion, through the issuance of a special license permit the holder of an allocation of imports into District I of residual fuel oil to be used as fuel to draw for importation during the last quarter of an allocation period against the allocation which has been made to him for the next succeeding allocation period. In connection with each application for a special license, the Administrator shall require a full disclosure of the requirements of the consumers involved, the efforts of such consumers and of the applicant to obtain supplies of residual fuel oil to be used as fuel, and the consumers' ability to utilize alternative fuels and the availability to them of such fuels. In those instances in which the Administrator determines to issue a special license under this section, the quantity of imports covered by the special license shall be no larger than the Administrator determines is necessary to give relief in the particular circumstances. All imports made under such a special license shall be charged against, and shall correspondingly reduce, the allocation which has been made for the next succeeding allocation period and such reduction shall be completely effected in the licenses issued for the first quarter of that allocation period. Actions taken by the Administrator under this section shall constitute adjustments in the maximum level of imports into District I of residual fuel oil to be used as fuel pursuant to paragraph (d) of section 2 of Proclamation 3279, as amended. No special license issued pursuant to this section may be sold, assigned, or otherwise transferred.

Sec. 13. Allocations of finished products—Districts I-IV, Districts II-IV, District V.

(a) The quantity of imports of finished products other than residual fuel oil to be used as fuel determined to be available for allocation in Districts I-IV and in District V, and the quantity of imports of residual fuel oil to be used as fuel available for allocation in Districts II-IV and in District V for any particular allocation period, shall be allocated by the Administrator to each eligible applicant in the proportion that the applicant's imports of such products in the respective districts during the calendar year 1957 bore to the imports of such products during that year by all eligible applicants. Separate allocations shall be made for imports of residual fuel oil to be used as fuel and

for imports of finished products other than residual fuel oil to be used as fuel.

(b) No allocations made pursuant to this section may be sold, assigned, or otherwise transferred.

Sec. 14. Determination of maximum level of imports—Puerto Rico.

(a) Pursuant to section 2 of Proclamation 3279, it is determined (1) that the average barrels per day of imports of crude oil and unfinished oils into Puerto Rico during any particular allocation period shall not exceed the average barrels per day, as determined by the Administrator, during the month of July of the calendar year 1958 of imports of such commodities into Puerto Rico, and (2) that the average barrels per day, as determined by the Administrator, of imports of residual fuel oil to be used as fuel and of imports of finished products other than residual fuel oil to be used as fuel into Puerto Rico during any particular allocation period shall not exceed the average barrels per day of imports of such products, respectively, into Puerto Rico during the last half of the calendar year 1958.

(b) The administrator shall from time to time review the determinations set forth in paragraph (a) of this section and shall recommend to the Secretary of the Interior that the level of imports be increased or decreased as may be required to meet increases or decreases in local demand in Puerto Rico or in demand for export to foreign areas.

Sec. 15. Allocations of crude oil and unfinished oils—Puerto Rico.

(a) For each allocation period, the Administrator shall allocate to each eligible applicant for an allocation for Puerto Rico quantities of imports of crude oil and unfinished oils in proportion to the applicant's average barrels daily of refinery inputs (adjusted by the Administrator for downtime) in Puerto Rico during the months of July, August, and September of the year 1958.

(b) In the event that the maximum levels of imports of crude oil and unfinished oils are increased or decreased pursuant to paragraph (b) of section 14, the Administrator shall increase or decrease individual allocations in the proportion that each allocation bears to the total allocations of crude oil and unfinished oils.

(c) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

Sec. 16. Allocations of finished products—Puerto Rico.

(a) For each allocation period, the Administrator shall allocate to each eligible applicant for an allocation for Puerto Rico a quantity of imports of finished products equal to the applicant's average barrels daily of imports of such products during the last six months of the calendar year 1958. Separate allocations shall be made for imports of residual fuel oil to be used as fuel and of imports of finished products other than residual fuel oil to be used as fuel.

(b) In the event that the maximum level of imports of residual fuel oil to be used as fuel or of finished products other

than residual fuel oil to be used as fuel is increased or decreased pursuant to paragraph (b) of section 14, the Administrator shall increase or decrease individual allocations in the proportion that each allocation bears to the total allocations of residual fuel oil to be used as fuel or of finished products other than residual fuel oil to be used as fuel, respectively.

(c) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

Sec. 17. Use of imported crude oil and unfinished oils.

(a) Each person who imports crude oil or unfinished oils under a license issued pursuant to an allocation made under sections 10, 11, or 15 of this regulation must process the oils so imported in his own refinery, except that foreign crude oil may be exchanged for either domestic crude oil or domestic unfinished oils and foreign unfinished oils may be exchanged for either domestic unfinished oils or domestic crude oil for processing in such refinery if:

(1) The exchange is effected on a ratio of not less than one barrel of domestic oil for each barrel of imported oil unless otherwise approved by the Administrator;

(2) The exchange is not otherwise unlawful;

(3) The exchange is effected on a current basis—that is, not more than 90 days elapse between the delivery of foreign and domestic oil under the exchange agreement; and

(4) The proposed exchange agreement is reported to the Administrator before it is acted upon.

(b) All exchanges must be on an oil-for-oil basis and any exchange involving adjustments, settlements, or accounting on a monetary basis is not permissible and will not be approved by the Administrator.

Sec. 18. Reports.

(a) Each person who imports crude oil, unfinished oils, or finished products under a license issued under this regulation shall report to the Administrator the quantities in barrels corrected to 60° F. of crude oil, unfinished oils, and finished products so imported. Each report shall state through which port of entry the importation was made and shall specify the kinds of unfinished oils and finished products imported. Each report shall be filed with the Administrator within 15 days of the end of a particular month.

(b) Each person who exchanges oil pursuant to section 17 of this regulation shall report the exchange to the Administrator on such forms as he shall prescribe. In addition, any changes occurring during an allocation period in the types of oils or the exchange ratio shall be reported.

Sec. 19. False statements.

Persons concealing material facts or making false statements in or in connection with any applications or reports filed with the Administrator or in connection with any license presented to or statements made to a Collector of Customs

with respect to imports of crude oil, unfinished oils, or finished products, are guilty of a crime and upon conviction may be punished by fine or imprisonment or both.

Sec. 20. Revocation or suspension of allocation or licenses.

The Administrator may, after a hearing, revoke or suspend any allocation or license issued under this regulation, on grounds relating to the national security, or the violation of the terms of Proclamation 3279, this regulation, or licenses issued pursuant thereto.

Sec. 21. Appeals.

(a) There is hereby established an Oil Import Appeals Board, comprised of a representative each from the Departments of Interior, Defense, and Commerce, designated, respectively, by the Secretaries of such Departments. The Board shall elect a Chairman from its own membership.

(b) The Appeals Board shall consider petitions by persons affected by this regulation and may, within the limits of the maximum levels of imports established in section 2 of Proclamation 3279, as amended:

(1) Modify any allocation made to any person under this regulation on the grounds of exceptional hardship or error;

(2) Grant allocations of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under this regulation;

(3) Grant allocations of finished products on the grounds of exceptional hardship to persons who do not qualify for allocations under this regulation; and

(4) Review the revocation or suspension of any allocation or license.

(c) (1) Except as provided in subparagraph (2) of this paragraph, the modification or grant of an allocation by the Appeals Board shall become effective in the allocation period, as provided in section 3 of this regulation, which succeeds the allocation period during which the Board's decision is made and no decision of the Appeals Board shall become effective unless it is made and the Administrator is notified more than thirty (30) calendar days before the beginning of an allocation period.

(2) An allocation granted pursuant to subparagraph (2) or (3) of paragraph (b) of this section to a person who has become ineligible because of total loss of refinery capacity or deep-water terminal facilities may be made effective within the allocation period during which the Appeals Board's decision is made.

(d) The Appeals Board may take such action on petitions as it deems appropriate; and it may adopt, promulgate, and publish such rules and procedures as it deems appropriate for the conduct of its business. The decisions of the Appeals Board on petitions shall be final.

Sec. 22. Definitions.

As used in this regulation:

(a) "person" includes an individual, a corporation, firm, or other business organization or legal entity, and an agency

of a State, territorial, or local government, but does not include a department, establishment, or agency of the United States;

(b) "District I" comprises the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, West Virginia, Virginia, North Carolina, South Carolina, Georgia, and Florida, and the District of Columbia;

(c) "Districts II-IV" means all the States of the United States except those within District I and District V;

(d) "Districts I-IV" means the District of Columbia and all of the States of the United States except those States within District V;

(e) "District V" means the States of Arizona, Nevada, California, Oregon, Washington, Alaska, and Hawaii;

(f) "Crude oil" means crude petroleum as it is produced at the wellhead and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons which existed in a vapor phase in a reservoir and that are not natural gas products;

(g) "Finished products" means any one or more of the following petroleum oils, or a mixture or combination of such oils, which are to be used without further processing except blending by mechanical means:

(1) Liquefied gases—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures;

(2) Gasoline—a refined petroleum distillate which, by its composition, is suitable for use as a carburant in internal combustion engines;

(3) Jet fuel—a refined petroleum distillate used to fuel jet propulsion engines;

(4) Naphtha—a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes;

(5) Fuel oil—a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, residues;

(6) Lubricating oil—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces;

(7) Residual fuel oil—a topped crude oil or viscous residuum which, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification MIL-F-859 for Navy Special Fuel Oil and any other more viscous fuel oil, such as No. 5 or Bunker C;

(8) Asphalt—a solid or semi-solid cementitious material which gradually liquefies when heated, in which the predominating constituents are bitumens, and which is obtained in refining crude oil;

(9) Natural gas products—means liquids (under atmospheric conditions), including natural gasoline, which are recovered by a process of absorption, adsorption, compression, refrigeration, cy-

cling, or a combination of such processes, from mixtures of hydrocarbons that existed in a vapor phase in a reservoir and which, when recovered and without processing in a refinery, otherwise fall within any of the definitions of products contained in subparagraphs (2) through (5), inclusive, of this paragraph (g).

(h) "Unfinished oils" means one or more of the petroleum oils listed in paragraph (g) of this section, or a mixture or combination of such oils, which are to be further processed other than by blending by mechanical means;

(i) "Administrator" means Administrator, Oil Import Administration, Department of the Interior, or his duly authorized representative;

(j) The words "importation," "importing," "import," "imports," and "imported" include both entry for consumption and withdrawal from warehouse for consumption.

(k) "Refinery inputs" means refinery feed stocks:

(1) And include only:

(i) Crude oil and

(ii) Imported unfinished oils

(2) But do not include:

(i) Unfinished oils that have not been imported, or

(ii) For the purpose of computing allocations under section 10 or section 11 of this regulation, any crude oil or unfinished oils which are imported into the United States by pipeline, rail, or other means of overland transportation from the country where they were produced, which country, in the case of unfinished oils, is also the country of production of the crude oil from which the unfinished oils were processed or manufactured.

(l) "Refinery capacity" means a plant which (1) consists of stills, refining units and equipment for separating or converting hydrocarbons, and storage tanks, pipelines and pumps; (2) processes crude oil or further processes unfinished oils through the stills or units; and (3) manufactures two or more separate and distinct finished products, unfinished oils, or at least one finished product and one unfinished oil for a total yield equal to not less than 30 percent of total "refinery inputs".

(m) "Deep-water terminal" means a permanent land installation which (1) consists of bulk storage tanks having not less than 100,000 barrels of operational capacity, pumps, and pipelines used for the storage, transfer and handling of residual fuel oil; (2) is adjacent to waterways that permit the safe passage to the installation of a tanker rated 15,000 cargo deadweight tons; and (3) has a berth that will permit the delivery of residual fuel oil to be used as fuel into the installation by direct connection from a tanker rated at 15,000 cargo deadweight tons, drawing not less than 25 feet of water, and moored in the berth. Cargo deadweight tons represent the carrying capacity of a tanker, in tons of 2,240 pounds, less the weight of fuel,

water, stores, and other items necessary for use on a voyage.

STEWART L. UDALL,
Secretary of the Interior.

DECEMBER 23, 1963.

[F.R. Doc. 63-13427; Filed, Dec. 26, 1963; 8:50 a.m.]

Title 44—PUBLIC PROPERTY AND WORKS

Chapter I—General Services Administration

SUBCHAPTER C—REAL PROPERTY MANAGEMENT

PART 100—PUBLIC BUILDINGS AND GROUNDS

Subpart B—Supplemental Regulations

PENTAGON AREA TRAFFIC AND PARKING REGULATIONS

Paragraph (b) of § 100.21 is revised to read as follows:

§ 100.21 Vehicle parking.

(b) The provisions of subparagraphs (1) through (4) of this paragraph are applicable from 7:30 a.m. to 6:00 p.m., Monday through Saturday, and 7:30 a.m. to 1:00 p.m., Sundays and holidays except at the Mall and River Entrances where these provisions will apply 24 hours daily, Monday through Sunday. Directions by police officers on duty will apply at all times.

Dated: December 19, 1963.

H. A. ABERSFELLER,
Regional Administrator, General Services Administration, Region 3.

[F.R. Doc. 63-13383; Filed, Dec. 26, 1963; 8:48 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 3—Department of Health, Education, and Welfare

PART 3-75—DELEGATIONS OF AUTHORITY

Subpart 3-75.2—General Delegation, Delegates and Specific Limitations

PUBLIC HEALTH SERVICE

Paragraphs (b) and (c) of § 3-75.205 are amended to read as follows:

§ 3-75.205 Public Health Service.

(b) Authority stated in § 3-75.101 to negotiate contracts under Title III, section 302(c)(11), Public Law 152, 81st Congress, as amended, is delegated to:

(1) Chief, Supply Management Branch, Division of Administrative Services.

(2) Director, National Institutes of Health.

(3) Chief, Supply Management Branch, National Institutes of Health.

(4) Head, Research Contracts Section, National Institutes of Health.

(5) Assistant Head, Research Contracts Section, National Institutes of Health.

(6) Group Heads, Research Contracts Section, National Institutes of Health.

(7) Executive Officer, Bureau of State Services.

(8) Assistant Executive Officer, Bureau of State Services.

(9) Chief, Contract Branch, Bureau of State Services-Community Health.

(10) Chief, Contract Branch, Bureau of State Services-Environmental Health.

(11) Chief, Contract Branch, Bureau of State Services-Environmental Health, may also exercise the above cited authority for the Bureau of Medical Services and the Office of the Surgeon General.

(c) Authority delegated in this section is limited as follows:

(1) No authority is delegated to:

(i) Negotiate purchases or contracts under section 302(c)(12), or to make advance payments under section 305.

(ii) Purchase or contract for supplies, equipment, and services of an administrative nature for headquarters offices which are obtained through the Procurement and Supply Management Branch, Division of General Services, Office of Administration.

(iii) Make the necessary determinations and decisions specified in section 302(c)(11) for contracts in excess of \$25,000.

(iv) The officers specified in paragraph (b) (5), (6) and (8) of this section to make the necessary determinations and decisions specified in section 302(c)(11) for contracts of \$25,000 or less.

(v) Make the necessary determinations and decisions specified in section 302(c)(13).

Effective date. This amendment shall become effective on December 22, 1963.

RUFUS E. MILES, JR.,
Administrative Assistant Secretary.

[F.R. Doc. 63-13386; Filed, Dec. 26, 1963; 8:49 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 31—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS A AND CLASS B TELEPHONE COMPANIES

PART 35—UNIFORM SYSTEM OF ACCOUNTS FOR WIRE-TELEGRAPH AND OCEAN-CABLE CARRIERS

Reorganization and Revision of Chapter; Correction

Parts 31 and 35 of the Commission's rules as revised by Order (#43431) adopted November 29, 1963, published as

Part II of the FEDERAL REGISTER of December 5, 1963 (28 F.R. 13002) are corrected as follows:

1. Change § 31.7-17 (which follows § 31.677) to § 31.7-70.

2. Immediately preceding Case 25 in Appendix A insert the following:

CASE 24-R-1

The Commission on April 15, 1960 deleted Case 24-R-1, effective April 29, 1960.

3. At the end of § 35.1-6 insert the following:

NOTE: The cost of valuations, inventories, and appraisals in connection with a contemplated sale of plant shall be charged to account 1935, "Preliminary survey and investigation charges."

4. Change the title of § 35.11 to read "Land used for right of way."

Released: December 23, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-13377; Filed, Dec. 26, 1963;
8:47 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Mark Twain National Wildlife Refuge, Illinois and Iowa

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

ILLINOIS AND IOWA

MARK TWAIN NATIONAL WILDLIFE REFUGE

Sport fishing on the Mark Twain National Wildlife Refuge, Illinois and Iowa, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 5300 acres or 100 percent of the total water area of the refuge, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport

Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minnesota, 55408. Sport fishing is subject to the following conditions:

(a) Species permitted to be taken: Northern pike, walleyed pike, sauger, largemouth and smallmouth bass, and other minor species as permitted by the States' regulations.

(b) Open season:

ILLINOIS

In the Calhoun and Batchtown Units of the Mark Twain National Wildlife Refuge the fishing season is open from January 1, 1964, through October 14, 1964, subject further to applicable State seasons pertaining to species.

In the Gardner and Keithsburg Units of the Mark Twain National Wildlife Refuge the fishing season is open from April 1, 1964, through September 30, 1964, subject further to applicable State seasons pertaining to species.

IOWA

In the Louisa Unit of the Mark Twain National Wildlife Refuge the fishing season is open from January 1, 1964, through September 30, 1964, subject further to applicable State seasons pertaining to species.

(c) Daily creel limits:

ILLINOIS

Northern pike—5, size limit 20 inches; walleyed pike and saugers—10 aggregate; largemouth bass—10; smallmouth bass—10; creel limits for other minor species are as prescribed by State regulations.

IOWA

Northern pike—5, size limit 24 inches (in natural lakes only); walleyed pike and sauger—10 aggregate; largemouth and smallmouth bass—10 aggregate; creel limits for other minor species are as prescribed by State regulations.

(d) Methods of fishing:

ILLINOIS

(1) It is unlawful to take fish through the ice by use of more than two poles and lines at any one time or with more than two hooks attached to each line; or from any hole cut in the ice that is larger than 12 inches in diameter.

(2) It is unlawful to use any pole and line, or rod and line device to which more than two (2) hooks have been attached; to use more than 50 hooks in the

aggregate; (trotline may be used under separate license in excess of 50 hooks).

(3) It is unlawful to use any trotline, throw line or similar device, having hooks spaced at intervals less than 24 inches.

(4) It is unlawful to leave unattended any trotline without a tag indicating name and address of owner.

(5) See applicable State regulations for additional details.

IOWA

(1) No person shall at any time take from the waters of the State any fish, except as otherwise provided in this chapter, except with hook, line and bait, nor shall any person use more than two (2) lines with one (1) hook on each line in still fishing or trolling, and in fly fishing not more than one (1) fly may be used on one (1) line and in trolling and bait casting not more than one (1) trolling spoon or artificial bait may be used on one (1) line. No person shall leave such fish line or lines and hooks in the water unattended or take or attempt to take any fish by snagging or to purposely hook them in any other part than in the mouth. One (1) hook shall mean a single, double or treble pointed hook, and all hooks attached as a part of an artificial bait or lure shall be counted as one (1) hook.

(2) It shall be unlawful for any person to use, in the Mississippi River, more than one (1) throw or trotline having more than twenty-five (25) hooks.

(3) See applicable State regulations for additional detail.

(4) In the Louisa Unit of the Mark Twain National Wildlife Refuge public fishing for all species of fish by any method except with the use of explosives or chemicals is permitted during the hours between sunrise and sunset from January 1, 1964, to March 15, 1964.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective to October 15, 1964.

R. W. BURWELL,
Regional Director, Bureau of
Sport Fisheries and Wildlife.

DECEMBER 18, 1963.

[F.R. Doc. 63-13346; Filed, Dec. 26, 1963;
8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 48]

EXCISE TAXES

Jewelry and Related Items; Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington, D.C., 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

In order to liberalize the requirements as to the proof necessary to substantiate the amount attributable to the sale of a taxable article in connection with the repair of jewelry and related items and to clarify the application of tax with respect to the charge attributable to labor, paragraph (a) of § 48.4001-8 of the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) is amended to read as follows:

§ 48.4001-8 Repairs.

(a) *Taxable operations.* If an item is repaired and in connection therewith the person making the repair furnishes an article which would be taxable under section 4001 if sold separately at retail, the tax applies to the charge made for the article so furnished. In such case, the total charge made for the repair shall be deemed to be the price charged for the taxable article used in the repair, unless the portion of the total charge attributable to labor in connection with the repair work (but not including labor in producing the taxable article) and to the use of any nontaxable materials is shown on the bill as a separate charge or shown separately on the retailer's records. The

following are examples of articles which are taxable under section 4001 when furnished in connection with the repair of other articles: (1) Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof, such as a ring mounting or setting, a bracelet link or safety chain, a complete shank of a ring (extending from one side of the head of the ring to the other side), a spring ring or swivel, catch, earring back or screw; and (2) a stone enumerated in section 4001.

[F.R. Doc. 63-13388; Filed, Dec. 26, 1963; 8:49 a.m.]

[26 CFR Parts 211, 212]

DENATURED ALCOHOL AND RUM

Formulas, Distribution and Use; Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Washington D.C., 20224, within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Director, Alcohol and Tobacco Tax Division, within the 30-day period. In such case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

In order to (1) liberalize the requirements of regulations regarding the manufacture and shipment or sale of special industrial solvents, printing inks, and reagent alcohol, the reporting of changes in officers and stockholders, the procurement of specially denatured alcohol, the filing of notices of bond termination, the storage of denatured alcohol and articles in tank cars and tank trucks, the labeling of articles, the use of optional ingredients in certain articles, the preparation of sales records, and the use of substitute records, (2) clarify the provisions of regulations regarding the distinction between proprietary solvents and special industrial solvents, the filing

of certain consents of surety, the submission of summary reports on Form 1482, the procurement of samples of specially denatured spirits, and the labeling of substances which are subject to labeling requirements under other laws and regulations, (3) require that samples of perfume oils be submitted with Forms 1479-A, (4) explain the responsibilities and liabilities of carriers, (5) require the maintenance of sales records by subsidiary or affiliated sales companies, (6) include the provisions of certain revenue rulings and procedures, (7) redesignate "rubbing alcohol compound" as "rubbing alcohol," (8) revise the provisions with respect to the authorized use of sodium ethylate, anhydrous, and (9) make non-substantive editorial changes; 26 CFR Parts 211 and 212 are amended as follows:

PARAGRAPH A. 26 CFR Part 211 is amended as follows:

1. Section 211.11 is amended to redefine the terms "Proprietary solvents" and "Special industrial solvents." As amended, § 211.11 reads as follows:

§ 211.11 Meaning of terms.

Proprietary solvents. Solvents containing more than 25 percent of alcohol by volume which are manufactured with specially denatured alcohol in accordance with proprietary solvent formulations as authorized by this part.

Special industrial solvents. Solvents containing more than 25 percent of alcohol by volume which are manufactured with specially denatured alcohol in accordance with special industrial solvent formulations as authorized by this part.

2. Section 211.23 is amended to change the designation of "rubbing alcohol compound" to "rubbing alcohol." As amended, § 211.23 reads as follows:

§ 211.23 Formulas and processes.

Except as otherwise provided in this section, the Director is authorized to approve all formulas and processes submitted on Form 1479-A. The assistant regional commissioner is authorized to approve all formulas for rubbing alcohol submitted on Form 1479-A.

(72 Stat. 1372; 26 U.S.C. 5273)

§ 211.32 [Revoked]

3. Section 211.32 is revoked.

4. The undesignated center head immediately preceding § 211.33 is amended to read "Marks and Brands".

5. A new section, § 211.33a, relating to labeling requirements imposed by other governmental agencies, is inserted, immediately following § 211.33, to read as follows:

§ 211.33a Labeling of hazardous substances.

(a) *General.* In addition to the marks and brands required by this part,

governmental agencies which are concerned with the transportation and household introduction of hazardous substances may impose labeling requirements on denatured spirits, and articles made therefrom. It is the responsibility of the person filling containers with articles manufactured under the provisions of this part to assure that the labels or marks on such containers satisfy all pertinent State and Federal requirements.

(b) *Federal Hazardous Substances Labeling Act.* Whenever this part requires the container of any substance to be marked or labeled so as to convey information with respect to hazardous properties of the substance, and such substance is also subject to substantially similar requirements under the Federal Hazardous Substances Labeling Act (72 Stat. 372) and regulations in 21 CFR Part 191, information on the container of such substance shall be deemed to comply with the requirements of this part, insofar as they relate to the hazardous properties of the substance, if such information complies with the labeling requirements of such Act and of regulations in 21 CFR Part 191.

6. Sections 211.44 and 211.55 are amended with respect to the reporting of changes after original qualification of permittees. As amended, §§ 211.44 and 211.55 read as follows:

§ 211.44 Exceptions to application requirements.

The assistant regional commissioner may, in his discretion, waive detailed application and supporting data requirements, other than the requirements of paragraphs (a), (b), (c), and (e) of § 211.43, and of paragraph (f) of such section as it relates to recovery, in the case of applications, Form 1479, filed by States or political subdivisions thereof or the District of Columbia. Also, he may waive such detailed application and supporting data requirements in the case of applications, Form 1479, filed by other applicants, if the quantity of specially denatured spirits to be obtained does not exceed 60 gallons per year. The waiver of the requirements for the submission of detailed application and supporting data shall terminate when a permittee, other than a State or a political subdivision thereof or the District of Columbia, files an application, Form 1485, for an increase in the quantity of specially denatured spirits to an amount in excess of 60 gallons per year; in such case the permittee shall furnish information in respect of the previously waived items, as provided in § 211.55.

§ 211.55 Changes affecting applications and permits.

(a) *General.* When there is a change relating to any of the information contained in, or considered as a part of, the application on Form 1474 or Form 1479 for an industrial use permit, the permittee shall, within 30 days (except as otherwise provided in this subpart), file with the assistant regional commissioner a written notice, in duplicate, of such change. Similarly, when any

waiver under § 211.44 is terminated, the permittee shall file such a written notice furnishing current information as to the items previously waived. When the terms of an industrial use permit are affected by the change, and the permittee has not filed an application for an amended permit, the assistant regional commissioner shall require the permittee to file an application on Form 1474 or Form 1479, as the case may be, for an amended industrial use permit. Items which remain unchanged shall be marked "No change since Form 1474 (or Form 1479) Serial No. ----."

(b) *Changes in officers, directors, and stockholders.* In case of a change in the officers or directors listed under the provisions of § 211.53(a)(2), the notice required by paragraph (a) of this section shall be supported by a certified list, in duplicate, reflecting such change: *Provided,* That if the permittee shows to the satisfaction of the assistant regional commissioner that the holders of certain corporate offices, as listed on the original application, have no responsibilities in connection with operations under this part, the assistant regional commissioner may waive the requirement for the giving of the notice required by paragraph (a) of this section to cover changes in the holders of such corporate offices. Notices of changes in the list of stockholders furnished under the provisions of § 211.53(c)(1), may, in lieu of being submitted within 30 days as required by paragraph (a) of this section, be submitted annually by the permittee, except where the sale or transfer of capital stock results in a change in ownership or control which is required to be reported under § 211.56. Such annual notice of changes shall be submitted by July 10 of each year unless the permittee has filed a request with the assistant regional commissioner for permission to submit such annual notice at some other time, and the assistant regional commissioner has approved such request.

(72 Stat. 1370; 26 U.S.C. 5271)

7. Section 211.78 is amended to delete the requirement for the giving of a power of attorney to cover the execution by an agent of a notice of termination of a bond. As amended, § 211.78 reads as follows:

§ 211.78 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the assistant regional commissioner with whom the bond is filed, that he desires, after a date named, to be relieved of liability under such bond. Such date shall be not less than 90 days after the date the notice is received by the assistant regional commissioner. The surety shall also file with the assistant regional commissioner an acknowledgment or other proof of service of such notice on the principal.

(72 Stat. 1372; 26 U.S.C. 5272)

8. Section 211.102 is amended to change the designation of "rubbing alcohol compound" to "rubbing alcohol." As amended, § 211.102 reads as follows:

§ 211.102 Formulas for rubbing alcohol.

A person desiring to produce rubbing alcohol shall submit a quantitative formula on Form 1479-A to the assistant regional commissioner for each such product to be produced by him. The label to be used on such product shall be attached to each copy of the Form 1479-A.

(72 Stat. 1372; 26 U.S.C. 5273)

9. Section 211.106 is amended to require the resubmission of labels when there is a change in name or location, and to clarify the scope of the Director's approval of labels. As amended, § 211.106 reads as follows:

§ 211.106 Labels and advertising matter for articles.

A manufacturer or reprocessor of articles shall attach to each copy of the Form 1479-A covering articles which contain denatured spirits, and when required by the Director, to each copy of the Form 1479-A covering articles which do not contain denatured spirits, samples of labels to be used on containers of such articles or facsimiles of such labels (or sketches, subject to the filing of actual labels, if approved). If a manufacturer or reprocessor makes changes in approved labels, or provides new labels, for articles, samples of the changed or new labels shall similarly be submitted; if the formula is not changed, it need not be restated on Form 1479-A, but the form shall be marked "For label approval only," and shall give the name under which the article was previously approved, the laboratory number of the approved sample, if any, and the date of approval. Manufacturers and reproducers shall submit to the Director advertising matter for articles when so required by him. The Director's approval of labels submitted under the provisions of this part is limited to approval of the information required by this part to be shown on labels. Such approval carries no import of relief from other statutory or regulatory labeling requirements. Further, such approval does not constitute an endorsement by the Government of the article, directions for use, claims of efficiency or strength, or similar statements; nor does such approval authorize the use of any material on the label in infringement of any copyright, trade-mark, or registration. Labels submitted for approval under the provisions of this part will not be approved even though they comply with the provisions of title 26, U.S.C., and of this part, if it is known that they do not conform to requirements imposed by other laws or regulations.

(72 Stat. 1372; 26 U.S.C. 5273)

10. Section 211.107 is amended with respect to the submission of samples with Form 1479-A, and to the redesignation of "rubbing alcohol compound" as "rubbing alcohol." As amended, § 211.107 reads as follows:

§ 211.107 Samples of articles and ingredients.

In connection with the submission of Form 1479-A covering the proposed

manufacture of an article (except a rubbing alcohol, a proprietary solvent, or a special industrial solvent) containing specially denatured spirits, the applicant shall submit to the Director duplicate 8-ounce samples of the article (except that duplicate 2-ounce samples will be sufficient for a perfume which contains more than 6 ounces of perfume oils per gallon). For all toilet preparations containing specially denatured spirits, the applicant shall also submit duplicate 1-ounce samples of the perfume oils (or of purchased mixtures consisting of perfume oils with other ingredients) to be used. The Director may at any time require the submission of samples of (a) any ingredients included in a formula, and (b) proprietary antifreeze solutions containing completely denatured alcohol.

(72 Stat. 1372; U.S.C. 5273)

11. Section 211.108 is amended to require that labels be submitted whenever there is a change in a previously approved container size, and to delete an unnecessary administrative instruction. As amended, § 211.108 reads as follows:

§ 211.108 Approval or disapproval of samples, formulas, processes, labels, and advertising matter.

In addition to the limitations in this part, and where necessary to protect the revenue, the Director may, when approving Forms 1479-A, specify thereon the size of containers in which any article may be sold and the maximum quantity that may be sold to any person at one time, and may restrict the sale of articles to a specific class of vendee and for a specific use. Approval by the Director of samples, formulas, processes, labels, and advertising matter shall mean only that they conform to the standards of the Internal Revenue Service, and such approval shall in no way require the assistant regional commissioner to issue an industrial use permit to use specially denatured spirits in such processes, formulas, or articles. A change in container size necessitates resubmission of the label if the Director, when approving Forms 1479-A, specified thereon the container sizes in which the article may be sold.

(72 Stat. 1370, 1372; 26 U.S.C. 5271, 5273)

12. Section 211.115 is amended to permit the storage of completely denatured alcohol in tank cars and tank trucks. As amended, § 211.115 reads as follows:

§ 211.115 Receipt.

Unless completely denatured alcohol received in bulk conveyances or by pipeline is to be used immediately, it shall be deposited in storage tanks, stored in the tank cars or tank trucks in which received, or drawn into packages which shall be marked or labeled as required by this subpart.

13. Section 211.139 is amended to permit the storage of specially denatured spirits in tank cars and tank trucks. As amended, § 211.139 reads as follows:

§ 211.139 Receipt of specially denatured spirits.

Specially denatured spirits received in bulk conveyances or by pipeline by bonded dealers shall be (a) deposited in storage tanks provided for in § 211.91, (b) drawn into packages marked or labeled as required by § 211.142, or (c) stored within the dealer's premises in the tank cars or tank trucks in which received. Such conveyances, while specially denatured spirits are being stored therein or while packages are being filled therefrom, shall be effectively immobilized within an enclosure approved as suitable for that purpose by the assistant regional commissioner pursuant to application, in duplicate, by the dealer. The formula number of the specially denatured spirits stored in tanks, tank cars, or tank trucks shall be shown on such containers or, in the case of underground tanks, at a convenient and suitable location. Portable containers received or filled by the bonded dealer shall be deposited in a storeroom provided for in § 211.91. On receipt, the bonded dealer shall ascertain an account for any losses in transit in accordance with Subpart M of this part, receipt for the shipment on the original and copy of Form 1473 received from the consignor (noting thereon any loss or deficiency in the shipment), forward the original to the assistant regional commissioner of his region, and file the copy in chronological order.

(72 Stat. 1370; 26 U.S.C. 5271)

14. Section 211.161 is amended to liberalize the requirements relating to the procurement of specially denatured spirits. As amended, § 211.161 reads as follows:

§ 211.161 Application for withdrawal permit.

(a) *Application.* To procure specially denatured spirits, a user shall file with the assistant regional commissioner an application on Form 1485 for a withdrawal permit. He shall specify in his application—

(1) The period to be covered by the withdrawal permit.

(2) The formula numbers of the denatured spirits to be withdrawn (not listing any formula which is not covered by a Form 1479-A).

(3) The estimated average quantity, in gallons, of denatured spirits of each formula that will be required in one month. (The applicant shall specify the quantities and the formulas in accordance with his bona fide business needs.)

A user may, if he so desires, file more than one application and receive more than one withdrawal permit; however, in such case he shall allot among the several applications the total to be withdrawn.

(b) *Limitations on withdrawals.* A user holding a permit on Form 1485 may, during any month and as to each formula specified, withdraw not more than twice the number of gallons specified under paragraph (a)(3) of this section,

or fifty-five gallons (one drum), whichever is the larger: *Provided*, That, as to any one such formula, the total quantity withdrawn under the permit shall not exceed the number of gallons specified under paragraph (a)(3) of this section multiplied by the number of months (considering any fraction of a month as a month) in the period of withdrawal covered by the permit.

(c) *Exceptions.* If, because of the seasonal nature of the user's business or for other valid reasons, the limitations contained in paragraph (b) of this section adversely affect the user's operations, he may in his application request a larger withdrawal as to one or more formulas during a calendar month, still subject to the limitations in paragraph (b) of this section on withdrawals during the period covered by the permit. In such case he shall furnish with his application sufficient information to enable the assistant regional commissioner to judge the merits of the request. Such larger withdrawals may, if the user so requests in his application, be authorized on the basis of an aggregate quantity of a combination of two or more formulas; in such case the user's request shall be specific as to the aggregate quantity and the formulas involved.

(72 Stat. 1370; 26 U.S.C. 5271)

15. Section 211.169 is amended to change the designation of "rubbing alcohol compounds," to "rubbing alcohol." As amended, § 211.169 reads as follows:

§ 211.169 General.

Uses of specially denatured spirits shall be as authorized under Part 212 of this chapter. Specially denatured spirits shall not be used until Form 1479-A showing the intended use, process, formula, or article has been approved, as required by Subpart G of this part. Specially denatured spirits shall not be used in the manufacture of medicinal preparations or flavoring extracts for internal human use where any of the spirits remain in the finished product. Liquid products containing specially denatured spirits shall be unfit for beverage or internal human use. The essential oils and chemicals used in their manufacture shall make the finished products conform to the samples and formulas for such products submitted by the applicant with Form 1479-A and approved by the Director or, in the case of rubbing alcohol, by the assistant regional commissioner. Whenever the assistant regional commissioner has reason to believe that the spirits in any articles are being reclaimed or diverted to beverage or internal human use, the permittee shall be directed to appear on a day named and show cause why the authorized formula and article should not be so changed and modified as to prevent such reclamation or diversion. In the event the permittee should fail to appear, or appearing, should fail to prove to the satisfaction of the assistant regional commissioner that the spirits in the authorized article are not reclaimable and are not being diverted to beverage

or internal human use, he shall, at the direction of the assistant regional commissioner, discontinue the use of the formula until it has been modified and again approved.

(72 Stat. 1372; 26 U.S.C. 5273)

16. Section 211.172 is amended, without substantive change, to read as follows:

§ 211.172 Use in manufacturing.

When a proprietary solvent is used in the manufacture, for sale, of an article containing more than 25 percent of alcohol by volume, sufficient ingredients shall be added to definitely change the composition and character of the proprietary solvent. Such articles shall not be manufactured until a Form 1479-A covering production of the article has been submitted to and approved by the Director, except that Form 1479-A need not be submitted to cover the manufacture of surface coatings (including such products as inks) containing two pounds or more of solid coating material per gallon of such article. The formulation number (see § 211.170) of the proprietary solvent to be used in manufacturing the article shall be stated in the Form 1479-A.

17. The heading and text of § 211.173 are amended, without substantive change, to read as follows:

§ 211.173 Shipments in bulk conveyances.

Proprietary solvents may be shipped in bulk conveyances (a) by producers to themselves or to distributors, (b) by distributors to themselves, and (c), on written notice to the assistant regional commissioner, by producers or distributors to other persons. Such notice, which shall be filed in duplicate if the consignee is located in another region, shall designate, by name, address, and type of business, the persons to whom bulk shipments are to be made, and shall state the approximate quantity to be shipped and the use to be made of the solvents by the consignee. Such notice may be given on a continuing basis, in which case the quantity to be shipped may be shown on a monthly or other periodic basis. The assistant regional commissioner may require the consignor to furnish additional information as to the needs of the consignee and the specific uses to be made of the proprietary solvents. Proprietary solvents of one manufacturer shall not be placed in the same compartment of a bulk conveyance with proprietary solvents of another manufacturer. Not less than the entire contents of a compartment may be delivered to a consignee at any one location.

18. Section 211.174 is amended to permit the storage of proprietary solvents in tank cars and tank trucks. As amended, § 211.174 reads as follows:

§ 211.174 Receipt.

Unless proprietary solvents received in bulk conveyances are to be used immediately, they shall be deposited in storage tanks, stored in the tank cars or tank trucks in which received, or drawn into

packages which shall be marked or labeled as required by this subpart.

19. Section 211.176 is amended with respect to the filling of proprietary solvents into packages. As amended, § 211.176 reads as follows:

§ 211.176 Filling of packages.

Proprietary solvents may be packaged by producers, by agents of producers, by distributors, and by persons using such products, in containers of any size not exceeding 55 gallons. Containers (except those filled for convenience by persons using such products at their own plant premises) shall be marked or labeled as required by § 211.177 or 211.179, as applicable. Proprietary solvents filled into packages by a user thereof may be transferred to other plant premises operated by him if he (a) first gives written notice to the assistant regional commissioner of the operation and (b) marks and labels the containers to be transferred as required by § 211.177 or 211.179, as applicable.

20. Section 211.180 is amended to revise the formulations for special industrial solvents and add a new formulation. As amended, § 211.180 reads as follows:

§ 211.180 Manufacture.

Special industrial solvents shall be manufactured with specially denatured alcohol Formula No. 1 or 3-A. The formulations shall be as follows, except as may otherwise be authorized by the Director:

	Gallons
(1) <i>Formulation A.</i>	
Specially denatured alcohol Formula No. 1 or 3-A.....	100
Isopropyl alcohol or methyl alcohol.....	10
Methyl isobutyl ketone.....	1
(2) <i>Formulation B.</i>	
Specially denatured alcohol Formula No. 1 or 3-A.....	100
Isopropyl alcohol.....	5
Methyl isobutyl ketone.....	1
Methyl alcohol.....	5
(3) <i>Formulation C.</i>	
Specially denatured alcohol Formula No. 1 or 3-A.....	100
Methyl isobutyl ketone.....	1
Ethyl acetate.....	5
(4) <i>Formulation D.</i>	
Specially denatured alcohol Formula No. 1 or 3-A.....	100
Isopropyl alcohol or methyl alcohol.....	15
Methyl isobutyl ketone.....	1

21. Section 211.181 is amended to provide for the sale of special industrial solvents by the producer thereof to other producers of such solvents. As amended, § 211.181 reads as follows:

§ 211.181 Sales by producers.

Special industrial solvents may be sold by producers to any person for use in manufacturing or as a solvent, to wholesale distributors for resale, and to other producers of such solvents. Sale of such solvents for distribution through retail channels is prohibited.

22. The heading and text of § 211.182 are amended, without substantive change, to read as follows:

§ 211.182 Use in manufacturing articles for sale.

When a special industrial solvent is used in the manufacture of an article for

sale, sufficient ingredients shall be added to definitely change the composition and character of the special industrial solvent; such an article shall not be manufactured until a Form 1479-A covering its production has been submitted to, and approved by, the Director. The formulation letter (see § 211.180) of the special industrial solvent to be used shall be stated in the Form 1479-A. Special industrial solvents shall not be reprocessed into other solvents, containing more than 25 percent alcohol by volume, for sale.

23. Section 211.183 is amended to prohibit the sale of samples of special industrial solvents furnished prospective customers. As amended, § 211.183 reads as follows:

§ 211.183 Sales to and by distributors.

A distributor shall not purchase or sell more than 550 gallons of special industrial solvents during a calendar month, unless he first notifies the assistant regional commissioner, in writing, stating the reasons for such purchase or sale. In the case of sales, the notice shall designate, by name, address, and type of business, the persons to whom sales are to be made and the uses to be made of the solvents by such consignees. Distributors shall not relabel special industrial solvents under their own brand names, and shall not repackage such solvents except for the purpose of shipping samples in containers of not more than 5 gallons capacity to prospective customers. Such samples shall be used only for evaluation purposes, and shall not be sold by the prospective customer.

24. A new section, § 211.183a, relating to the filling and labeling of containers of special industrial solvents, is inserted, immediately following § 211.183, to read as follows:

§ 211.183a Filling and labeling containers.

Producers of special industrial solvents, and their agents, may fill and ship such solvents only in bulk conveyances or in packages having a capacity of 50 gallons or more, except that they may fill samples of such solvents into containers of not more than 5 gallons capacity for shipment to prospective customers. Such samples shall be used only for evaluation purposes, and shall not be sold by the prospective customer. All containers of special industrial solvents shall be labeled to show the brand name under which produced and the name and address of the producer. If such solvents are packaged by a producer's agent, the name and address of the agent may also be shown as the packager on the principal label or on a separate label. In the case of a shipment in a bulk conveyance, the label shall be affixed to a route board or other suitable device on such conveyance.

25. Section 211.184 is amended to provide for numbering packages of special industrial solvents by agents of producers. As amended, § 211.184 reads as follows:

§ 211.184 Numbering of containers.

Containers of special industrial solvents, except sample packages of 5 gal-

ions or less, shall be consecutively numbered commencing with "1" and continuing in regular sequence. When any series reaches "1,000,000" the series may be recommenced; the recommenced series shall be given an alphabetical prefix of suffix. An agent filling packages for a producer may use either serial numbers from a block of numbers assigned to him by the producer or a separate series of serial numbers (differentiated from that of the producer by a suitable prefix) to identify the packages filled by him.

26. The heading of § 211.185 is changed, and the text is amended to authorize producers to ship special industrial solvents in bulk conveyances to their agents and to other producers. As amended, § 211.185 reads as follows:

§ 211.185 Shipments in bulk conveyances.

Shipments of special industrial solvents in bulk conveyances may be made by producers to themselves at other locations, to their agents, as provided in § 211.185a, and to other producers. Pursuant to the producer's or agent's written notice to the assistant regional commissioner, the producer or his agent may make such shipments to industrial solvent users. Such notice, which shall be filed in duplicate if the consignee is located in another region, shall designate, by name, address, and type of business, the person to whom bulk shipments are to be made, and shall state the approximate quantity to be shipped and the use to be made of the solvents by the consignee. Such notice may be given on a continuing basis, in which case the quantity to be shipped may be shown on a monthly or other periodic basis. The assistant regional commissioner may require the producer or agent to furnish additional information as to the needs of the consignee and the specific uses to be made of the special industrial solvents. Special industrial solvents from only one consignor may be placed in any one compartment of a bulk conveyance. Not less than the entire contents of a compartment may be delivered to a consignee at any one location.

27. Two new sections, §§ 211.185a and 211.185b, relating respectively to applications by producers to ship special industrial solvents to their agents and to the storage of such solvents, are inserted, immediately following § 211.185, to read as follows:

§ 211.185a Approval of shipments by agents.

A producer desiring to ship special industrial solvents in bulk conveyances to his agent for packaging and distribution, or for shipment in bulk conveyances to customers, shall first submit an application therefor, in duplicate, to the assistant regional commissioner and receive his approval thereof. The application shall be accompanied by the following:

(a) A list, separate from the application, of names and addresses of the producer's agents (designating those who will package and distribute the special industrial solvents and those who will

reship such solvents in bulk conveyances).

(b) A copy of each contract of agency (an additional copy if the agent is located in a region other than the one in which the producer is located, and further copies, as appropriate, if the agent operates at locations in more than one such region). Such contract shall reflect a true agency agreement and shall include stipulations which provide for (1) the right of access by internal revenue officers to inspect the business (including records) and premises of the agency, (2) the maintenance of records of the receipt and disposition of all special industrial solvents, and (3) the submission of such reports as the assistant regional commissioner may require.

(c) A consent of surety extending the conditions of the producer's bond, Form 1480, to specifically cover shipments of special industrial solvents by the principal to his agents, and the receipt, storage, sale, and disposition of such solvents by such agents.

§ 211.185b Receipts.

Unless special industrial solvents received in a bulk conveyance are to be used immediately, packaged under the provisions of § 211.183a, or reshipped by the producer's agent in the conveyance in which received, such solvents shall be deposited in a storage tank or stored in the tank car or tank truck in which received.

28. In order to provide current terminology for alcohol rubs, to authorize the use of Bitrex (THS-839) and colorative materials in alcohol rubs, and to make clarifying changes, the undesignated centerhead immediately preceding § 211.186 and §§ 211.186 through 211.188 are amended to read as follows:

RUBBING ALCOHOL

§ 211.186 General.

All preparations which are to be labeled or represented to be alcohol rubs, without any qualification as to type of alcohol contained therein, shall be manufactured with specially denatured alcohol in accordance with § 211.187. The labeling of a preparation as "Rubbing Alcohol" or with a substantially similar name, without such a qualification, is held to connote that it was manufactured with specially denatured alcohol. Accordingly, an alcohol rub produced from any other material (such as isopropyl alcohol) shall not be labeled "Rubbing Alcohol" or with a name substantially similar thereto, unless such name is appropriately modified to effectively inform the public that the preparation was not made with specially denatured alcohol. Alcohol rubs made with specially denatured alcohol shall be packaged and labeled only by the manufacturer who made the product and shall not be repackaged or relabeled by any other person. Such alcohol rubs shall be packaged in containers not exceeding one pint in capacity.

§ 211.187 Manufacture.

Rubbing alcohol shall be manufactured only with specially denatured alcohol

Formula No. 23-H, and only in accordance with the following formulas:

FORMULA A

Specially denatured alcohol, Formula No. 23-H----- 103.3 fl. ozs.
Sucrose octa-acetate----- 0.5 av. oz.
Water (and, if desired, odorous, medicinal, and/or colorative ingredients)----- q.s. 1 gallon

FORMULA B

Specially denatured alcohol, Formula No. 23-H----- 103.3 fl. ozs.
Benzyl diethyl (2: 6-xylyl carbamoyl methyl) ammonium benzoate (Bitrex (THS-839))----- 0.88 grain
Water (and, if desired, odorous, medicinal, and/or colorative ingredients)----- q.s. 1 gallon

The odorous, medicinal, and/or colorative ingredients may be used only if included in the formula submitted on Form 1479-A to the assistant regional commissioner and approved by him. The finished product shall be 70 percent absolute alcohol by volume.

§ 211.188 Labeling.

The manufacturer shall label each container of rubbing alcohol with a brand label showing:

(a) The brand name (if any) of the product;

(b) The words "Rubbing Alcohol" (in letters of the same color and size);

(c) His name and address; or his industrial use permit number and the name and address of the particular wholesale or retail druggist for whom he packaged the product;

(d) The legend "Contains 70 percent alcohol by volume", "Contains 70 percent ethyl alcohol by volume", or "Contains 70 percent absolute alcohol by volume"; and

(e) The warning "For external use only. If taken internally, will cause serious gastric disturbances."

The manufacture may include additional statements on the brand label, or on a separate label appearing in conjunction with the brand label, if such statements do not contradict, or obscure the meaning of, the required labeling. The labels shall not contain any statement which may give the impression that the product is pure alcohol or that it is susceptible of beverage use. No label shall be used on any container of rubbing alcohol made with specially denatured alcohol unless it has first been approved by the assistant regional commissioner in accordance with § 211.102.

§ 211.189 [Revoked]

29. Section 211.189 is revoked.

30. Section 211.190 is amended to reflect current terminology for alcohol rubs and to liberalize the rule regarding sales of alcohol rubs. As amended, § 211.190 reads as follows:

§ 211.190 Sales of rubbing alcohol.

Rubbing alcohol may be sold only by the manufacturers thereof and by wholesale and retail druggists. Such persons may sell the product, in quantities larger than the customary retail quantities, only to wholesale druggists, retail druggists, and to those users of the product who have legitimate need for such larger

quantities for external use (examples of such users are hospitals, sanitariums, clinics, Turkish baths, athletic associations, physicians, dentists, veterinarians). Manufacturers and wholesale and retail druggists may sell rubbing alcohol to persons generally, in customary retail quantities only, for external use.

31. Section 211.192 is amended to provide an alternate ingredient for use in the manufacture of toilet waters. As amended, § 211.192 reads as follows:

§ 211.192 Manufacture.

All bay rum, alcoholado, or alcoholado-type toilet waters made with specially denatured alcohol shall contain (a) 1.10 grains of benzyl-diethyl (2:6-xylyl-carbamoyl methyl) ammonium benzoate (Bitrex (THS-839)) in each gallon of finished product in addition to any such material used as a denaturant in the specially denatured alcohol, or (b) 32 grains of tartar emetic in each gallon of finished product, or (c) 0.5 avoirdupois ounce of sucrose octa-acetate in each gallon of finished product. Preparations manufactured with specially denatured alcohol Formula No. 39-C shall contain in each gallon of finished product not less than 2 fluid ounces of perfume material (essential oils, isolates, aromatic chemicals, etc.) satisfactory to the Director.

32. Section 211.195 is amended to liberalize requirements for showing permit numbers on labels. As amended, § 211.195 reads as follows:

§ 211.195 Labels.

(a) *Manufacturer.* Where products specified in § 211.191 are packaged or bottled by the manufacturer, the labels shall show (1) the name of the manufacturer and the address or addresses of the actual place or places of manufacture; or (2) the name of the manufacturer, the address of the principal office, and the permit number or numbers of the place or places of manufacture; or (3) the permit number of the manufacturer and the name and address of the person for whom the bottles or other containers are filled. Where the same premises are operated under one or more approved trade names, any one or more of such trade names may be shown on the label as the name of the manufacturer.

(b) *Persons other than a manufacturer.* A person, other than a manufacturer, who bottles, repackages, or reprocesses the products specified in § 211.191 for himself, shall show on the label his own name and address and either the permit number of the manufacturer or his own permit number. A person, other than a manufacturer, who bottles, repackages, or reprocesses such products for another, shall show on the label the name and address of the person for whom the product is packaged and either the permit number of the manufacturer or his own permit number.

(c) *Exceptions.* The requirements of paragraphs (a) and (b) of this section shall not apply to (1) witch hazel packaged in containers of one gallon or less,

(2) products specified in § 211.191 which have been approved as containing 6 fluid ounces or more of perfume oil per gallon of finished product, or which have been approved as containing not more than 16 fluid ounces of specially denatured alcohol per gallon of finished product, or (3) any product marketed under a trade-name or brand-name label in containers of 8 fluid ounces or less capacity: *Provided*, That the manufacturer or bottler specifies on the Form 1479-A with which the label is submitted for approval that such label is to be used only on such products or containers. The requirements of this section for showing the permit number on labels shall not apply to products which are contained in pressurized aerosol containers of 32 fluid ounces or less.

33. Section 211.199 is amended to permit the manufacture of aqueous dilutions of reagent alcohol and to revise the labeling requirements. As amended, § 211.199 reads as follows:

§ 211.199 Reagent alcohol.

(a) *Production, packaging, and sales.* Users who are proprietors of bona fide laboratory supply houses may manufacture an article, designated as reagent alcohol, consisting of 95 parts by volume of specially denatured alcohol Formula No. 3-A and 5 parts by volume of isopropyl alcohol. Water may be added to the article at the time of manufacture. Reagent alcohol shall be packaged in containers holding not more than 1 gallon and may be sold to school laboratories, medical laboratories, physicians, and others requiring small quantities for scientific purposes.

(b) *Labels.* Containers of reagent alcohol shall bear a front label as follows:

REAGENT ALCOHOL

Special Denatured Alcohol Formula 3-A—95 parts by vol.
and

Isopropyl Alcohol—5 parts by vol.

**CAUTION * * * POISON
CONTAINS METHYL ALCOHOL
NOT FOR INTERNAL OR
EXTERNAL USE**

If water is added to the article at the time of manufacture, the front label shall be modified appropriately to accurately reflect the composition of the diluted product. A back label shall be attached bearing the word "ANTIDOTE", followed by suitable directions therefor.

34. Section 211.200 is amended to authorize the manufacture of printing inks, for sale. As amended, § 211.200 reads as follows:

§ 211.200 Solvents not specifically authorized.

Articles such as duplicating and printing fluids containing specially denatured alcohol shall not be sold for other solvent use and shall not be reprocessed into other products for sale, except that duplicating and printing fluids containing 1 percent or more by weight of a glycol ether and 10 percent or more by weight of methyl alcohol may be reprocessed into printing ink for sale pursuant to formulas on Form 1479-A submitted by the reprocessor and approved

by the Director. Where a person finds that proprietary solvents, special industrial solvents, or other authorized solvents are unsatisfactory for his particular purpose, and he therefore desires to manufacture a suitable solvent for his own use (but not for sale), he shall first qualify as a user under the provisions of Subparts D and E of this part, and shall, as provided in Subpart G of this part, submit Form 1479-A for approval to cover the process to be used or article to be made by him.

35. Section 211.233 is amended to delete the requirement respecting the recording of shipments on the permit, Form 1486. As amended, § 211.233 reads as follows:

§ 211.233 Procurement of specially denatured spirits.

When specially denatured spirits are to be procured by a U.S. Governmental agency, the permit on Form 1486, received from the Director pursuant to an application filed in accordance with the provisions of § 211.231, shall be forwarded to the denaturer or bonded dealer from whom the specially denatured spirits are to be obtained. A purchase order shall be submitted by the Governmental agency for any specially denatured spirits shipped under the permit. At the time of shipment, the vendor shall return the permit to the Governmental agency unless he has been authorized by such agency to retain the permit for the purpose of making future shipments.

(72 Stat. 1372; 26 U.S.C. 5273)

36. Subpart M is amended to state the responsibilities and liabilities of carriers. As amended, Subpart M reads as follows:

Subpart M—Losses of Specially Denatured Spirits

§ 211.241 Liability and responsibility of carriers.

Any person who transports specially denatured spirits in violation of laws pertaining thereto or of the regulations in this part, and all such denatured spirits, shall be subject to all provisions of law pertaining to spirits that are not denatured, including those requiring the payment of tax thereon; and the person so transporting the specially denatured spirits shall be required to pay such tax. A person transporting specially denatured spirits shall be responsible for safe delivery of such denatured spirits to the consignee (or, under the provisions of this part, the safe return of such denatured spirits to the consignor) and shall account for any such denatured spirits not delivered.

(72 Stat. 1314; 26 U.S.C. 5001)

§ 211.242 Losses in transit.

The carrier shall determine as soon as possible the quantity of specially denatured spirits lost in transit and shall immediately inform the consignee, in writing, of the facts and circumstances of such loss. In case of theft, the carrier shall also immediately notify the assistant regional commissioner of the facts and circumstances. The consignee shall determine, at the time the shipment or report of loss is received, the

quantity of specially denatured spirits lost. He shall report such quantity on Form 1473, and on Form 1478 or Form 1482 as the case may be. If the quantity lost from wooden packages contained in a shipment exceeds 3 percent of their original aggregate contents, or the loss from any other containers in a shipment exceeds 1 percent of their original aggregate contents, and the quantity lost is more than 5 gallons, the consignee shall file claim for allowance of the entire quantity lost: *Provided*, That when the loss is due to theft, he shall file claim for allowance of the entire quantity lost, regardless of the percentage of loss or the quantity lost. If losses in transit (other than losses due to theft) do not exceed the quantities specified in this section and there are no circumstances indicating that any part of the quantity lost was unlawfully used or removed, claim for allowance will not be required.

§ 211.243 Losses at premises of bonded dealer or user.

Losses of specially denatured spirits from storage tanks and from tank cars and tank trucks being used as storage containers shall be determined at the time such containers are emptied and by physical inventory of the contents of such containers at the close of each month. Losses, if any, from packages shall be determined at the time the packages are removed for shipment or dumped. Losses due to theft shall be determined at the time such losses are discovered. All losses on a bonded dealer's premises shall be recorded in the records required by § 211.264 and reported on Form 1478 by such dealer for the month in which they are discovered. Losses of specially denatured spirits at a user's premises shall be determined and recorded in the records required by § 211.265 and reported on Form 1482. If the quantity lost during any one month exceeds 1 percent of the quantity of specially denatured spirits to be accounted for during the month, and the quantity lost is more than 5 gallons, the bonded dealer or the user shall file claim for allowance of the entire quantity lost: *Provided*, That when the loss is due to theft, he shall file claim for allowance of the entire quantity lost, regardless of the percentage of loss or the quantity lost. If losses on the premises (other than losses due to theft) do not exceed the quantities specified in this section, and there are no circumstances indicating that any part of the quantity lost was unlawfully used or removed, claim for allowance will not be required.

§ 211.244 Claims.

Claims for allowance of losses of specially denatured spirits shall be filed, on Form 2635, with the assistant regional commissioner within 30 days from the date the loss is ascertained, and shall set forth the following:

- (a) Name, address, and permit number of the claimant;
- (b) Identification and location of the container or containers from which the specially denatured spirits were lost;
- (c) Quantity of specially denatured spirits lost from each container, the

total quantity of specially denatured spirits covered by the claim, and the aggregate quantity involved;

(d) Date of the loss (or, if not known, date of discovery), the cause or nature of the loss and all the facts relative thereto, including facts establishing whether the loss occurred as a result of any negligence, connivance, collusion, or fraud on the part of any person participating in, or responsible in any manner for, the transaction, or any employee or agent of such person; and

(e) Name of the carrier where a loss in transit is involved. The carrier's statement regarding the loss (required by § 211.242) shall accompany the claim. The assistant regional commissioner may require the submission of additional evidence.

37. Section 211.252 is amended to clarify the provisions relating to the filing of a consent of surety. As amended, § 211.252 reads as follows:

§ 211.252 Return to denaturer or bonded dealer.

If, for any valid reason, a permittee desires to return specially denatured spirits to a denaturer or bonded dealer (whether or not to the original shipper) he shall obtain the denaturer's or bonded dealer's agreement to accept the return of the specially denatured spirits, and his assistant regional commissioner's permission to so return such spirits. Application for permission shall be filed in triplicate (quadruplicate if the bonded dealer or denaturer is in another region). If the application is approved the assistant regional commissioner will forward a copy to the permittee, a copy to the denaturer or bonded dealer, and the additional copy, if any, to the consignee's assistant regional commissioner. Where specially denatured spirits are to be returned to a bonded dealer as provided in this section or in § 211.254, the bonded dealer shall file a consent of surety on his bond to extend the terms thereof to cover the return of such spirits to him; he may, if he so desires, file one consent of surety on his bond to extend the terms thereof to cover all such spirits which may be so returned to him.

38. Sections 211.265 and 211.266 are amended with respect to the keeping of sales records and the use of substitute records. As amended, §§ 211.265 and 211.266 read as follows:

§ 211.265 Records of users of specially denatured spirits.

(a) *Persons manufacturing bay rum, hair lotions, skin lotions, and similar products which contain specially denatured alcohol.* Permittees using specially denatured alcohol in the manufacture of products specified in § 211.191 shall keep a manufacturing record on Form 133, covering all such products which contain specially denatured alcohol. Such records shall accurately and clearly reflect the details of all specially denatured alcohol received and used in such products, and all such products manufactured. The details of manufacture, showing the quantities of essential oils, chemicals (or other materials

used in manufacturing, shall be shown on a separate batch record, identified by serial number. In lieu of Form 133, other manufacturing records may be maintained for such products, if such other records reflect all of the data required by Form 133 and are maintained in such a manner as to enable internal revenue officers to readily determine the proper use of all specially denatured alcohol: *Provided*, That the assistant regional commissioner may require the maintenance of Form 133 by a permittee when, in his opinion, the interests of the United States so demand. Such permittees shall also keep a bottling or packaging and sales record of each product which contains specially denatured alcohol, which record shall accurately and clearly reflect the details of the bottling or packaging of the product and the sales thereof, showing the names and addresses of the consignees: *Provided*, That the record may show only the totals disposed of daily through sales in individual quantities of less than 5 gallons. Where the estimated average monthly requirement of specially denatured alcohol as stated on Form 1485, does not exceed 25 gallons, or, in the case of users who also reprocess products containing specially denatured alcohol, where the estimated average monthly requirement of specially denatured alcohol plus the quantity of such products received for reprocessing does not exceed 25 gallons per month, the records required by this paragraph (a) need not be maintained. Records of products specified in § 211.191 which are made with specially denatured alcohol but which do not contain specially denatured alcohol shall be kept in accordance with paragraph (b) of this section.

(b) *Persons manufacturing other articles.* Permittees using specially denatured spirits for purposes other than the manufacture of products specified in § 211.191 and which contain specially denatured spirits shall keep records which accurately and clearly reflect the details of specially denatured spirits received, used, and recovered, and of articles recovered. Such records shall contain all data necessary (1) to enable the permittee to prepare Form 1482, and (2) to enable any internal revenue officer to verify and trace each operation or transaction, to verify claims, and to ascertain whether there has been compliance with law and regulations. The records shall include the following information:

- (i) The quantity of each formula of specially denatured spirits received, and the name and address of the consignor;
- (ii) The quantity, by formula and code number, of specially denatured spirits used and each purpose for which used (if used in the manufacture of an article, the name of each such article and the quantity used in its manufacture);
- (iii) The quantity of each article manufactured; and
- (iv) Details of the disposition of each article, showing names, addresses, and quantities.

Where the estimated average monthly requirement of specially denatured

spirits as stated on Form 1485, does not exceed 25 gallons, the records required by this paragraph (b) need not be maintained.

(c) *Sales by subsidiary or affiliated sales companies.* Where a person required to keep sales records under paragraph (a) or (b) of this section disposes of articles, manufactured by him, through a subsidiary or affiliated sales company, such sales company shall also keep, as applicable, the sales records required by paragraph (a) or (b) of this section.

(72 Stat. 1373; 26 U.S.C. 5275)

§ 211.266 Records of reprocessing, repackaging, bottling, and resale of bay rum, hair lotions, skin lotions, and similar products.

Persons authorized under § 211.193 to reprocess products specified in § 211.191 which contain specially denatured alcohol shall keep records on Form 133, or other records, in the same manner and under the same conditions as prescribed in § 211.265 for manufacturers of such products. All persons who purchase such products in containers larger than one gallon for repackaging, bottling, or resale, shall also keep a record of the receipt, bottling, or packaging, and sales thereof: *Provided*, That the record may show only the totals disposed of daily through sales in individual quantities of less than 5 gallons. The records required by this section need not be maintained if the total quantity of such products received during a month does not exceed 25 gallons.

(72 Stat. 1373; 26 U.S.C. 5275)

39. Section 211.271 is amended to require the submission of summary reports on Form 1482. As amended, § 211.271 reads as follows:

§ 211.271 Reports of users.

Every person holding a permit to use specially denatured spirits or recover specially denatured spirits or articles shall prepare monthly reports on Form 1482: *Provided*, That any such permittee may submit an annual report on Form 1482, on a fiscal year (July 1 through June 30) basis, in lieu of monthly reports, if—

(a) He is authorized to withdraw not more than 660 gallons per annum; or

(b) He is authorized to withdraw more than 660 gallons per annum and the assistant regional commissioner, pursuant to application, finds that he maintains an accounting system which affords adequate control, and that the filing of an annual report will not interfere with the effective administration of this part.

Notwithstanding the foregoing provisions in this section, the assistant regional commissioner may at any time require the submission of monthly reports on Form 1482 by any permittee. A permittee required to file monthly reports under this section shall also submit an annual summary on Form 1482 of the quantity of specially denatured spirits used and recovered during the

fiscal year. A permittee discontinuing business shall file a summary report on Form 1482 of all transactions from July 1 to the date of discontinuance, marking such summary report "Final Report." Separate reports shall be prepared covering specially denatured alcohol and denatured rum. The permittee shall submit the original of the Form 1482 to the assistant regional commissioner not later than the 10th day of the month succeeding the period for which the report is submitted and retain the duplicate for his files.

(72 Stat. 1373; 26 U.S.C. 5275)

40. Section 211.275 and its heading are amended to delete reference to Form 134. As amended, § 211.275 reads as follows:

§ 211.275 Form 133 to be provided by users at own expense.

Form 133 shall be provided by the users thereof at their own expense and shall be in the form prescribed by the Director.

41. The heading of § 211.281 is changed, and the text is amended to restate the conditions under which samples of specially denatured spirits may be procured. As amended, § 211.281 reads as follows:

§ 211.281 Samples of specially denatured spirits.

Applicants and prospective applicants for permits to use specially denatured spirits, and users, may procure samples of such spirits for experimental purposes or for use in the preparation of samples of finished products for submission with Form 1479-A. Samples of specially denatured spirits shall be procured only from proprietors of distilled spirits plants or from bonded dealers. Samples in excess of 1 quart shall be procured pursuant to a permit under § 211.283; samples of 1 quart or less may be procured without a permit. A user may, during any calendar month, use for experimental purposes or for preparation of samples of finished products for submission with Form 1479-A not more than 5 gallons of specially denatured spirits from his stock obtained under his withdrawal permit.

(72 Stat. 1372; 26 U.S.C. 5273)

PAR. B. 26 CFR 212 is amended as follows:

1. Paragraph (b)(2) of § 212.17 is amended to delete the parenthesized words "(for own use only)". As amended, paragraph (b)(2) reads as follows:

§ 212.17 Formula No. 2-B.

(b) Authorized uses.

(2) As a raw material:

524. Sodium ethylate, anhydrous.

2. Paragraph (b)(2) of § 212.18 is amended to delete the line for code 524. As amended, paragraph (b)(2) reads as follows:

§ 212.18 Formula No. 2-C.

(b) Authorized uses.

(2) As a raw material:

523. Miscellaneous ethyl esters.
530. Ethylamines (for rubber processing).
540. Dyes and intermediates (ethylamines).
575. Drugs and medicinal chemicals.
579. Other chemicals.

3. Paragraph (b)(1) of § 212.19 is amended by inserting in numerical sequence a new line in the list of authorized uses. As amended, paragraph (b)(1) reads as follows:

§ 212.19 Formula No. 3-A.

(b) Authorized uses. (1) As a solvent:

043. Special solvents (restricted sale).

4. Paragraph (b)(1) of § 212.32 is amended by changing the designation of code 220 from "Rubbing alcohol compounds" to "Rubbing alcohols." As amended, paragraph (b)(1) reads as follows:

§ 212.32 Formula No. 23-H.

(b) Authorized uses. (1) As a solvent:

220. Rubbing alcohols.

5. The list of uses in § 212.105 is amended by redesignating "Rubbing alcohol compound" as "Rubbing alcohol", by deleting Formula 2-C as an authorized formula for sodium ethylate, and by adding Formula 3-A as an authorized formula for "Solvents, special (restricted sale)". As amended, § 212.105 reads as follows:

§ 212.105 Listing of products and processes using specially denatured alcohol and rum and formulas authorized therefor.

Rubbing alcohol-----	220 23-H
Sodium ethylate, anhydrous (restricted)-----	524 2-B
Solvents, special (restricted sale) -	043 1, 3-A

[F.R. Doc. 63-13389; Filed, Dec. 26, 1963; 8:49 a.m.]

[26 CFR Part 213]

TAX-FREE ALCOHOL

Distribution and Use; Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treas-

ury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Washington, D.C., 20224, within a period of 30 days from the date of publication of this notice in the *FEDERAL REGISTER*. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Director, Alcohol and Tobacco Tax Division, within the 30-day period. In such case, a public hearing will be held and a notice of the time, place, and date will be published in a subsequent issue of the *FEDERAL REGISTER*. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

In order to make amendments relating to (1) the reporting of changes after original qualification of permittees, (2) the procurement of tax-free alcohol, (3) the filing of a notice of bond termination, (4) the responsibilities and liabilities of carriers of tax-free spirits, (5) the listing of storage tanks on Form 2600, Application for Permit to Use Alcohol Free of Tax, and (6) the recording of shipments on the permit, Form 1444, 26 CFR Part 213 is amended as follows:

§ 213.29 [Revoked]

PARAGRAPH 1. Section 213.29 is revoked.

PAR. 2. Paragraph (f) of § 213.42 is amended to require the listing of storage tanks on applications for permits to use alcohol free of tax. As amended, paragraph (f) reads as follows:

§ 213.42 Data for application.

(f) Listing of the size, description, and location of each storeroom, compartment, or stationary storage tank where tax-free alcohol will be stored, and of principal equipment for the recovery and restoration of alcohol (including the serial number, kind, capacity, name and address of owner, and intended use of distilling apparatus).

(72 Stat. 1318, 1370; 26 U.S.C. 5005, 5271)

PAR. 3. Sections 213.43 and 213.54 are amended with respect to the reporting of changes after original qualification of permittees. As amended, §§ 213.43 and 213.54 read as follows:

§ 213.43 Exceptions to application requirements.

The assistant regional commissioner may, in his discretion, waive detailed application and supporting data, requirements, other than the requirements of paragraphs (a), (b), (c), and (e) of § 213.42, and of paragraph (f) of such section as it relates to recovery, in the case of applications, Form 2600, filed by States or political subdivisions thereof or the District of Columbia. Also, he may waive such detailed application and

supporting data requirements in the case of applications, Form 2600, filed by other applicants, if the quantity of tax-free alcohol to be obtained does not exceed 120 proof gallons per year. The waiver of the requirements for the submission of detailed application and supporting data shall terminate when a permittee, other than a State or a political subdivision thereof or the District of Columbia, files an application, Form 1450, for an increase in the quantity of tax-free alcohol to an amount in excess of 120 proof gallons per year; in such case the permittee shall furnish information in respect of the previously-waived items, as provided in § 213.54.

(72 Stat. 1370; 26 U.S.C. 5271)

§ 213.54 Changes affecting applications and permits.

(a) *General*. When there is a change relating to any of the information contained in, or considered as part of, the application on Form 2600 for an industrial use permit, the permittee shall, within 30 days (except as otherwise provided in this subpart), file with the assistant regional commissioner a written notice, in duplicate, of such change. Similarly, when any waiver under § 213.43 is terminated the permittee shall file such a written notice furnishing current information as to the items previously waived. When the terms of an industrial use permit are affected by the change, and the permittee has not filed an application for an amended permit, the assistant regional commissioner shall require the permittee to file an application on Form 2600 for an amended industrial use permit. Items which remain unchanged shall be marked "No change since Form 2600 Serial No. ----"

(b) *Changes in officers, directors, and stockholders*. In case of a change in the officers or directors listed under the provisions of § 213.52(a)(2), the notice required by paragraph (a) of this section shall be supported by a certified list, in duplicate, reflecting such change: *Provided*, That if the permittee shows to the satisfaction of the assistant regional commissioner that the holders of certain corporate offices, as listed on the original application, have no responsibilities in connection with operations under this part, the assistant regional commissioner may waive the requirement for the giving of the notice required by paragraph (a) of this section to cover changes in the holders of such corporate offices. Notices of changes in the list of stockholders furnished under the provision of § 213.52(c)(1), may, in lieu of being submitted within 30 days as required by paragraph (a) of this section, be submitted annually by the permittee, except where the sale of transfer of capital stock results in a change in ownership or control which is required to be reported under § 213.55. Such annual notice of changes shall be submitted by July 10 of each year unless the permittee has filed a request with the assistant regional commissioner for permission to submit such annual notice at some other time, and the assistant regional commissioner has approved such request.

(72 Stat. 1370; 26 U.S.C. 5271)

PAR. 4. Section 213.77 is amended to delete the requirement for the giving of a power of attorney to cover the execution by an agent of a notice of termination of a bond. As amended, § 213.77 reads as follows:

§ 213.77 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the assistant regional commissioner with whom the bond is filed, that he desires, after a date named, to be relieved of liability under such bond. Such date shall be not less than 90 days after the date the notice is received by the assistant regional commissioner. The surety shall also file with the assistant regional commissioner an acknowledgment or other proof of service of such notice on the principal.

(72 Stat. 1372; 26 U.S.C. 5272)

PAR. 5. Sections 213.109 and 213.115 are amended to liberalize the requirements relating to the procurement of alcohol free of tax. As amended, §§ 213.109 and 213.115 read as follows:

§ 213.109 Application and withdrawal permit.

(a) *Application*. Except as provided in Subpart I of this part, every person desiring to procure tax-free alcohol shall file with the assistant regional commissioner an application on Form 1450 for a withdrawal permit. He shall specify in his application the period to be covered by the withdrawal permit and the estimated average quantity, in proof gallons, of tax-free alcohol that will be required in one month. The quantity specified shall be in accordance with the applicant's bona fide needs. The applicant may, if he so desires, file more than one application and receive more than one withdrawal permit; however, in such case he shall allot among the several applications the total to be withdrawn.

(b) *Limitation on withdrawals*. A user holding a permit on Form 1450 may, during any month, withdraw not more than twice the number of proof gallons specified under paragraph (a) of this section, or fifty-five wine gallons (one drum), whichever is the larger: *Provided*, That the total quantity withdrawn during the period of withdrawal specified under paragraph (a) of this section shall not exceed the number of proof gallons specified under paragraph (a) of this section multiplied by the number of months (considering any fraction of a month as a month) in such period of withdrawal. If, because of the seasonal nature of usage or for other valid reasons, these limitations will adversely affect the permittee's operations, he may request a larger withdrawal during a calendar month, still subject to the limitations of this paragraph on total withdrawals during the period of the permit. In such case he shall furnish with his application sufficient information to enable the assistant regional commissioner to judge the merits of the request.

(72 Stat. 1370; 26 U.S.C. 5271)

§ 213.115 Regulation of withdrawals.

A permittee shall so regulate his withdrawals that he will not have on hand, in transit, and unaccounted for at any one time more than the quantity of tax-free alcohol shown in his application on Form 2600 for an industrial use permit. Recovered alcohol and alcohol received under § 213.117 shall be taken into account in determining the quantity of alcohol on hand. For this purpose, tax-free alcohol and recovered alcohol shall be deemed to be unaccounted for if lost under circumstances where a claim for allowance is required by this part and such claim has not been allowed, or if used or disposed of otherwise than as provided in this part.

PAR. 6. Section 213.143 is amended to delete the requirement respecting the recording of shipments on the permit, Form 1444. As amended, § 213.143 reads as follows:

§ 213.143 Procurement of tax-free spirits.

When tax-free spirits are to be procured by a U.S. Governmental agency, the permit, Form 1444, shall be forwarded to the vendor. A purchase order shall be submitted by the Governmental agency for any tax-free spirits shipped under the permit. At the time of shipment, the vendor shall return the permit to the Governmental agency unless he has been authorized by such agency to retain the permit for the purpose of making future shipments.

PAR. 7. Subpart J is revised to include a statement of the responsibilities and liabilities of carriers. As amended, Subpart J reads as follows:

Subpart J—Losses**§ 213.151 Liability and responsibility of carriers.**

Any person who transports tax-free alcohol in violation of laws pertaining thereto or of the regulations in this part, and all such alcohol, shall be subject to all provisions of law relating to alcohol subject to tax, including those requiring the payment of tax thereon; and the person so transporting such alcohol shall be required to pay such tax. A person transporting tax-free alcohol shall be responsible for safe delivery of such alcohol to the consignee (or, under the provisions of this part, the safe return of such alcohol to the consignor) and shall account for any such alcohol not delivered.

(72 Stat. 1314; 26 U.S.C. 5001)

§ 213.152 Losses in transit.

The carrier shall determine as soon as possible the quantity of tax-free alcohol lost in transit and shall immediately inform the consignee, in writing, of the facts and circumstances of such loss. In case of theft, the carrier shall also immediately notify the assistant regional commissioner of the facts and circumstances. The consignee shall determine, at the time the shipment or report of loss is received, the quantity of tax-free alcohol lost. He shall report such quantity on Form 1473 and on Form 1451. If the quantity lost from containers comprising a shipment exceeds 1 percent

of their original aggregate contents, and the quantity lost is more than 5 proof gallons, the consignee shall file claim for allowance of the entire quantity lost: *Provided*, That when the loss is due to theft, he shall file claim for allowance of the entire quantity lost, regardless of the percentage of loss or the quantity lost. If losses in transit (other than losses due to theft) do not exceed the quantities specified in this section and there are no circumstances indicating that any part of the quantity lost was unlawfully used or removed, claim for allowance will not be required.

§ 213.153 Losses at user's premises.

The quantity of tax-free alcohol lost on the premises of a permittee shall be determined and recorded at the end of each month at the time the inventory of tax-free alcohol required under § 213.172 is taken, except that losses due to theft, casualty, or other unusual causes shall be determined and recorded at the time of discovery. All losses on the premises of the permittee shall be recorded in the records required by § 213.171 and be reported on Form 1451. If the quantity lost during any one month exceeds 1 percent of the quantity of tax-free alcohol to be accounted for during the month, and is more than 5 proof gallons, claim for allowance of the entire quantity lost shall be made by the permittee: *Provided*, That when the loss is due to theft, he shall file claim for allowance of the entire quantity lost, regardless of the percentage of loss or the quantity lost. If losses on the premises (other than losses due to theft) do not exceed the quantities specified in this section, and there are no circumstances indicating that any part of the quantity lost was unlawfully used or removed, claim for allowance will not be required.

§ 213.154 Claims.

Claims for allowance of losses of tax-free alcohol shall be filed, on Form 2635, with the assistant regional commissioner within 30 days from the date the loss is ascertained, and shall set forth the following:

- (a) Name, address, and permit number of the claimant;
- (b) Identification and location of the container or containers from which the tax-free alcohol was lost;
- (c) Quantity of tax-free alcohol lost from each container, the total quantity of such alcohol covered by the claim, and the aggregate quantity involved;
- (d) Date of the loss (or, if not known, date of discovery), the cause or nature of the loss, and all the facts relative thereto, including facts establishing whether the loss occurred as a result of any negligence, connivance, collusion, or fraud on the part of any person participating in, or responsible in any manner for, the transaction, or any employee or agent of such person; and
- (e) Name of carrier where a loss in transit is involved. The carrier's statement regarding the loss (required by § 213.152) shall accompany the claim. The assistant regional commissioner may require the submission of additional evidence.

[F.R. Doc. 63-13390; Filed, Dec. 26, 1963; 8:50 a.m.]

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****[7 CFR Part 919]**

[Docket No. AO 102-A3]

HANDLING OF PEACHES GROWN IN COUNTY OF MESA, COLORADO**Notice of Hearing With Respect to Proposed Amendments to Marketing Agreement and Order**

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders, as amended (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Veterans Memorial Building, Palisade, Colorado, at 9:30 a.m., m.s.t., January 23, 1964, with respect to proposed amendments to the amended marketing agreement and Order No. 919, as amended (7 CFR Part 919), hereinafter referred to as the "marketing agreement" and "order," respectively, regulating the handling of peaches grown in the County of Mesa, Colorado. The proposed amendments have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions relating to the proposed amendments, which are hereinafter set forth, and appropriate modifications thereof.

The following amendments to the marketing agreement and order were proposed by the Administrative Committee, the administrative agency established pursuant to the marketing agreement and order:

1. Delete § 919.10 *Fiscal year* and substitute, in lieu thereof, the following:

§ 919.10 Fiscal period.

Fiscal period is synonymous with "fiscal year" and means a twelve-months' period beginning November 1 of any year and ending the last day of October of the following year, both dates inclusive, or such other period that may be approved by the Secretary pursuant to recommendations by the committee.

2. Amend § 919.20 *Establishment and membership* as follows:

A. Designate the current provisions as paragraph (a) and revise the third sentence thereof to read as follows: "The members of the Committee and their respective alternates shall be nominated and selected at least 30 days prior to the expiration of the term of office to be filled, and in accordance with the provisions of § 919.21 through § 919.24."

B. Add the following new paragraph (b):

- (b) Representative districts for producer members. For the purpose of the

nomination and selection of the producer members of the Administrative Committee and their respective alternates, the County of Mesa in the State of Colorado shall be divided into five representative districts pursuant to § 919.11, except that the representative districts of the producer members may be re-established by the Secretary upon the recommendations of the Administrative Committee. In recommending any such changes the committee shall consider (1) the relative importance of new producing sections, (2) the geographic location of the producing sections as they affect the efficiency of administration of this part, and (3) other relevant factors.

3. Delete from §§ 919.21 (a) and 919.22(a) the parenthetical phrase "(on or before February 1 of each year)."

4. Amend § 919.23 *Nomination and selection of cooperative handler members* as follows:

A. Delete from paragraph (a) the words "beginning March 1, 1956" wherever they appear.

B. Revise paragraph (b) to read as follows:

(b) Nominations of cooperative members and their respective alternates shall be made by such cooperative associations at such times and places, and in such manner as the members of the respective associations may designate, with concurrence of the Administrative Committee.

5. Delete from § 919.25 *Failure to nominate* the words "on or before February 15" and insert, in lieu thereof, the following: "15 days prior to the term of office"

6. Delete the provisions in § 919.27 *Term of office* and insert, in lieu thereof, the following:

§ 919.27 *Term of office.*

The term of office of producer members and their alternates shall be for two (2) years, or until their successors have been selected and qualified. Term of office of producer members and their respective alternates shall be arranged so that approximately one-half shall terminate each year. (Determination of which of the initial producer members and their alternates shall serve for one year, or two years, shall be by lot.) The term of office of the independent producer handler member and cooperative handler members and their alternates shall be for one (1) year, or until their successors have been selected and qualified. The term of office of each member and alternate shall be for the period beginning on January 1 of one year and ending on December 31 of the following, or second year, both dates inclusive, or such other period as the committee, with the approval of the Secretary, may prescribe.

7. Delete § 919.42 *Handler accounts* and insert, in lieu thereof, the following:

§ 919.42 *Accounting.*

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the committee, with the approval of the Secretary, may carry

over such excess into subsequent fiscal periods as a reserve: *Provided*, That funds already in the reserve do not exceed approximately two fiscal periods' expenses. Such reserve funds may be used (1) to cover any expenses authorized by this part, and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the Committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Committee and its members to account for all receipts and disbursements."

8. Delete §§ 919.50, 919.51, and 919.52 and insert, in lieu thereof, the following:

§ 919.50 *Recommendation of the Administrative Committee.*

Whenever the Administrative Committee deems it advisable to regulate, during any period or periods, the shipment of one or more varieties of peaches pursuant to § 919.52, it shall so recommend to the Secretary. At the time of submitting each such recommendation for the regulation, the Committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. The Committee shall promptly give adequate notice to handlers and producers of each such recommendation.

§ 919.52 *Issuance of regulations.*

(a) The Secretary shall regulate, in the manner specified in this section, the handling of peaches whenever he finds from the recommendations and information submitted by the Committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of peaches grown in the production area;

(2) Limit the shipment of peaches by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of peaches;

(b) The Committee shall be informed immediately of any such regulation issued by the Secretary, and the Commit-

tee shall promptly give notice thereof to handlers.

The Fruit and Vegetable Division, Agricultural Marketing Service, has proposed the following:

9. That consideration be given to making such other changes in the marketing agreement and order as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing may be obtained from the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C., 20250, or from Robert B. Case, Field Representative, Fruit and Vegetable Division, U.S. Department of Agriculture, Room 344-B New Customhouse, Denver, Colorado, 80203.

Dated: December 23, 1963.

S. R. SMITH,
Administrator.

[F.R. Doc. 63-13363; Filed, Dec. 26, 1963; 8:47 a.m.]

[7 CFR Part 1002]

MILK IN NEW YORK-NEW JERSEY MARKETING AREA

Cooperative Payments; Notice of Meeting

Pursuant to provisions of § 1002.81 of the order, as amended (7 CFR Part 1002), regulating the handling of milk in the New York-New Jersey marketing area, and of the Administrative Procedures Act (5 U.S.C. 1001 et seq.), notice is hereby given of a meeting to be held on January 8, 1964, at 10 a.m., e.s.t., at the office of the Market Administrator, 205 East 42nd Street, New York, New York, for consideration of an amendment to the regulations issued pursuant to said § 1002.81 of the order. Interested persons will be afforded an opportunity at the meeting to be heard through the submission of data, views, or arguments orally or in writing. All materials presented in writing should be in quintuplicate. Copies of the said proposed regulations hereinafter set forth may be procured from the Market Administrator, 205 East 42nd Street, New York, New York.

The amendment proposed by the Metropolitan Cooperative Milk Producers Bargaining Agency, Inc. to the regulations to be considered at said meeting follows:

Amend § 1002.414 by deleting paragraph (c) and substituting a new paragraph (c) which reads as follows:

(c) A determination pursuant to paragraph (a) of this section shall be made on the basis of considering all of the milk received from members by the cooperative or the federated cooperative. Milk delivered by members of the federated cooperative during the twelve month period shall be counted in making the determination if the cooperative is federated at the time of the determination, and was a cooperative under § 1002.81 of the order during the entire preceding twelve months. In making

such determination, milk being received at pool plants operated by the cooperative or federated cooperative at the time of the determination shall be counted as if delivered at pool plants so operated during such entire twelve month period.

Issued at New York, New York this 19th day of December 1963.

A. J. POLLARD,
Acting Market Administrator.

[F.R. Doc. 63-13362; Filed, Dec. 26, 1963;
8:47 a.m.]

Agricultural Research Service

[7 CFR Part 301]

WHITE-FRINGED BEETLE

Notice of Public Hearing on Extending Quarantine to States of Arkansas and Virginia

The Administrator of the Agricultural Research Service has information that introduced species of the genus *Graphognathus*, commonly known as white-fringed beetles, dangerous insects which previously have been found to exist in certain parts of the States of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, have been discovered in certain parts of the States of Arkansas and Virginia.

Notice is hereby given that it is proposed under the authority of sections 8 and 9 of the Plant Quarantine Act of 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150ee), to quarantine the States of Arkansas and Virginia and to regulate, under the White-Fringed Beetle Quarantine and supplemental regulations (7 CFR 301.72, 301.72-1 et seq.), the interstate movement from these States, or areas therein where the beetle has been discovered or other basis for regulation exists, into or through any other State, Territory, or District of the United States of (1) forest, field, nursery, or greenhouse-grown woody or herbaceous plants with roots; (2) soil, compost, manure, peat, muck, clay, sand, or gravel, independently of or in connection with nursery stock, other plants, plant products or other products or articles; (3) grass sod; plant crowns or roots for propagation; true bulbs, corms, tubers, and rhizomes of ornamental plants, when freshly harvested or uncured; potatoes (Irish) when freshly harvested; peanuts in shells, peanut shells and peanut hay; (4) uncleaned grass, grain and legume seed; hay (other than peanut hay), straw, seed cotton and cottonseed; (5) scrap metal and junk; brick, tile, stone, concrete slabs, pipes, and building blocks; and cinders; (6) forest products, such as cordwood, stump wood, logs, lumber, timbers, posts, poles, and cross ties; (7) used harvesting machinery and used construction and maintenance equipment; and (8) other farm products and farm equipment, trucks, wagons, railway cars, aircraft, boats, and other means of conveyance, used crates, boxes,

and other used farm products containers, and, unlimited by the foregoing, any other products and articles of any character whatsoever not covered by subparagraphs (1) through (7) of this paragraph, when it is determined in accordance with the regulations that they present a hazard of spread of white-fringed beetles.

A public hearing to consider the above proposals will be held before a representative of the Agricultural Research Service in the Medallion room of the Piedmont Hotel, 108 Peachtree Street, Atlanta, Georgia, at 10 a.m., e.s.t., on January 23, 1964, at which hearing any interested person may appear and be heard, either in person or by attorney, on the proposals. Any interested person who desires to submit written data, views, or arguments on the proposals may do so by filing the same with the Director of the Plant Pest Control Division, Agricultural Research Service, U.S. Department of Agriculture, Federal Center Building, Hyattsville, Maryland, 20781, on or before January 23, 1964, or with the presiding officer at the hearing.

Further, notice is hereby given under section 4 of the Administrative Procedure Act (5 U.S.C. 1003) that if it is determined, after hearing, that the States of Arkansas and Virginia should be quarantined as proposed, the Agricultural Research Service is considering amending the White-Fringed Beetle Quarantine and administrative instructions thereunder (7 CFR 301.72, 301.72-2a) to add these two States to the States designated as quarantined and to specify regulated areas in these States for purposes of the regulations.

(Sec. 9, 37 Stat. 318, sec. 106, 71 Stat. 33; 7 U.S.C. 162, 150ee. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U.S.C. 161; 19 F.R. 74, as amended)

Done at Washington, D.C., this 20th day of December 1963.

[SEAL] M. R. CLARKSON,
*Acting Administrator,
Agricultural Research Service.*

[F.R. Doc. 63-13364; Filed, Dec. 26, 1963;
8:47 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 71 [New]]

[Airspace Docket No. 63-CE-123]

FEDERAL AIRWAY

Notice of Proposed Alteration

Notice is hereby given that the Federal Aviation Agency (FAA) is considering an amendment to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

VOR Federal airway No. 47 is designated in part from Nabb, Ind., to Cincinnati, Ohio. The FAA is considering extending V-47 airway from Nabb via the intersection of the Nabb VOR 252° and the Evansville, Ind., VOR 065° True radials to Evansville. This airway extension would provide a more direct route for air traffic operating between the Evansville and Cincinnati terminal areas.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City, Mo., 64110. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 19, 1963.

MICHAEL J. BURNS,
*Acting Chief,
Airspace Utilization Division.*

[F.R. Doc. 63-13335; Filed, Dec. 26, 1963;
8:45 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 63-LAX-6]

FEDERAL AIRWAY

Notice of Proposed Alteration

Notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

A south alternate of VOR Federal airway No. 12 extends from Winslow, Ariz., to Zuni, New Mexico, via the intersection of the Winslow 109° and the Zuni 252° True radials. The latest FAA IFR peak day airway traffic survey shows no instrument flight rule traffic on this alternate airway. It appears, therefore, that the retention of this south alternate to Victor 12 is unjustified as an assignment of airspace and the agency proposes its revocation.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attn: Chief, Air Traffic Branch, Federal Aviation Agency, Western Region Area Office, P.O. Box 45018, Los Angeles, California, 90045. All communications received within forty-five

days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Air Traffic Branch, Western Region Area Office, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C. An informal Docket will also be available for examination at the office of the Branch Chief, Western Region Area Office.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C. on December 18, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13336; Filed Dec. 26, 1963;
8:45 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 63-WE-110]

FEDERAL AIRWAY SEGMENT

Notice of Proposed Revocation

Notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

VOR Federal airway No. 10 north alternate is designated in part from Lamar Colo., to Garden City, Kansas. The Federal Aviation Agency is considering the revocation of this airway segment. The latest Federal Aviation Agency IFR peak day airway traffic survey for this segment of Victor 10 north alternate shows no aircraft movements between Lamar and Garden City. Accordingly it appears that the retention of this airway segment is unjustified as an assignment of airspace.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles, Calif. 90009. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal con-

ferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 19, 1963.

MICHAEL J. BURNS,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13337; Filed, Dec. 26, 1963;
8:45 a.m.]

[14 CFR Part 75 [New]]

[Airspace Docket No. 63-CE-77]

JET ROUTE

Notice of Proposed Alteration

The Federal Aviation Agency (FAA) is considering an amendment to Part 75 [New] of the Federal Aviation Regulations, the substance of which is stated below.

Jet Route No. 105 presently extends in part from the Springfield, Mo., VORTAC via the Moline, Ill., VORTAC to the Milwaukee, Wisc., VORTAC. The FAA is proposing to alter this segment of J-105 from the Springfield VORTAC via the Bradford, Ill., VOR to the Milwaukee VORTAC. Such action would provide easier transition to and from other jet routes, in conjunction with Jet Route No. 80 would provide an alternate route between Kansas City, Mo., and Chicago, Ill., and would remove the Moline VORTAC from the jet route structure.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City, Mo., 64110. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments pre-

sented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 18, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13338; Filed, Dec. 26, 1963;
8:45 a.m.]

[14 CFR Part 75 [New]]

[Airspace Docket No. 63-CE-108]

JET ROUTE

Notice of Proposed Revocation

Notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 75 [New] of the Federal Aviation Regulations, the substance of which is stated below.

Jet Route No. 54 extends from the Alamosa, Colo., VOR via the Garden City, Kansas, VORTAC the Ponca City, Okla., VOR the Tulsa, Okla., Little Rock, Ark., and Birmingham, Ala., VORTACs to the Atlanta, Ga., VORTAC. The portion of this route between Little Rock and Atlanta is coincident with Jet Route No. 14. The Federal Aviation Agency is considering the revocation of J-54 as only very light use by the military makes it appear that the retention of this route assignment in the continental control area is unjustified.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City, Mo., 64110. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

PROPOSED RULE MAKING

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 18, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13339; Filed, Dec. 26, 1963;
8:45 a.m.]

[14 CFR Part 75 [NEW]]

[Airspace Docket No. 63-SW-88]

JET ROUTE

Notice of Proposed Alteration

The Federal Aviation Agency (FAA) is considering an amendment to Part 75 [NEW] of the Federal Aviation Regulations, the substance of which is stated below.

Jet Route No. 58 presently extends in part from the Alexandria, La., VOR direct to the New Orleans, La., VORTAC. The FAA has under consideration the realignment of this segment of J-58 from the Alexandria VOR via the intersection of the Alexandria VOR 126° and the New Orleans VORTAC 295° True radials, to the New Orleans VORTAC. Such action would cause J-58 to directly overlie intermediate altitude VOR Federal airway V-1536 and low altitude VOR Federal airway V-114 and would simplify transitions between the low and intermediate airway structures and the jet route structure.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Southwest Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth, Texas, 76101. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 19, 1963.

MICHAEL J. BURNS,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13340; Filed, Dec. 26, 1963;
8:45 a.m.]

[14 CFR Parts 71 [New], 73 [New]]

[Airspace Docket No. 63-SO-48]

RESTRICTED AREAS, TRANSITION
AREA AND CONTINENTAL CON-
TROL AREANotice of Proposed Revocation, Des-
ignation, and Alteration

Notice is hereby given that the Federal Aviation Agency is considering amendments to §§ 71.151, 71.181 and 73.29 of the Federal Aviation Regulations, the substance of which is stated below.

The Department of Air Force has proposed the subdivision of Restricted Area R-2915, Valparaiso, Fla., into two joint use areas, namely R-2915A and R-2915B, to obtain greater utilization of this airspace. R-2915A would retain the current designated altitudes of R-2915 "Surface to FL 500". R-2915B, containing missile and probe launching sites, would be designated from "Surface to FL 1200." Concurrently, it is also proposed to change the name of this airspace from "Valparaiso, Fla." to "Eglin AFB, Fla.," since most pilots operating through this area are more familiar with the location of Eglin AFB than Valparaiso.

In addition, it would be necessary to amend the continental control area to reflect the change from "R-2915" to "R-2915A and R-2915B," and to amend the Eglin AFB, Fla., transition area to require approval from appropriate authority prior to operation with R-2915A and R-2915B.

R-2915A and R-2915B would be joint use with the Federal Aviation Agency, New Orleans ARTC Center as the controlling agency, and the time of designation and the using agency would continue for these areas as presently designated for R-2915.

If this action is taken, R-2915A and R-2915B, Eglin AFB, Fla., would be described, as follows:

R-2915A, Eglin AFB, Florida

Boundaries. Beginning at latitude 30°33'40" N., longitude 86°55'00" W.; to latitude 30°38'45" N., longitude 86°55'00" W.; thence along the L and N Railroad to lati-

tude 30°42'45" N., longitude 86°45'45" W.; to latitude 30°42'50" N., longitude 86°38'02" W.; to latitude 30°29'01" N., longitude 86°38'02" W.; to latitude 30°26'30" N., longitude 86°51'30" W.; thence along the Navarre-Milton Highway to point of beginning.

Designated altitudes. Surface to FL 500.

Time of designation. Continuous.

Controlling agency. Federal Aviation Agency, New Orleans ARTC Center.

Using agency. Commander, Air Proving Ground Command, Eglin AFB, Florida.

R-2915B, Eglin AFB, Florida

Boundaries. Beginning at latitude 30°29'01" N., longitude 86°38'02" W.; to latitude 30°20'50" N., longitude 86°38'50" W.; thence 3 nautical miles from and parallel to the shoreline to latitude 30°20'15" N., longitude 86°48'00" W.; to latitude 30°23'20" N., longitude 86°48'00" W.; to latitude 30°22'50" N., longitude 86°51'30" W.; to latitude 30°23'50" N., longitude 86°51'30" W.; to latitude 30°24'20" N., longitude 86°48'00" W.; to latitude 30°26'30" N., longitude 86°51'30" W.; to point of beginning.

Designated altitudes. Surface to FL 1200.

Time of designation. Continuous.

Controlling agency. Federal Aviation Agency, New Orleans ARTC Center.

Using agency. Commander, Air Proving Ground Command, Eglin AFB, Florida.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Southern Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 20636, Atlanta, Ga., 30320. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

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

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 18, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13341; Filed, Dec. 26, 1963;
8:45 a.m.]

**FEDERAL COMMUNICATIONS
COMMISSION****[47 CFR Part 1]**

[Docket No. 13961; FCC 63-1163]

**STATEMENT OF PROGRAM SERVICE,
BROADCAST APPLICATION FORMS¹****Second Notice of Further Proposed
Rule Making**

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

2. The proceedings herein were instituted by the Commission on February 21, 1961. As a result of the extensive comments which have been filed to date and the conferences held with industry rep-

resentatives and other interested parties, the Commission has revised the proposed section IV applicable to television only, as attached. The applicable section IV program service statement for radio is currently under intensive study.

3. To facilitate this proceeding and to provide for direct presentation of views and comments on the attached proposal, the Commission is hereby scheduling an en banc oral proceeding at the Commission's offices in Washington, D.C., on February 13, 1964. Representatives of all segments of the television industry and other interested parties are invited to participate. The Commission will particularly welcome coordination of industry comments in order to encourage a detailed review and discussion of each significant aspect of this proposal while avoiding repetitious testimony.

4. All parties intending to appear before the Commission shall notify the

Secretary of the Commission in writing on or before February 3, 1964, indicating the approximate amount of time they wish to use. Parties not participating in the oral proceeding may submit comments on or before February 13, 1964, in the form of a written statement for inclusion in the record. (Include an original and 14 copies of such statement.)

5. This action is taken pursuant to authority found in sections 4(i), 303(r), 307(d), 308(a) and 308(b) of the Communications Act of 1934, as amended.

Adopted: December 18, 1963.

Released: December 20, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-13376; Filed, Dec. 26, 1963;
8:47 a.m.]

¹Filed as part of the original document.

Notices

DEPARTMENT OF THE TREASURY

Comptroller of the Currency FIRST NATIONAL BANK OF AKRON AND MOGADORE SAVINGS BANK

Decision Granting Application to Merge

On August 26, 1963, The Mogadore Savings Bank, Mogadore, Ohio, and the First National Bank of Akron, Akron, Ohio, applied to the Comptroller of the Currency for permission to merge under the charter and with the title of the latter.

On December 17, 1963, the Comptroller of the Currency granted this application.

Copies of this decision are available on request to the Comptroller of the Currency, Washington 25, D.C.

Dated: December 20, 1963.

[SEAL] A. J. FAULSTICH,
Administrative Assistant to the
Comptroller of the Currency.

[F.R. Doc. 63-13374; Filed, Dec. 26, 1963;
8:47 a.m.]

Office of the Secretary

[AA 643.3-m]

HALIBUT STEAK FROM JAPAN Fair Value Determination

DECEMBER 12, 1963.

A complaint was received that halibut steak from Japan was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that halibut steak from Japan is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons: The imported product is halibut steak. The quantity of halibut steaks sold for home consumption is inconsequential. Dressed halibut, however, is sold for home consumption. The dressed halibut is deemed to be similar to halibut steaks within the meaning of the Antidumping Act. The quantity of dressed halibut sold for home consumption was sufficient to furnish a basis for a fair value comparison.

There is no relationship between the seller and the purchaser in the United States within the meaning of section 207 of the Antidumping Act.

The appropriate comparison for fair value purposes, therefore, is between purchase price and adjusted home market price.

Purchase price was computed by deducting inland freight and shipping

charges from the f.o.b. Japanese port price.

Adjusted home market price was computed by adding to the price of dressed halibut in the home market, the cost of processing it into steaks. The proceeds from the sale of certain by-product wastes produced in the manufacture of the steak were deducted. An addition was made to reflect the additional cost resulting from the fact that the halibut steak yield was less than 100 percent of the dressed halibut. The extra cost of export packing was also added.

Purchase price was found to be not lower than adjusted home market price.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] JAMES A. REED,
Assistant Secretary of the Treasury.

[F.R. Doc. 63-13375; Filed, Dec. 26, 1963;
8:47 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Idaho 014955]

IDAHO

Proposed Withdrawal and Reservation of Lands

DECEMBER 18, 1963.

The Department of the Army, Corps of Engineers has filed an application, Serial Number Idaho 014955, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. The applicant desires the land for the Dworshak Dam and Reservoir Project on the North Fork of the Clearwater River, Idaho.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, P.O. Box 2237, Boise, Idaho.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's and to reach agreement on the

concurrent management of the lands and their resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place which will be announced.

The lands involved in the application are:

BOISE MERIDIAN, IDAHO

T. 37 N., R. 1 E.,
Sec. 1, lots 2 and 6;
Sec. 11, lot 5 and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 12, lot 4 south of former north boundary line of Nez Perce Indian Reservation, and lot 5;
Sec. 13, lot 8;
Sec. 14, lot 4 and SW $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 22, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 23, lots 1, 4, 7 and W $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 26, NW $\frac{1}{4}$ NE $\frac{1}{4}$.
T. 37 N., R. 2 E.,
Sec. 7, lot 8 and SW $\frac{1}{4}$ SW $\frac{1}{4}$.
T. 38 N., R. 2 E.,
Sec. 19, lots 9 and 14.

The areas described aggregate 815.14 acres.

MICHAEL T. SOLAN,
Manager.

[F.R. Doc. 63-13347; Filed, Dec. 26, 1963;
8:46 a.m.]

[Classification 122]

ALASKA

Small Tract Classification, Corrected Land Description

DECEMBER 18, 1963.

F.R. Doc. 63-12928 appearing in the issue for December 13, 1963 is hereby corrected as follows:

Paragraph 1 containing description of the land classified by the order is hereby corrected so that the portion reading:

SEWARD MERIDIAN

T. 2 S., R. 14 W.
Sec. 12, lot 1;
Sec. 23, lots 3 and 4;
Sec. 26, lot 1, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$.

will read;

SEWARD MERIDIAN

T. 1 S., R. 14 W.
Sec. 12, lot 1;
Sec. 23, lots 3 and 4;
Sec. 26, lot 1, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$.

GEORGE R. SCHMIDT,
Chief, Branch of Lands
and Minerals Operations.

[F.R. Doc. 63-13348; Filed, Dec. 26, 1963;
8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

FLORIDA

Extension of Period for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Florida, the natural disaster for which said counties were designated (27 F.R. 12986) has resulted in a continuing need in those counties for agricultural credit not readily available from commercial banks, co-operative lending agencies, or other responsible sources.

FLORIDA

Brevard	Manatee
Broward	Marion
Charlotte	Martin
Citrus	Okeechobee
Collier	Orange
Dade	Osceola
De Soto	Palm Beach
Flagler	Pasco
Glades	Pinellas
Hardee	Polk
Hendry	Putnam
Hernando	Saint Johns
Highlands	Saint Lucie
Hillsborough	Sarasota
Indian River	Seminole
Lake	Sumter
Lee	Volusia

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after December 31, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 20th day of December 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-13366; Filed, Dec. 26, 1963; 8:47 a.m.]

OKLAHOMA

Designation of Area for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in Dewey County, Oklahoma, natural disasters have caused a need for agricultural credit not readily available from commercial banks, co-operative lending agencies, or other responsible sources.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named county after December 31, 1964, except to applicants who

previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 20th day of December 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-13367; Filed, Dec. 26, 1963; 8:47 a.m.]

OKLAHOMA

Designation of Area for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in Wagoner County, Oklahoma, a natural disaster has caused a need for agricultural credit not readily available from commercial banks, co-operative lending agencies, or other responsible sources.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named county after December 31, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 20th day of December 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-13368; Filed, Dec. 26, 1963; 8:47 a.m.]

TEXAS

Designation of Area for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in Motley County, Texas, natural disasters have caused a need for agricultural credit not readily available from commercial banks, co-operative lending agencies, or other responsible sources.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named county after June 30, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 20th day of December 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-13369; Filed, Dec. 26, 1963; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

[Report No. 23]

LIST OF FREE WORLD AND POLISH FLAG VESSELS ARRIVING IN CUBA SINCE JANUARY 1, 1963

SECTION 1. Pursuant to the National Security Action Memorandum No. 220, dated February 5, 1963, addressed to The Secretary of State; The Secretary of Defense; The Secretary of Agriculture; The Secretary of Commerce; The Administrator, Agency for International Development; and the Administrator, General Services Administration, concerning United States Government shipments by foreign-flag vessels in the Cuban trade, the Maritime Administration is making available to the appropriate Departments the following list of vessels which have arrived in Cuba since January 1, 1963, based on information received through December 18, 1963, exclusive of those vessels that called at Cuba on United States Government-approved noncommercial voyages and those listed in section 2:

FLAG OF REGISTRY AND NAME OF SHIP

	Gross tonnage
Total—All Flags (196 ships) -----	1,517,287
British (59 ships) -----	536,623
Ardgem -----	6,981
Ardmore -----	4,664
Ardrowan -----	7,300
Arlington Court -----	9,662
Athelcrown (Tanker) -----	11,149
Athelduke (Tanker) -----	9,089
Athelmere (Tanker) -----	7,524
Athelmonarch (Tanker) -----	11,182
Athelsultan (Tanker) -----	9,149
Avisfaith -----	7,868
Baxtergate -----	8,813
Beech Hill -----	7,150
Cedar Hill -----	7,156
Chipbee -----	7,271
Dairen -----	4,939
East Breeze -----	8,708
Fir Hill -----	7,119
Grosvenor Mariner -----	7,026
Hazelmoor -----	7,907
*Hemisphere -----	8,718
Ho Fung -----	7,121
Inchstaffa -----	5,255
Ivy Fair (now Cosmo Trader) -----	7,201
Kirriemoor -----	5,923
Linkmoor -----	8,236
London Confidence (Tanker) -----	21,699
London Glory (Tanker) -----	10,081
London Harmony (Tanker) -----	13,157
London Independence (Tanker) -----	22,643
London Majesty (Tanker) -----	12,132
London Prestige (Tanker) -----	16,194
London Pride (Tanker) -----	10,776
London Spirit (Tanker) -----	10,176
London Splendour (Tanker) -----	16,195
London Valour (Tanker) -----	16,268
Lord Gladstone -----	11,299
Maratha Enterprise -----	7,166
Newgate -----	6,743

*Added to Report No. 22 appearing in the FEDERAL REGISTER issue of December 11, 1963.

FLAG OF REGISTRY AND NAME OF SHIP—Con.

	Gross tonnage
British (59 ships)—Continued	
Newlane	7,043
Ocean tramp	6,185
Ocean travel	10,477
Overseas Explorer (Tanker)	16,267
Overseas Pioneer (Tanker)	16,267
Redbrook	7,388
Ruthy Ann	7,361
Shienfoon	7,127
Silverforce	8,058
Silverlake	8,058
Stanwear	8,108
Suva Breeze	4,970
Sycamore Hill	7,124
Thames Breeze	7,878
Timios Stavros (previous trips to Cuba under Greek flag)	5,269
Vercharmian	7,265
Vermont	7,381
West Breeze	8,718
Yungfutary	5,388
Yunglutaton	5,414
Zela M.	7,237

Greek (53 ships) 410,170

Agios Therapon	5,617
Akastos	7,331
Aldebaran (Tanker)	12,897
Alice	7,189
Ambassade	8,600
Americana	7,104
Anacreon	7,359
Anatoli	7,178
Antonia	5,171
Apollon	9,744
Armathia	7,091
Athanassios K.	7,216
Barbarino	7,084
Calliopi Michalos	7,249
Capetan Petros	7,291
Despoina	5,006
Efcharis	7,249
Eftychia	7,223
Embassy	8,418
Everest	7,031
Flora M.	7,244
Gallini	7,266
Gloria	7,128
Hydraios III	5,239
Irena	7,232
Istros II	7,275
*Kapetan Kostis	5,032
Kostis	7,264
Kyra Hariklia	6,888
Maria de Lourdes	7,219
Maria Santa	7,217
Maria Theresa	7,245
Marigo	7,147
Maroudio	7,369
Mastro-Stellos II	7,282
Nicolaos Frangistas	7,199
North Empress	10,904
North Queen	9,341
Pamit	3,929
Pantanassa	7,131
Paxol	7,144
Penelope	6,712
Perseus (Tanker)	15,852
Polyxeni	7,143
Presvia	10,820
Propontis	7,128
Redestos	5,911
Seirios	7,239
Sirius (Tanker)	16,241
Stylianios N. Vlassopoulos	7,244
Tina	7,362
Vassiliki (Tanker)	10,507
Western Trader	9,268

NOTE: (Timios Stavros—now British flag).

Lebanese (41 ships)	273,161
Aiolos II	7,256
Ais Giannis	6,997

FLAG OF REGISTRY AND NAME OF SHIP—Con.

	Gross tonnage
Lebanese (41 ships)—Continued	
Akamas	7,285
Alaska	6,989
Anthas	7,044
Antonis	6,259
Ares	4,557
Areti	7,176
Aristefs	6,995
Astir	5,324
Carnation	4,884
Dimos	7,187
Free Trader	7,067
Giorgos Tsakiroglou	7,240
Granikos	7,282
Ilena	5,925
Ioannis Aspiotis	7,297
Kalliope D. Lemos	5,103
Leftic	7,176
Malou	7,145
Mantric	7,255
Mersinidi	6,782
Mousse	6,984
Noelle	7,251
Noemi	7,070
Olga	7,199
Panagos	7,133
Parmarina	6,721
Razani	7,253
Rio	7,194
St. Anthony	5,349
St. Nicolas	7,165
San John	5,172
San Spyridon	7,260
Stevio	7,066
Tertric	7,045
Theologos	6,529
Toula	4,561
Vassiliki	7,192
*Vastric	6,453
Vergolivada	6,339

Italian (8 ships) 59,648

Achille	6,950
Airone	6,969
Annalisa	2,479
Aspromonte	7,154
Cannaregio	7,184
Nazareno	7,173
San Nicola (Tanker)	12,461
San Lucia	9,278

Polish (10 ships) 66,190

Baltyk	6,963
Bialystok	7,173
Bytom	5,967
Chopin	6,987
Chorzow	7,237
Huta Florian	7,258
Kopalnia Miechowice	7,223
Kopalnia Siemianowice	7,165
Kopalnia Wujek	7,033
Plast	3,184

Yugoslav (6 ships) 42,801

Bar	7,233
Cavtat	7,266
Cetinje	7,200
Dugi Otok	6,997
Promina	6,960
Trebinjica	7,145

Norwegian (5 ships) 54,502

Kongsgaard (Tanker)	19,999
Lovdal (Tanker)	12,764
Ole Bratt	5,252
Polycipper (Tanker)	11,737
Tine (now Jezreel)	4,750

FLAG OF REGISTRY AND NAME OF SHIP—Con.

	Gross tonnage
French (4 ships)	10,028
Circe	2,874
Enee	1,232
Guinee (now Comfort)	3,048
Nelee	2,874

Moroccan (4 ships) 32,614

Atlas	10,392
Banora	3,082
Mauritanie	10,392
Toubkal	8,748

Spanish (3 ships) 5,564

Castillo Ampudia	3,566
Sierra Madre	999
Sierre Maria	999

Swedish (2 ships) 14,295

Atlantic Friend	7,805
Dagmar	6,490

Finnish (1 ship) 11,691

Valny (Tanker) 11,691

SEC. 2. In accordance with the provisions of National Security Action Memorandum No. 220 of February 5, 1963, as amended, the vessels listed below which called at Cuba after January 1, 1963, have reacquired eligibility to carry United States Government-financed cargoes from the United States by virtue of the persons who control the vessels having given satisfactory certification and assurance

(a) that such vessels will not, thenceforth, be employed in the Cuba trade so long as it remains the policy of the United States Government to discourage such trade; and

(b) that no other vessels under their control will thenceforth be employed in the Cuba trade, except as provided in paragraph (c); and

(c) that vessels under their control which are covered by contractual obligations, including charters, entered into prior to December 16, 1963, requiring their employment in the Cuba trade shall be withdrawn from such trade at the earliest opportunity consistent with such contractual obligations.

FLAG OF REGISTRY AND NAME OF SHIP

	Gross Tonnage
a. Since last report:	
British (2 ships):	12,132
London Victory (Tanker)	7,120
Tulse Hill	
Greek (2 ships):	9,603
Polaris	9,956
Pollux	
Italian (1 ship):	9,985
Linda Giovanna (Tanker)	

	Number of ships
b. Previous report:	
Flag of registry:	
British	2
Danish	1
German (West)	1
Greek	3
Italian	1
Japanese	1
Norwegian	1

SEC. 3. The ships listed in Sections 1 and 2 have made the following number of trips to Cuba in 1963, based on information received through December 18, 1963:

*Added to Report No. 22 appearing in the FEDERAL REGISTER issue of December 11, 1963.

*Added to Report No. 22 appearing in the FEDERAL REGISTER issue of December 11, 1963.

Flag of Registry	Number of trips												Total
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	
British	5	8	8	17	13	15	14	11	8	10	10	4	123
Greek	4	6	8	8	17	12	17	7	8	8	2	1	98
Lebanese	1		2	8	8	9	8	3	4	10	5	1	59
Norwegian		2	4		1	2	1	2	1				13
Italian	1	1	1	2	3	2	2	2		1	1		16
Yugoslav		2		1	1		1	1	2		2		12
Spanish			2				1	1	1		1		6
Danish			1										1
Finnish						1							1
French									5	1			6
German (West)					1								1
Japanese	1												1
Moroccan			1			1	1	1	1	2	1		8
Swedish				1		1		1					3
Sub Total	12	19	29	37	44	43	45	29	30	32	22	6	348
Polish	2	1	1	2	2	2	1	1		2	3		17
Grand Total	14	20	30	39	46	45	46	30	30	34	25	6	365

NOTE: Trip totals in this section exceed ship totals in sections 1 and 2 because some of the ships made more than one trip to Cuba.

Dated: December 20, 1963.

ROBERT E. GILES,
Acting Maritime Administrator.

[F.R. Doc. 63-13423; Filed, Dec. 26, 1963; 8:50 a.m.]

FEDERAL MARITIME COMMISSION

MEMBERS OF NORTH ATLANTIC PORTUGAL EASTBOUND FREIGHT CONFERENCE

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763, 46 U.S.C. 814):

Agreement 9293, between American Export Lines, Inc., Fresco Lines, Companhia De Navegacao Carregadores Acoreanos, and Torm Lines proposes a new conference to be known as the North Atlantic Portugal Freight Conference, for the establishment and maintenance of rates, charges and practices with respect to the transportation of all cargo in vessels owned, controlled, chartered or operated by the members, in the trade from North Atlantic ports of the United States (in the Hampton Roads/Maine range) to Portugal Atlantic ports, in accordance with the terms and conditions stated therein.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington 25, D.C., or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington 25, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval or modification, together with request for hearing should such hearing be desired.

Dated: December 23, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 63-13361; Filed, Dec. 26, 1963; 8:47 a.m.]

HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

ACTING REGIONAL DIRECTOR OF ADMINISTRATION, REGION IV (CHICAGO)

Delegation of Authority

The officers appointed to the following listed positions in Region IV (Chicago) are hereby designated to serve as Acting Regional Director of Administration, Region IV, during the absence of the Regional Director of Administration, with all the powers, functions, and duties redelegated or assigned to the Regional Director of Administration, provided that no officer is authorized to serve as Acting Regional Director of Administration unless all other officers whose titles precede his in this designation are unable to act by reason of absence:

1. Special Assistant to the Regional Director of Administration.
 2. Supervisory Operating Accountant.
- This designation supersedes the designation effective January 24, 1963 (28 F.R. 3130, March 30, 1963).

(62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U.S.C. 1701c)

Effective as of the 24th day of November 1963.

JOHN P. MCCOLLUM,
Regional Administrator.

[F.R. Doc. 63-13373; Filed, Dec. 26, 1963; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-4722]

TASTEE FREEZ INDUSTRIES, INC.

Order Summarily Suspending Trading

DECEMBER 20, 1963.

In the matter of trading on the American Stock Exchange In the Common

Stock, 67 cents par value, of Tastee Freez Industries, Inc.; File No. 1-4722.

The common stock, 67 cents par value, of Tastee Freez Industries, Inc., being listed and registered on the American Stock Exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c) (2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of any such security, otherwise than on a national securities exchange:

It is ordered, Pursuant to section 19(a) (4) of the Securities Exchange Act of 1934, that trading in such security on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for the period December 23, 1963 through January 1, 1964, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 63-13350; Filed, Dec. 26, 1963; 8:46 a.m.]

[File No. 812-1630]

TOWNSEND CORPORATION OF AMERICA AND TOWNSEND MANAGEMENT COMPANY

Notice of and Order for Hearing on Application for Order of Exemption and Approval

DECEMBER 19, 1963.

Notice is hereby given that Townsend Corporation of America ("TCA"), a Delaware corporation, and Townsend Management Company ("TMC"), 38 Chatham Road, Short Hills, New Jersey, a New Jersey corporation, each a closed-end investment company registered under the Investment Company Act of 1940 (the "Act"), have filed an application pursuant to sections 6(c), 17(b) and 23(c) (3) of the Act for an order of the Commission exempting from the provisions of section 17(a), and approving under section 23(c) (3) of the Act, certain transactions incident to a Plan of Merger of TCA, TMC, and Resort Airlines, Inc. ("Resort"), a Delaware corporation and an 83-percent-owned subsidiary of TCA. All interested persons are referred to the application on file with the Commission for a complete statement of the representations contained therein, which are summarized below.

On May 31, 1961, in an action entitled Securities and Exchange Commission v.

Townsend Corporation of America et al., Civil Action No. 336-61, TCA and TMC were ordered by the United States District Court for the District of New Jersey, to file with this Commission a plan for the merger of the two companies and Resort.

TCA is engaged in the radio broadcasting business through its wholly-owned subsidiary, WKDA Broadcasting Company, Inc., of Nashville, Tennessee, and its 85.2-percent-owned subsidiary, KNOK Broadcasting Company, Inc., of Fort Worth, Texas. TCA is also presently engaged in the manufacture and sale of embossing machines and other specialized printing processes through Modern Engraving and Machine Company ("MEMCO"), a 92-percent-owned subsidiary of TCA, located in Hillside, New Jersey. TCA's audited balance sheet as of June 30, 1963, indicates total assets valued at \$3,948,654. Total stated liabilities as of that date amounted to \$1,803,252, including notes payable to Resort, plus accrued interest thereon, in the amount of \$305,815, and an amount of \$319,200 stated to represent an obligation of TCA to repurchase 14,250 shares of its stock from Resort, at \$22.40 per share, as the result of Resort's exercise of a "put" option. As of June 30, 1963, TCA was also indebted to TMC on notes payable, plus accrued interest, in the amount of \$389,563.

A substantial portion of TCA's assets represents investments in and advances to the other parties to the proposed merger. As of June 30, 1963, TCA owned 132,000 shares, or approximately 70 percent of the outstanding Class A nonvoting common stock of TMC (or approximately 67 percent of the aggregate of the outstanding Class A nonvoting and Class B voting common stock) and 327,313 shares, or approximately 83.5 percent of Resort's outstanding common stock.

As of June 30, 1963, TCA had outstanding \$485,000 principal amount of 5 percent debentures, due December 1, 1963, now in default; 57,876 shares of 5 percent convertible, cumulative preferred stock, par value of \$10 per share, on which accumulated, undeclared dividends as of June 30, 1963, amounted to \$101,283; and 1,316,716 shares of common stock, par value \$0.25 per share. As of the same date, there were reserved for issuance 118,765 shares of common stock upon the exercise of perpetual warrants issued to a former officer of the company and exercisable at a purchase price of \$4.21 per share.

As indicated by TCA's financial statements for June 30, 1963, the net asset value per share of TCA's outstanding common stock on the basis of valuing the securities of affiliated companies at the proportional share of net worth of such companies, and as adjusted to reflect accumulated, undeclared dividend arrears on TCA's outstanding preferred stock, was \$1.13. If effect were given to a proposed settlement in the amount of \$500,000 of a claim by Resort against TCA and its affiliates in respect of a transaction in 1958 pursuant to which Resort acquired certain shares of TCA common stock now totaling 136,593 shares, the resultant net asset value of

the outstanding TCA stock would be reduced to \$1.08 per share.

TMC is not presently engaged in any business. Its principal investments consist of United States treasury bills and stock of, and notes receivable from, TCA. Its ownership of TCA stock was represented by 108,560 shares, or 8.24 percent of the total amount outstanding. TMC's assets, as indicated by its audited financial statements as of June 30, 1963, had an aggregate value of \$1,813,688. TMC also had, as of that date, total liabilities in the stated amount of \$484,832, of which \$412,500 was stated to represent an obligation of TMC to repurchase, from Resort, 15,000 shares of TMC's Class A nonvoting common stock at \$27.50 per share, as the result of Resort's exercise of a "put" option.

As of June 30, 1963, TMC had outstanding 189,518 shares of Class A nonvoting common stock and 6,977 shares of Class B voting common stock, both classes having a par value of \$0.01 per share. The two classes of stock rank pari passu in all respects, with the exception of voting rights, and, on the basis of valuing the investment in TCA stock at the proportional share of net worth of that company, had a net asset value per share, as of June 30, 1963, of \$7.32.

Resort, which formerly operated as an airline, has sold all of its aircraft and related equipment. As of June 30, 1963, its audited financial statements showed total assets of \$3,146,803 and total liabilities of \$460,035. Resort's indicated assets included 150,843 shares (11.46 percent) of the common stock of TCA (including 14,250 shares subject to a "put" option against TCA); 15,000 shares (7.91 percent) of the Class A common stock of TMC (subject to a "put" option against TMC); notes receivable from TCA; and all of the outstanding common stock of, and notes and accounts receivable from, TCA Broadcasting Corporation and Rainbow Springs Development Corporation.

As of June 30, 1963, Resort had outstanding \$323,300 principal amount of 6% convertible debentures, due December 1, 1970; 1,405 shares of 5% convertible, noncumulative preferred stock, \$100 par value per share; and 392,023 shares of common stock, par value \$7.50 per share.

As of June 30, 1963, the financial statements of Resort indicated a net asset value for the common stock of Resort of \$6.50 per share. This valuation gives effect to stating certain investments in securities of affiliated companies at the amounts receivable therefor under the "put" options referred to above and, with respect to the remaining investments in the securities of such companies, at the proportional share of net worth of such companies. If effect were given to a proposed settlement of a claim by Resort against TCA and its affiliates in respect of certain shares of TCA stock held by Resort, as referred to above, the resultant net asset value of the Resort common stock would be increased to \$7.33 per share.

The Plan of Merger includes the following steps:

A. TMC, a New Jersey corporation, will be merged into a new TMC that will be incorporated in Delaware ("Reincorporated TMC").

B. Resort and Reincorporated TMC will be merged into TCA which is to be the surviving corporation. As parts of this second step:

1. TCA's outstanding 5 percent debentures in the principal amount of \$485,000, which are now in default, will be paid upon completion of the merger; the 57,876 shares of TCA's 5 percent convertible, cumulative preferred stock, \$10 par value per share, will remain outstanding and will not be altered.

2. Resort's outstanding debentures will be exchanged for an equal principal amount of debentures to be issued by TCA, which will have terms identical with the presently outstanding debentures of Resort except for adjustments in the applicable conversion ratios.

3. Each share of Resort's convertible, noncumulative preferred stock issued and outstanding at the effective date of the merger will be converted into one share of convertible, noncumulative preferred stock of the surviving corporation, TCA. TCA's certificate of incorporation will be amended to include this new class of noncumulative preferred stock, which will contain provisions identical with those applicable to the presently outstanding Resort preferred stock.

4. The outstanding shares of common stock of Resort (other than shares held by any of the constituent corporations to the merger) will be converted into TCA common stock, on the basis of respective net asset values per share of common stock, at the rate of 6.33 shares of TCA common for each share of Resort common stock. This conversion rate gives effect to a proposed settlement and release by Resort of any and all claims against TCA and its affiliates arising out of a 1958 transaction, as referred to above.

5. The outstanding shares of Class A and Class B common stock of Reincorporated TMC (other than shares held by any of the constituent corporations to the merger) will be converted into TCA common stock, on the basis of respective net asset values per share of common stock, at the rate 5.55 shares of TCA common stock for each share of Reincorporated TMC common stock.

6. The intercompany holdings of stock as between TCA, Reincorporated TMC, and Resort will be cancelled, although such holdings will have been reflected in the determination of the net asset value per share of the outstanding common stocks of such constituent corporations.

7. The outstanding perpetual warrants of TCA will be cancelled and no securities or property of the surviving corporation will be issued therefor.

A pro forma balance sheet as of June 30, 1963, giving effect to the Plan of Merger indicates total assets of the surviving corporation—TCA—of \$4,399,774, consisting of current assets (primarily United States treasury bills) of \$2,264,617, investments valued at \$2,129,268, and miscellaneous assets of \$5,889. The total pro forma liabilities of the surviving TCA as of the same date are stated in the amount of \$1,608,461, including

5% debentures in the principal amount of \$485,000 due December 1, 1963, which are now in default and which, as indicated, will be paid upon completion of the merger; 6% convertible debentures in the principal amount of \$323,300, due December 1, 1970; and preferred dividends in arrears in the amount of \$101,283, which will be provided for as a current liability. The pro forma stated amounts of assets and liabilities give effect to certain adjustments proposed to be made thereto coincident with the proposed merger.

Upon consummation of the Plan of Merger, there would be outstanding 57,876 shares of 5 percent convertible, cumulative preferred stock, par value \$10 per share; 1,405 shares of 5 percent convertible, noncumulative preferred stock, par value \$100 per share, and 1,741,624 shares of common stock, par value \$0.25 per share, having a pro forma net asset value, as of June 30, 1963, of \$1.19 per share. Such common stock would be held as follows: by the present stockholders of TCA (other than TMC and Resort)—1,057,313 shares, or 60.7 percent; by the present minority stockholders of Resort—409,614 shares, or 23.5 percent; and by the present minority stockholders of TMC—274,697 shares, or 15.8 percent.

The application states that the approvals of the stockholders of TCA, TMC, and Reincorporated TMC, which would ordinarily be required under applicable state law or the certificate of incorporation of TCA, with respect to various steps in the Plan of Merger, are not required since the merger is to be effected in compliance with the May 31, 1961, order of the United States District Court for the District of New Jersey. The approval of the common stockholders of Resort, however, will be sought.

After the merger has been effected, the surviving corporation will apply to the Commission for an order pursuant to section 8(f) of the Act that TMC, both in its original and reincorporated forms, has ceased to be an investment company, and that its registrations under the Act shall cease to be in effect.

The surviving corporation will call a meeting of its shareholders for the purpose of approving, pursuant to section 13(a)(4) of the Act, a change in the nature of its business so as to cease to be an investment company, and to approve the filing with the Commission of an application for an order under section 8(f) of the Act finding that the surviving corporation has ceased to be an investment company.

It is ordered, Pursuant to section 40(a) of the Act, that a hearing on the Plan of Merger and on the aforesaid application under the applicable provisions of the Act and of the rules of the Commission thereunder be held on the 20th day of January 1964, at 10:00 a.m., in the offices of the Securities and Exchange Commission, 425 Second Street NW., Washington, D.C., 20549. At such time the Hearing Room Clerk will advise as to the room in which such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in this proceeding is directed to file with the Sec-

retary of the Commission his application as provided by Rule 9(c) of the Commission's rules of practice, on or before the date provided in the Rule, setting forth any issues of law or fact which he desires to controvert or any additional issues which he deems raised by this notice and order or by such application.

It is further ordered, That Sidney Gross, or any officer or officers of the Commission, designated by it for that purpose, shall preside at said hearing. The officer so designated is hereby authorized to exercise all the powers granted to the Commission under sections 41 and 42(b) of the Investment Company Act of 1940 and to a hearing officer under the Commission's Rules of Practice.

The Division of Corporate Regulation having advised the Commission that it has made a preliminary study of the Plan of Merger and application for exemptions, and that upon the basis thereof the following matters and questions are presented for consideration, without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether: (A) the consideration to be paid and received with respect to the transfer of assets or securities among TCA, TMC, and Resort, and affiliated persons thereof, is reasonable and fair and does not involve overreaching on the part of any person concerned; (B) the proposed transactions are consistent with the policy of each registered investment company concerned as recited in its registration statement and reports filed under the Act; and (C) the proposed transactions are consistent with the general purposes of the Act.

(2) Whether the acquisition by TCA of its common stock held by Resort and to be held by Reincorporated TMC, and the acquisition by Reincorporated TMC of its Class A nonvoting common stock to be held by TCA and Resort, will be made in a manner or on a basis which will not unfairly discriminate against any holders of the class or classes of securities to be purchased.

It is further ordered, That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this Notice and Order by registered mail to the Interim Board of TCA and TMC and to Resort and that notice to all other persons be given by publication of this notice and order in the FEDERAL REGISTER, and that a general release of this Commission in respect of this notice and order be distributed to the press and mailed to the mailing list for releases.

It is further ordered, That TCA, TMC and Resort mail a copy of this Notice and Order to each of its respective stockholders of record, at his last known address, at least 15 days before the date set for hearing hereon.

It is further ordered, That TCA mail a copy of this notice and order to Bankers Trust Company, trustee under the indenture securing the TCA debentures, and to each holder of record of such debentures, and that TCA cause a copy of this notice and order to be mailed to

each holder of record of the outstanding Resort debentures, at the last known address of each such person, at least 15 days before the date set for hearing hereon.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 63-13351; Filed, Dec. 26, 1963; 8:46 a.m.]

[File No. 811-851]

MIDWEST TECHNICAL DEVELOPMENT CORP.

Notice of Filing of Application for an Order Granting an Exemption

DECEMBER 23, 1963.

In the matter of Midwest Technical Development Corporation, 1615 First National Bank Building, Minneapolis 2, Minnesota, File No. 811-851.

Notice is hereby given that an application has been filed pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting from the provisions of section 16(a) of the Act the proposed filling of not more than eight vacancies on the board of directors of Midwest Technical Development Corporation ("Midwest") until the 1964 annual meeting of Midwest's shareholders scheduled to be held on March 3, 1964. Midwest is a management, closed-end non-diversified investment company which has been registered under the Act since November 20, 1958. At the present time Midwest has approximately 5,000 shareholders.

On May 1, 1962 the Commission commenced a civil lawsuit in the United States District Court for the District of Minnesota, Fourth Division, against Midwest and certain of its officers and directors seeking, among other things, an order enjoining certain directors and officers of Midwest from violating the provisions of sections 13(a), 17(a), 17(d) and Rule 17d-1 thereunder, 20(a), 21(a) and 30(b) and Rule 30b1-1 thereunder. On December 13, 1963 the Court entered a final decree enjoining the individual defendants who are currently serving as directors and officers of Midwest from violating the above-mentioned provisions of the Act. Following the entry of the final decree the enjoined directors and officers resigned from their positions thereby reducing the number of directors to three which is less than the quorum requirements set forth in Midwest's bylaws.

At the annual meeting of Midwest's shareholders which was held on March 6, 1962 the shareholders voted to set the number of members of the board of directors at fifteen and elected fifteen directors. As a result of resignations submitted by directors of Midwest, the number of directors of Midwest decreased to nine individuals on December 13, 1963 including six individuals who were defendants in the above-mentioned lawsuit, thereby leaving nine vacancies on Midwest's board of directors. Under the provisions of Midwest's bylaws a majority of the board of directors,

or eight directors, must be present to constitute a quorum for the transaction of business. The application states that these six individuals have resigned as directors since the entry of the Court's final decree. Consequently, there are an insufficient number of directors to constitute a quorum and the present members of Midwest's board of directors are unable to transact any business until at least five additional directors are elected.

Section 16(a) of the Act provides that no person shall serve as a director of a registered investment company unless elected by the holders of the outstanding voting securities of such company at an annual or a special meeting duly called for that purpose; except that vacancies occurring between such meetings may be filled in any otherwise legal manner if immediately after filling any such vacancy at least two-thirds of the directors then holding office shall have been elected to such office by the holders of the outstanding voting securities of the company at such an annual or special meeting. In the event that at any time less than a majority of the directors of such company holding office at that time were so elected by the holders of the outstanding voting securities, the board of directors or proper officer of such company shall forthwith cause to be held as promptly as possible and in any event within sixty days a meeting of such holders for the purpose of electing directors to fill any existing vacancies in the board of directors unless the Commission by order shall extend such period.

Section 6(c) of the Act provides, among other things, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In order for Midwest's board of directors to be able to transact business there must be a quorum of eight directors present at a meeting of Midwest's board of directors. An exemption from all the provisions of section 16(a) is necessary to enable the present directors of Midwest to fill at least five of the vacancies on Midwest's board of directors so that the quorum requirement may be met; and following such action to allow the board of directors of Midwest to serve until the 1964 annual meeting of Midwest's stockholders which is scheduled to be held on March 3, 1964.

Notice is further given that any interested person may, not later than January 3, 1964, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy

of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the address set forth above. Proof of such service by affidavit (or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 63-13387; Filed, Dec. 26, 1963;
8:49 a.m.]

[File No. 1-3421]

CONTINENTAL VENDING MACHINE CORP.

Order Summarily Suspending Trading

DECEMBER 20, 1963.

The common stock, 10 cents par value, of Continental Vending Machine Corp., being listed and registered on the American Stock Exchange and having unlisted trading privileges on the Philadelphia-Baltimore-Washington Stock Exchange, and the 6 percent convertible subordinated debentures due September 1, 1976 being listed and registered on the American Stock Exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such securities on such Exchanges and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c) (2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of any such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to Section 19 (a) (4) of the Securities Exchange Act of 1934, that trading in such securities on the American Stock Exchange and the Philadelphia-Baltimore-Washington Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for the period December 23, 1963 through January 1, 1964, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 63-13349; Filed, Dec. 26, 1963;
8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 450]

CALIFORNIA

Declaration of Disaster Area

Whereas, it has been reported that during the month of December, 1963, because of the effects of certain disasters, damage resulted to residences and business property located in Los Angeles County in the State of California;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) (1) of the Small Business Act, as amended, may be received and considered by the Offices below indicated from persons or firms whose property, situated in the aforesaid County and areas adjacent thereto, suffered damage or destruction resulting from flood, inundation and accompanying conditions occurring on or about December 14, 1963.

Offices: Small Business Administration Regional Office, 312 West Fifth Street, Los Angeles 13, Calif. Small Business Administration Temporary Office, Dorsey High School, 3537 Farndale Avenue, Los Angeles, Calif.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to June 30, 1964.

Dated: December 14, 1963.

EUGENE P. FOLEY,
Administrator.

[F.R. Doc. 63-13352; Filed, Dec. 26, 1963;
8:46 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. RI64-394-RI64-406]

BETA DEVELOPMENT CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates ¹

DECEMBER 19, 1963.

Beta Development Company, Docket No. RI64-394; Continental Oil Company, Docket No. RI64-395; J. L. Mills, et al., Docket No. RI64-396; John A. Egan (Operator), et al., Docket No. RI64-397; Northwest Production Corporation (Operator), et al., Docket No. RI64-398; Mercury Drilling Company, et al., Docket No. RI64-399; Cabot Corporation (SW), Docket No. RI64-400; Columbian Fuel

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.

Corporation, Docket No. RI64-401; Cities Service Oil Company, Docket No. RI64-402; Jones-O'Brien, Inc. (Operator), et al., Docket No. RI64-403; Christie, Mitchell and Mitchell Company (Operator), et al., Docket No. RI64-404; Gra-

ridge Corporation (Operator), et al., Docket No. RI64-405; W. L. Moody, III, d.b.a. Moody Properties (Operator), et al., Docket No. RI64-406.

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, which constitute increased rates and charges, are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI64-394...	Beta Development Co., Mid-Continent Building, Fort Worth 2, Tex., Attn: Mr. T. N. Shults.	1	9	El Paso Natural Gas Co. (San Juan Field, San Juan County, N. Mex.). (San Juan Basin Area).	\$182,410	11-18-63	21-1-64	6-1-64	413.0	44414.0	-----
RI64-395...	Continental Oil Co., P.O. Box 2197, Houston, Tex., 77001, Attn: Mr. Fred T. O'Leary.	198	3	El Paso Natural Gas Co. (Northeast Haynes Area, Rio Arriba County, N. Mex.). (San Juan Basin Area).	1,967	11-18-63	21-1-64	6-1-64	413.2295	44414.2486	RI64-30
RI64-396...	J. L. Mills, et al., Philtower Building, Tulsa, Okla.	1	1	El Paso Natural Gas Co. (Basin Dakota Field, San Juan County, N. Mex.). (San Juan Basin Area).	545	11-20-63	21-1-64	6-1-64	413.0	44414.0	-----
RI64-397...	John A. Egan (Operator), et al., P.O. Box 208, Farmington, N. Mex.	4	2	El Paso Natural Gas Co. (Rio Arriba County, N. Mex.). (San Juan Basin Area).	1,800	11-21-63	21-1-64	6-1-64	13.0	4414.0	-----
RI64-398...	Northwest Production Corp. (Operator), et al., P.O. Box 1796, El Paso, Tex., 79049.	1	63	El Paso Natural Gas Co. (Various Fields, Rio Arriba and San Juan Counties, N. Mex., and La Plata County, Colo.) (San Juan Basin and Colorado Areas).	24,962	11-21-63	21-1-64	6-1-64	413.0	447814.0577	-----
RI64-399...	Mercury Drilling Co., et al., 5138 S. Peoria, Suite 219, Tulsa, Okla.	4	1	Cities Service Gas Co. (Eureka Field, Grant County, Okla.) (Oklahoma "Other" Area).	360	11-18-63	12-19-63	5-19-64	1112.0	3101113.0	-----
RI64-400...	Cabot Corporation (SW) P.O. Box 1101, Pampa, Tex.	27	7	Colorado Interstate Gas Co. (Keyes Field, Texas County, Okla.) (Panhandle Area).	7,350	11-20-63	12-1-64	6-1-64	1616.0	18101417.0	G-17153
	do.	45	1	Colorado Interstate Gas Co. (Keyes Field, Cimarron County, Okla.) (Panhandle Area).	400	11-20-63	12-1-64	6-1-64	1716.0	18101617.0	-----
RI64-401...	Columbian Fuel Corp., 401 Dewey Avenue, Bartlesville, Okla.	35	3	Colorado Interstate Gas Co. (Greenwood Field, Morton County, Kans.).	250	11-21-63	12-1-64	6-1-64	1816.0	3101517.0	RI60-171
	do.	34	3	Colorado Interstate Gas Co. (Hugoton Field, Grant, Haskell and Kearny Counties, Kans.).	17,000	11-21-63	12-1-64	6-1-64	1112.5	3101113.5	RI63-248
RI64-402...	Cities Service Oil Co., Cities Service Building, Bartlesville, Okla.	156	2	Colorado Interstate Gas Co. (Boehm Field, Morton County, Kans.).	9,780	11-21-63	12-1-64	6-1-64	1116.0	3101117.0	-----
	do.	158	2	Colorado Interstate Gas Co. (West Kansas Deep Field, Haskell County, Kans.).	1,760	11-21-63	12-1-64	6-1-64	1116.0	3101117.0	-----
RI64-403...	Jones-O'Brien, Inc. (Operator), et al., P.O. Box 1447, Shreveport, La.	5	12	Texas Eastern Transmission Corp. (Bethany-Longstreet Field, Caddo and DeSoto Parishes, La.).	122,987	11-20-63	12-21-63	5-21-64	102015.8007	3102016.8263	-----
RI64-404...	Christie, Mitchell and Mitchell Co. (Operator), et al., 12th Floor, Houston Club Building, Houston 2, Tex.	19	31	Natural Gas Pipeline Co. of America (Wise County Area, Wise, Jack and Parker Counties, Tex.) (R.R. Dist. Nos. 7-b and 9).	345,881	11-21-63	12-27-63	5-27-64	302415.090	310222016.120	RI61-239
RI64-405...	Graridge Corp. (Operator), et al., P.O. Box 752, Breckenridge, Tex., Attn: C. R. Anderson, Attorney.	14	4	Tennessee Gas Transmission Co. (Alligator Bayou Field, Chambers County, Tex.) (R.R. District No. 3).	4,015	11-21-63	12-1-64	6-1-64	11212616.16947	310112617.16947	-----
RI64-406...	W. L. Moody, III, et al., d.b.a. Moody Properties (Operator), et al., 636 Wilson Building, Corpus Christi, Tex.	1	6	South Texas Natural Gas Gathering Co. (Cano and Santa Rita Field, Hidalgo County, Tex.) (R.R. District No. 4).	1,470	11-21-63	12-1-64	6-1-64	11212614.5	310112615.5	-----

¹ Contractually provided for effective date.

² Periodic rate increase.

³ Includes 1.0 cent per Mcf added to reflect minimum guarantee for liquids.

⁴ Pressure base is 15.025 psia.

⁵ Reflects 1.0 cent per Mcf periodic and proportionate tax reimbursement.

⁶ Reflects 1.0 cent periodic and partial reimbursement for the 0.55 percent in the New Mexico Oil and Gas Emergency School Tax.

⁷ For gas delivered at 500 psig.

⁸ The stated effective date is the first day after expiration of the required statutory notice.

⁹ Pressure base is 14.65 psia.

¹⁰ Subject to downward Btu adjustment.

¹¹ The stated effective date is the effective date proposed by Respondent.

¹² Renegotiated rate increase.

¹³ Subject to an upward and downward Btu adjustment (net rate for 920 Btu gas is 15.64 cents per Mcf).

¹⁴ Subject to an upward and downward Btu adjustment (net rate for 920 Btu gas is 14.72 cents per Mcf).

¹⁵ Subject to an upward and downward Btu adjustment (net rate for 920 Btu gas is 14.72 cents per Mcf).

¹⁶ Subject to an upward and downward Btu adjustment (net rate for 920 Btu gas is 14.72 cents per Mcf).

¹⁷ Subject to an upward and downward Btu adjustment (net rate for 920 Btu gas is 14.72 cents per Mcf).

¹⁸ Subject to an upward and downward Btu adjustment (net rate for 920 Btu gas is 14.72 cents per Mcf).

¹⁹ Subject to an upward and downward Btu adjustment (net rate for 920 Btu gas is 14.72 cents per Mcf).

²⁰ Subject to an upward and downward Btu adjustment (net rate for 920 Btu gas is 14.72 cents per Mcf).

¹⁶ Subject to an upward and downward Btu adjustment (net rate for 813 Btu gas is 13.821 cents per Mcf).

¹⁷ Subject to an upward and downward Btu adjustment (net rate for 813 Btu gas is 13.008 cents per Mcf).

¹⁸ Subject to an upward and downward Btu adjustment.

¹⁹ Includes 1.75 cents per Mcf tax reimbursement.

²⁰ Does not apply to non-signatory party sellers to offer of settlement approved by the Commission's order issued Dec. 29, 1959, in Docket Nos. G-11338, et al.

²¹ Initial rate.

²² Increase also includes adjustment for 1058 Btu content.

²³ Rate includes a 0.25 cent per Mcf reimbursement by buyer for dehydration.

²⁴ Last previously reported rate based on adjustment for 1060 Btu. Proposed rate adjusted for 1058 Btu. Seller in turn pays third party 0.25 cent for dehydration.

²⁵ Rates subject to upward and downward adjustment for Btu variation from 1000 Btu's and adjustment for pressure variation from 650 pounds.

²⁶ Rate includes 0.21931 cent reimbursement by buyer for dehydration.

²⁷ Rate subject to deduction by buyer of 2.5 cents per Mcf for compression and 0.25 cent per Mcf for dehydration.

²⁸ Rate subject to deduction by buyer of 2.5 cents per Mcf for compression and 0.25 cent per Mcf for dehydration.

²⁹ Rate subject to deduction by buyer of 2.5 cents per Mcf for compression and 0.25 cent per Mcf for dehydration.

³⁰ Rate subject to deduction by buyer of 2.5 cents per Mcf for compression and 0.25 cent per Mcf for dehydration.

³¹ Rate subject to deduction by buyer of 2.5 cents per Mcf for compression and 0.25 cent per Mcf for dehydration.

³² Rate subject to deduction by buyer of 2.5 cents per Mcf for compression and 0.25 cent per Mcf for dehydration.

Mercury Drilling Company, et al., (Mercury) request a retroactive effective date of January 1, 1960, for their proposed rate increase. Jones-O'Brien, Inc. (Operator), et al., request that their proposed rate increase be permitted to become effective as of November 1, 1963. Good cause has not been shown for the granting of an earlier effective date for the aforementioned producers' rate filings and such request are denied.

The proposed rate increases filed by Beta Development Company, Continental Oil Company (Continental) and J. L. Mills, et al., provide for tax reimbursement computed on the contract base rate of 12.0 cents per Mcf exclusive of the 1.0 cent per Mcf minimum guarantee for liquids. The addition of this minimum guarantee of 1.0 cent per Mcf to the base rate of 12.0 cents per Mcf plus tax reimbursement results in a total proposed rate in excess of the 13.0 cents per Mcf area ceiling for increased rates in the San Juan Basin Area.

Continental's proposed increased rate reflects partial reimbursement for the full 2.55 percent New Mexico Oil and Gas Emergency School Tax which was increased from 2.0 percent to 2.55 percent on April 1, 1963. The buyer, El Paso Natural Gas Company (El Paso) has protested Continental's rate filing. El Paso questions the right of Continental under its tax reimbursement clause to file a rate increase reflecting tax reimbursement computed on the basis of an increase in tax rate by the New Mexico Legislature in excess of 0.55 percent. While El Paso concedes that the New Mexico tax legislation effected a higher tax rate of at least 0.55 percent, El Paso claims there is controversy as to whether or not the new legislation effected an increased tax rate in excess of 0.55 percent. Under the circumstances, we shall provide that the hearing provided for herein with respect to Continental's rate filing shall concern itself with the contractual basis as well as the statutory lawfulness of Continental's proposed rate increase.

Northwest Production Corporation (Operator), et al., (Northwest) proposed increased rate is suspended because it exceeds the applicable area ceiling price and also because it relates to sales made by Northwest to its affiliate, El Paso Natural Gas Company.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR, Chapter I, Part 2, § 2.56).

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(A) 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 contractual basis of Continental's proposed rate filing which El Paso has protested, and the statutory lawfulness of all of the

producers' proposed rate changes, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

(B) Pending hearings and decisions thereon, the above-designated rate supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date 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 February 5, 1964.

By the Commission. Commissioner Woodward did not participate in the suspension of the filings in Docket No. RI64-394, Beta Development Company; Docket No. RI64-395, Continental Oil Company and Docket No. RI64-396, J. L. Mills, et al.

[SEAL]

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-13353; Filed, Dec. 26, 1963;
8:46 a.m.]

[Project No. 2418]

CENTRAL ILLINOIS ELECTRIC AND GAS CO.

Notice of Application for License

DECEMBER 19, 1963.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Central Illinois Electric and Gas Company (correspondence to: L. S. Berry, Vice President, Central Illinois Electric and Gas Company, 303 North Main Street, Rockford, Illinois) for license for constructed Project No. 2418, known as the Fordam Dam Project, located on the Rock River, in County of Winnebago, near the City of Rockford, State of Illinois.

The project consists of: a 635-foot long reinforced concrete dam varying from 10 to 12 feet in height with 1 foot 8 inch flashboards, and including one 19-foot fish ladder, a headrace about 54 feet wide and 280 feet long; a reinforced concrete and brick wheel house containing two 750 horsepower water wheels connected to two electric generators rated at 600 kilowatts each; and appurtenant electrical and mechanical facilities.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Rules of Practice and Procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is February 15, 1964. The application is on

file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-13354; Filed, Dec. 26, 1963;
8:46 a.m.]

[Docket No. RI64-407]

ELIAS FLOYD FOX

Order Providing for Hearings on and Suspension of Proposed Change in Rate; and Allowing Rate Change to Become Effective Subject to Refund

DECEMBER 19, 1963.

On November 26, 1963, Elias Floyd Fox (Fox)¹ tendered for filing a proposed change in his presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated November 12, 1963.

Purchaser and Producing Area: Cabot Corporation (GLC) (Big Springs Field, Calhoun County, West Virginia).

Rate Schedule Designation: Supplement No. 5 to Fox's FPC Gas Rate Schedule No. 1.

Effective Date: December 27, 1963.²

Amount of Annual Increase: \$128.

Effective Rate: 12.0 cents per Mcf.

Proposed Rate: 13.824 cents per Mcf.³

Pressure Base: 15.325 psia.

Although Fox's proposed increased rate is below the applicable area ceiling price for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR, Chapter I, Part 2, § 2.56), it is geared to the buyer's, Cabot Corporation (GLC), resale rate which is in effect subject to refund. Under the circumstances, Fox's proposed increase should be suspended for one day from December 27, 1963, the date of expiration of the 30-days' statutory notice.

The proposed changed rate and charge 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 a hearing concerning the lawfulness of the proposed change, and that Supplement No. 5 to Fox's FPC Gas Rate Schedule No. 1 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

¹ Address is: Big Springs, West Virginia.

² The stated effective date is the first day after expiration of the required thirty days' notice.

³ The contract provides that seller shall have 60 percent of whatever buyer receives as an increase from his selling price to Hope Natural Gas Company. The proposed increase to buyer's selling price is presently in effect subject to refund in Docket No. RI61-308.

of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 5 to Fox's FPC Gas Rate Schedule No. 1.

(B) Pending a hearing and decision thereon, Supplement No. 5 to Fox's FPC Gas Rate Schedule No. 1 is hereby suspended and the use thereof deferred until December 28, 1963, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act: *Provided, however*, That said supplement shall become effective subject to refund on December 28, 1963, if within 20 days from the date of the issuance of this order Fox shall execute and file under Docket No. RI64-407, with the Secretary of the Commission, its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon the purchaser under the rate schedule involved. Unless Fox is advised to the contrary within 15 days after the filing of his agreement and undertaking, such agreement undertaking shall be deemed to have been accepted.

(C) Neither the supplement hereby suspended, nor the rate schedule 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) 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 February 5, 1964.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-13355; Filed, Dec. 26, 1963;
8:46 a.m.]

[Docket No. G-13221 etc.]

UNION TEXAS PETROLEUM ET AL.

Order Severing Proceedings, Conditionally Approving Settlement Proposal and Conditionally Issuing Certificate of Public Convenience and Necessity

DECEMBER 18, 1963.

Union Texas Petroleum, et al., Docket No. G-13221, et al.; Union Texas Petroleum, a division of Allied Chemical Corporation, Docket No. G-14227; Joseph E. Seagram & Sons, Inc. d.b.a. Frankfort Oil Company, Docket No. CI61-1412.

On October 30, 1963, Union Texas Petroleum, a division of Allied Chemical Corporation (Union Texas) and Joseph E. Seagram & Sons, Inc. d.b.a. Frankfort Oil Company (Seagram) filed a motion for severance of Docket Nos. G-14227 and CI61-1412 from the consolidated proceeding Union Texas Petroleum, et al.,

Docket Nos. G-13221, et al., for the issuance of a certificate of public convenience and necessity in Docket No. CI61-1412 in accordance with the application and attached settlement proposal and for an order vacating the authority in Docket No. G-14227 to sell gas produced in the Chegby Field, St. James and La Fourche Parishes, Louisiana. An amendment to the settlement offer was filed on December 11, 1963.

A certificate of public convenience and necessity was originally issued in Docket No. G-14227 in 1958. Transcontinental Gas Pipe Line Corporation, 20 FPC 264. This certificate was issued to Union Texas (formerly Union Oil and Gas Corporation of Louisiana) and sales commenced under Union Texas' F.P.C. Gas Rate Schedule No. 9. Effective November 1, 1960, the Union Texas leases in the Chegby Field were assigned to Seagram and, on March 29, 1961, Seagram filed an application in Docket No. CI61-1412 for authority to continue the sales from the Chegby Field. However, the order issuing the certificate to Union Texas in Docket No. G-14227 was remanded to the Commission in Public Service Commission of New York v. F.P.C., 361 U.S. 195. Subsequently, on July 30, 1962, in accordance with a settlement agreement, the certificate was reissued to Union Texas in Docket No. G-14227 except insofar as it concerned the acreage in the Chegby Field. Texaco Inc., 28 FPC 247.

Union Texas and Seagram in the instant motion and settlement offer propose to settle the Chegby Field aspect upon terms similar to the settlement terms approved by the Commission in Docket No. G-14227 on July 30, 1962.

The settlement proposes a future price of 20.625¢ per Mcf,¹ effective July 1, 1962; a five year moratorium on rate increase filings, except that such filings may be made (1) prior to the end of the moratorium period to the extent that the maximum suspension period under section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such period and, (2) at any time for reimbursement of one-half the amount of increased taxes provided that such increase does not exceed the reimbursement to which Seagram is entitled by contract; refunds by Union Texas and Seagram for periods prior to July 1, 1962, of two-thirds of the difference between the charges they have collected and those they would have collected at the settlement rate; refunds of the full difference for periods subsequent to June 30, 1962; interest on all amounts to be refunded at a rate of 6 percent per annum as to volumes delivered before March 1, 1960 and at 7 percent as to volumes delivered after that date, such interest to accrue through October 31, 1963; extension of the take-or-pay make-up period to four years.

Union Texas will pay a total of \$10,-832.08 of principal and interest and Seagram will pay the remainder.

¹ Inclusive of tax reimbursement; pressure base 15.025 psia.

We find this proposal generally to be in the public interest and shall approve it subject to the following reservations and conditions.

In the context of the proposal we interpret the term "delivered" as used in paragraph 1 of the proposal to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61-2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61-2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61-2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, et al., Docket Nos. G-13221, et al., omit the intermediate decision in regard to these dockets² and issue a certificate of public convenience and necessity in Docket No. CI61-1412 in accordance with the application, settlement proposal and conditions of this order. The matter in Docket No. G-14227 will be terminated insofar as it concerns the Chegby Field.

The Commission finds:

(1) Joseph E. Seagram & Sons, Inc., is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) Seagram is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, is required by the public convenience and necessity and is in the public interest upon the conditions set forth below, and a certificate should be issued as ordered below.

² The hearings in the Union Texas Petroleum, et al., consolidated proceeding concluded July 25, 1963.

(5) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decisions is granted.

(B) The matters in Docket Nos. G-14227 and CI61-1412 are hereby severed from the consolidated proceeding Union Texas Petroleum, et al., Docket Nos. G-13221, et al.

(C) A certificate of public convenience and necessity is hereby issued upon the conditions set forth herein to Joseph E. Seagram & Sons, Inc., d.b.a. Frankfort Oil Company for the sales of natural gas in interstate commerce for resale as proposed in Docket No. CI61-1412 and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Seagram's application and settlement proposal herein.

(D) The certificate issued by paragraph (C) above, is granted upon the express condition that Seagram and Union Texas comply fully with the terms of this order and the settlement proposal, as amended, which settlement is expressly approved, under the conditions of this order.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Seagram and Union Texas shall report to the Commission, in triplicate, the amount of the refunds made to the pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchaser showing receipt of the refunds in conformity with the settlement as approved.

(F) Upon full compliance of Seagram and Union Texas with all the terms of this order and of the settlement proposal, Seagram and Union Texas shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificate herein issued is not transferable and shall be effective only so long as Seagram continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the regulations thereunder: *Provided, however*, That the 30-day notice provision of § 154.94(b) and the detailed submittal requirements of § 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(I) The grant of the certificate herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter

be made by the Commission in any proceeding now pending or hereafter instituted by or against Union Texas and Seagram, particularly any proceeding under section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Union Texas, Seagram, the Commission staff, or any affected party herein in any other proceeding.

(J) Upon full compliance of Union Texas and Seagram with all the terms

of this order and the settlement proposal, Joseph E. Seagram & Sons, Inc., d.b.a. Frankfort Oil Company's Rate Schedule No. 6 and supplements Nos. 1, 3, and 4 thereto shall be accepted for filing effective November 1, 1960, and Supplement No. 2 shall be accepted for filing effective January 30, 1961.

By the Commission.

[SEAL] JOSEPH H. GUTRIE,
Secretary.

APPENDIX

	R.S. No.	Docket No.	Present rate (cents Mcf)	Settlement rate (cents Mcf)	Buyer
Joseph Seagram & Sons, Inc. d.b.a. Frankfort Oil Co.	6	CI61-1412 ----	23.05	20.625	Transcontinental Gas P/L Corp.
Union Texas Petroleum, a division of Allied Chemical Corp.	9	G-14227 -----	(1)	20.625	

¹ Union Texas conveyed the acreage herein to Seagram as of Nov. 1, 1960. Initially certificated rate was 23.55 cents per Mcf.

[F.R. Doc. 63-13356; Filed, Dec. 26, 1963; 8:46 a.m.]

[Docket Nos. CP62-57, CP64-109]

FUEL RESEARCH COUNCIL, INC., ET AL.

Notice of Application and Date of Hearing, and Order Granting Motion To Vacate Show Cause Order as Moot, Denying Motion for Interim Relief, Denying Request for Temporary Certificate, Granting Petitions To Intervene, and Severing and Terminating Proceeding in Docket No. CP62-57

DECEMBER 18, 1963.

Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, and Mid-West Coal Producers Institute, Inc., v. Michigan Wisconsin Pipe Line Company, Docket No. CP62-57; Michigan Wisconsin Pipe Line Company, Docket No. CP64-109.

Take notice that Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), a Delaware corporation with principal place of business at One Woodward Avenue, Detroit, Michigan, 48226, filed on November 12, 1963, in Docket No. CP64-109, an application for a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, authorizing it to construct and operate facilities required for the sale and delivery of natural gas to Wisconsin Public Service Corporation (Public Service) for use in the latter's electric generating station located at a point near Weston, Wisconsin, subject to the jurisdiction of the Commission, as herein-after described and as more fully represented in the application which is on file with the Commission and open for public inspection.

The facilities for which Michigan Wisconsin seeks certificate authorization are located at a point about 18 miles from the origin of Michigan Wisconsin's branch line which extends northward to Tomahawk, Wisconsin. The facilities consist of a tap on the Tomahawk branch line and 3,972 feet of eight-inch pipeline

extending westward from the tap to a meter station. The cost of the facilities, including payment for acquirement of site and rights-of-way and allowance for overheads and interest during construction, is \$48,655. A balance sheet attached to the application indicates that Michigan Wisconsin could finance the facilities from cash on hand.

Exhibit N to Michigan Wisconsin's application shows that annual volumes of about 6,284,040 Mcf of gas would be delivered to Public Service for consumption in the Weston generating plant, and that of the total volume, approximately 2,850,028 Mcf would be sold under Michigan Wisconsin's ACQ-1 Rate Schedule and 3,434,012 Mcf would be sold under Michigan Wisconsin's OS-1 Rate Schedule.

The above-described application was filed in response to the Commission's order issued October 30, 1963, in Docket No. CP62-57, requiring Michigan Wisconsin to show cause why it should not be ordered to file an application for authority to construct and operate the facilities it had already constructed for the purpose of delivering gas to Public Service for use in its Weston plant. Concurrently with the filing of its application in Docket No. CP64-109, Michigan Wisconsin filed on November 12, 1963, a motion requesting that the aforesaid show cause order be vacated as moot because Michigan Wisconsin had, by voluntarily filing its application in Docket No. CP64-109, taken the action which would have been the subject of the show cause proceeding in Docket No. CP62-57. It appears that Michigan Wisconsin's filing of an application for a certificate authorizing it to construct and operate the Weston delivery facilities does render the show cause order moot.

On November 13, 1963, Public Service filed a motion for interim relief from paragraph (B) of the Commission's show cause order issued October 30, 1963. Paragraph (B) of the show cause order had prohibited Michigan Wisconsin from *** utilizing facilities, heretofore

constructed without apparent authority, for making deliveries of natural gas to Public Service for use by the latter in its Weston generating station prior to the issuance by the Commission of a final order in this proceeding." Public Service's eight-page motion alleges that the economic effect upon its operations of the discontinuance of gas deliveries to the Weston plant will be severe; otherwise, the motion is devoted to arguments asserting that the show cause order should not have been issued.

On November 22, 1963, the Fuels Research Council, Inc., et al. (Coal Petitioners), filed an answer to the aforementioned motions of Michigan Wisconsin and Public Service. The Coal Petitioners' answer indicates that they agree that Michigan Wisconsin's filing of its application in Docket No. CP64-109 did render moot our show cause order in Docket No. CP62-57. As to Public Service's motion for interim relief from paragraph (B) of the show cause order, however, the Coal Petitioners correctly observe that " * * * Since there is no authority under which deliveries of gas can lawfully be made to Weston, no relief can be granted to Public Service in * * * " Docket No. CP62-57.

The Public Service Commission of Wisconsin, on November 18, 1963, filed an answer in support of Public Service's motion for interim relief from ordering paragraph (B) of the Commission's show cause order. The Wisconsin Commission points out that the use of gas at Weston by Public Service was "a factor" in the reduction of Public Service's electric rates in an annual amount of \$1,750,000, and that discontinuance of natural-gas service at the Weston plant will work against the objective of maintaining the lowest possible fuel costs for generating electricity. The Wisconsin Commission's answer also requests that gas deliveries at Weston be continued, pending consideration of Michigan Wisconsin's application in Docket No. CP64-109, by "other appropriate means" in the event modification of paragraph (B) of the show cause order is considered to be an inappropriate means of resuming gas service to the Weston plant. We have already indicated above why modification of paragraph (B) of the show cause order would be an inappropriate way to restore gas service to Weston. Nevertheless, the Wisconsin Commission's request for restoration of service by "other appropriate means" will be considered as a filing in support of Michigan Wisconsin's application for a temporary certificate which Michigan Wisconsin filed November 12, 1963, in Docket No. CP64-109, seeking authorization to utilize the Weston delivery facilities for continuance of gas service to Public Service's Weston plant pending hearing and disposition of its application for a permanent certificate.

In support of its application for a temporary certificate Michigan Wisconsin alleges: (1) That the Weston delivery point was the cheapest way that could have been found for providing natural-gas service to Public Service's Weston generating plant; (2) that gas is cheaper than the coal which Public

Service will have to buy because of the Commission's requirement that gas deliveries be discontinued; (3) that Michigan Wisconsin had no reason to oppose Public Service's desire for a delivery point for the use of gas at its Weston plant; (4) that Michigan Wisconsin had "assumed" that it had authority to construct and operate the Weston facilities after the issuance of the Commission's order accompanying Opinion No. 336 in Michigan Wisconsin Pipe Line Co., 24 FPC 177; (5) that Public Service had already constructed 2.5 miles of pipeline to receive delivery of gas for its Weston plant and that the Coal Petitioners knew this for one year before they filed their petition for a show cause order and that the Commission didn't issue its show cause order for two years after the filing of the Coal Petitioners' petition; (6) that there is no "conceivable basis upon which" Michigan Wisconsin's application in Docket No. CP64-109 could be denied on the merits; (7) that the "balancing of the equities" requires maintenance of the status quo pending hearing and consideration of its application; (8) that Michigan Wisconsin relied upon the deliveries of gas to the Weston plant in its rate proceeding in Docket No. RP60-9 and in negotiating the "take-or-pay" provisions in its gas purchase contracts in the Woodward, Oklahoma, area in Michigan Wisconsin Pipe Line Co., 27 FPC 449; (9) that the sole beneficiaries of a refusal of the Commission to issue temporary authorization would be the Coal Petitioners whose stockholders would reap increased profits from the sale of the coal which Public Service will be forced to buy at unregulated prices; and (10) that denial of the temporary certificate would only add to the Coal Petitioners' incentive to delay the forthcoming hearing and disposition of Michigan Wisconsin's certificate application filed in Docket No. CP64-109.

On November 27, 1963, the Coal Petitioners also filed an answer in opposition to the granting of Michigan Wisconsin's request for a temporary certificate. The Coal Petitioners state in their answer in opposition to issuance of a temporary certificate: (1) That Michigan Wisconsin has neither alleged nor shown that an emergency exists which would prevent maintenance of adequate service to Michigan Wisconsin's customers; (2) that Michigan Wisconsin's request for a temporary certificate is primarily a defense to the Commission's show cause order and that this defense is misplaced in a proceeding where Michigan Wisconsin is requesting that the show cause order be vacated as moot; (3) that the only justification alleged by Michigan Wisconsin as grounds for the issuance of a temporary certificate is legally insufficient because such justification is based upon Michigan Wisconsin's own interpretation of the economic advantages to it and Public Service from making deliveries of gas at Weston and that Michigan Wisconsin's allegations in its request for a temporary certificate are in conflict with other facts stated by Michigan Wisconsin in its application for a permanent certificate; (4) that issuance of a temporary certificate would seemingly result in Michigan Wisconsin's

withdrawing gas from storage in order to make boiler fuel sales and would again raise the question mentioned by the Commission in its order issued November 12, 1963, in Michigan Wisconsin Pipe Line Co., et al., Docket Nos. CP63-230, et al. (p. 3), 30 FPC ----, as to whether Michigan Wisconsin and its customers have operated in a manner which is wholly consistent with the public interest; (5) that there is now an ample supply of coal available to meet all of Public Service's fuel requirements at its Weston plant and that the public will not want for an adequate fuel supply during the interim period necessary for the holding of a hearing and the rendering of a decision regarding Michigan Wisconsin's application; and (6) that issuance of a temporary certificate would be tantamount to a decision on the merits, contrary to the position taken by the Coal Petitioners, without affording them full opportunity for a complete hearing.

There is considerable validity to the contentions made by the Coal Petitioners' answer to Michigan Wisconsin's request for a temporary certificate. Our holding herein, that the filing by Michigan Wisconsin of its application in Docket No. CP64-109 has rendered the show cause order moot, makes further discussion of whether or not the Weston delivery facilities were constructed without authority irrelevant. It further appears that two issues to be considered in the hearing regarding Michigan Wisconsin's application is whether the sale of boiler fuel to the Weston plant is in the public interest, and whether, as we noted in our order issued in Docket Nos. CP63-230, et al., supra, Michigan Wisconsin's and Public Service's operations have been consistent with the public interest, particularly as to the period of time within which Public Service has consumed the ACQ related to the MDQ which it may have nominated for a specific contract year.

However, it is unnecessary to comment further upon either Michigan Wisconsin's or the Coal Petitioners' allegations because Michigan Wisconsin's request for a temporary certificate contains a very obvious and fatal deficiency as hereinafter indicated. Despite the fact that section 7(c) of the Act restricts the issuance of temporary certificates to " * * * cases of emergency, to assure maintenance of adequate service * * * ", Michigan Wisconsin did not allege at any place in its nine-page request for a temporary certificate that an emergency exists because we ordered it to stop delivering gas to Public Service for use in the latter's Weston generating station. In fact, the statements in Michigan Wisconsin's request for a temporary certificate do not even attempt to show that an emergency exists within the meaning of section 7 of the Natural Gas Act, and it necessarily follows that we cannot make the requisite finding that there is an emergency which would justify the issuance of a temporary certificate under the circumstances of this proceeding.

We do agree with Michigan Wisconsin that the "status quo" should be maintained pending the hearing and disposition of its application for a permanent

certificate. In our opinion, however, the status quo means that when Michigan Wisconsin filed its application, the parties were appropriately placed in the same position they would have been in had no facilities ever been constructed or any deliveries of gas ever initiated for serving the Weston plant. Therefore, notice of the filing of the application in Docket No. CP64-109 will be duly published in the FEDERAL REGISTER and the hearing thereon will be held, pursuant to section 7 of the Act, in the same manner as any other application is heard and decided. At the conclusion of that hearing, after all parties have had an opportunity to be heard, we shall determine whether operation of the Weston delivery facilities is required by the public convenience and necessity.

Petitions to intervene in the proceeding in Docket No. CP64-109 were filed on November 14, 1963, and November 27, 1963, by Public Service and the Coal Petitioners, respectively. On November 18, 1963, the Public Service Commission of Wisconsin filed a notice of intervention in Docket No. CP62-57 and on November 29, 1963, the Wisconsin Commission filed a notice of intervention in Docket No. CP64-109.

The Commission finds:

(1) The motion of Michigan Wisconsin to vacate the show cause order in Docket No. CP62-57 as moot should be granted and the proceeding in Docket No. CP62-57 should be terminated and severed from the hearing to be held on Michigan Wisconsin's application in Docket No. CP64-109.

(2) Public Service's motion for interim relief under paragraph (B) of the show cause order issued in Docket No. CP62-57 should be denied for the reasons that such order is hereinafter vacated and that there is no outstanding certificate authority under which deliveries of gas to Public Service's Weston plant can lawfully be made.

(3) Michigan Wisconsin's request for a temporary certificate in Docket No. CP64-109, and Public Service's and the Wisconsin Commission's motions in support thereof, should be denied because Michigan Wisconsin's and Public Service's failure to make a showing that an emergency exists within the meaning of the Natural Gas Act precludes the issuance of a temporary certificate authorizing deliveries of gas to the Weston plant pending hearing and disposition of the application for a permanent certificate in Docket No. CP64-109.

(4) It is desirable to grant the petitions to intervene of Public Service and the Coal Petitioners in order that they may establish the facts and law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) The show cause order issued October 30, 1963, in Docket No. CP62-57 is hereby vacated as moot because of Michigan Wisconsin's having filed its application in Docket No. CP64-109; the proceeding in Docket No. CP62-57 is hereby

terminated and severed from the hearing provided for in paragraph (D) hereof.

(B) Public Service's motion for interim relief from paragraph (B) of the show cause order issued in Docket No. CP62-57 is hereby denied for the reasons given in paragraph (2) of this order.

(C) Michigan Wisconsin's request for a temporary certificate in Docket No. CP64-109, together with Public Service's and the Wisconsin Commission's motions in support thereof, are hereby denied for the reason given in paragraph (3) of this order.

(D) Pursuant to the authority contained in, and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly sections 7, 14, 15, and 16, and the Commission's rules and regulations under that Act, a public hearing shall be held commencing January 21, 1964, at 10:00 a.m., (e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, concerning the matters involved in and the issues presented by the application in Docket No. CP64-109, particularly as those issues have been hereinbefore discussed.

(E) Protests or petitions to intervene in this proceeding may be filed with the Federal Power Commission, 441 G Street, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 9, 1964.

(F) Public Service and the Coal Petitioners be and they are hereby permitted to become interveners in the proceeding in Docket No. CP64-109 subject to the rules and regulations of the Commission: *Provided, however*, That the participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene: *And provided, further*, That the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-13357; Filed, Dec. 26, 1963;
8:46 a.m.]

[Project No. 2424]

NIAGARA MOHAWK POWER CORP.

Notice of Application for License

DECEMBER 19, 1963.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Niagara Mohawk Power Corporation (correspondence to: Lauman Martin, Vice President and General Counsel, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse 2, New York) for license for constructed Project No. 2424, known as the Hydraulic Race Project, located on the New York State Barge Canal in the City of Lockport, Niagara County, New York.

A regulator tunnel owned by the State of New York takes water through a gate structure in the south canal wall above Lock No. 35 at Lockport. Applicant's tunnel 12.5-foot in diameter connects with the State tunnel and conveys the water 140 feet to a steel penstock 13 feet in diameter and 99 feet long. The water passes through a single unit powerhouse, through a short tailrace, and back into the canal below Lock No. 34. The powerhouse contains one vertical type generating unit—2 Kaplan turbine with adjustable blades directly connected to a generator rated at 4,687 kilowatts. The project includes other mechanical and electrical appurtenances.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is February 5, 1964. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-13358; Filed, Dec. 26, 1963;
8:46 a.m.]

[Docket No. RI64-393]

**NORTHWEST PRODUCTION CORP.
ET AL.**

**Order Providing for Hearing on and
Suspension of Proposed Change in
Rate; and Allowing Rate Change to
Become Effective Subject to Refund**

DECEMBER 19, 1963.

On November 21, 1963, Northwest Production Corporation (Operator), et al., (Northwest)¹ tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated November 19, 1963.

Purchaser and Producing Area: El Paso Natural Gas Company (Various Fields, Rio Arriba and San Juan Counties, New Mexico, and La Plata County, Colorado) (San Juan Basin and Colorado Areas).

Rate Schedule Designation: Supplement No. 62 to Northwest's FPC Gas Rate Schedule No. 1.

Effective Date: January 1, 1964.²

Amount of Annual Increase: \$2.151.

Effective Rate: 11.0 cents per Mcf.³

Proposed Rate: 12.0495 cents per Mcf.⁴

Pressure Base: 15.025 psia.

Although Northwest's proposed increased rate is below the applicable area ceiling price for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18

¹ Address is: Post Office Box 1796, El Paso, Texas, 79949.

² The contractually provided for effective date.

³ Low pressure gas.

⁴ Reflects 1.0 cent per Mcf periodic and partial reimbursement for the 0.55 percent increase in the New Mexico Emergency School Tax.

CFR, Chapter I, Part 2, § 2.56), it relates to sales made to Northwest's affiliate, El Paso Natural Gas Company. Under the circumstances, Northwest's proposed increase should be suspended for one day from January 1, 1964, the proposed effective date.

The proposed changed rate and charge 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 a hearing concerning the lawfulness of the proposed change, and that Supplement No. 62 to Northwest's FPC Gas Rate Schedule No. 1 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, Chapter I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 62 to Northwest's FPC Gas Rate Schedule No. 1.

(B) Pending a hearing and decision thereon, Supplement No. 62 to Northwest's FPC Gas Rate Schedule No. 1 is hereby suspended and the use thereof deferred until January 2, 1964, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act: *Provided, however*, That said supplement shall become effective subject to refund on January 2, 1964, if within 20 days from the date of the issuance of this order Northwest shall execute and file under Docket No. RI64-393, with the Secretary of the Commission, its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon the purchaser under the rate schedule involved. Unless Northwest is advised to the contrary within 15 days after the filing of its agreement and undertaking, such agreement and undertaking shall be deemed to have been accepted.

(C) Neither the supplement hereby suspended, nor the rate schedule 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) 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 February 5, 1964.

By the Commission.

[SEAL]

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-13359; Filed, Dec. 26, 1963;
8:46 a.m.]

[Docket No. G-13221 etc.]

UNION TEXAS PETROLEUM ET AL.

Order Severing Proceedings, Conditionally Approving Settlement Proposals and Conditionally Issuing Certificates of Public Convenience and Necessity

DECEMBER 18, 1963.

Union Texas Petroleum, et al., Docket No. G-13221, et al.; Colorado Oil and Gas Corporation, Docket Nos. CI60-721 and CI63-813; Texas Gas Exploration Corporation (Operator), et al., Docket No. CI61-1125; Skelly Oil Company (Operator), et al., Docket No. CI61-1419; Texas Gas Exploration Corporation, Docket No. CI62-930.

Motions for severance, for approval of settlement proposals and for issuance of certificates of public convenience and necessity in their respective dockets were filed in the above-captioned proceedings on August 30, 1963, by Colorado Oil and Gas Corporation (Colorado); on September 10, 1963, by Texas Gas Exploration Corporation (Texas Exploration); and on September 16, 1963, by Skelly Oil Company (Skelly).

The settlement proposals are similar to those previously approved by the Commission¹ and provide for the issuance of permanent certificates at initial rates of 20.625 cents per Mcf² for sales from the taxing jurisdiction of the State of Louisiana and 19.0 cents per Mcf for a sale in the Federal domain, five year moratoria on rate increase filings commencing April 1, 1963 (subject to the usual exceptions), extension of the take-or-pay make-up periods to four years in all contracts which provide lesser make-up periods, and refunds of amounts above the settlement rate collected since the date of initial delivery in Docket No. CI61-1125 wherein the temporary authorization contains an express refund condition.³

No answers to these motions have been received.

These proposals, generally, are in the public interest and we shall approve them subject to the following reservations and conditions.

Since deliveries have been made at rates above the settlement rates since the proposed effective date, refunds of such excesses are required. Colorado and Skelly propose to pay interest on such amounts to be refunded at a rate of 7 percent per annum. Texas Exploration's proposal contains no interest provision. In accordance with our present policy, we shall require that interest at 7 percent per annum be paid on all amounts to be refunded under these settlement proposals, such interest to accrue through the last day of the month in which the respective proposals were filed, August 31, 1963, in the case of Colorado and September 30, 1963, in the cases of Skelly and Texas Exploration.

¹ See e.g., orders issued August 7, 1963, and October 9, 1963, in Union Texas Petroleum, et al., Docket Nos. G-13221, et al.

² All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

³ See Appendix for further details.

In the context of the proposals, we interpret the term "delivered" as used in paragraph 1 of the Colorado and Texas Exploration proposals and the term "sold" as used in the Skelly proposal to include gas required to be taken during the moratorium periods but paid for and not taken when paid for. In other words, prepayments shall not be made during the moratorium periods at rates higher than the rates in effect for gas physically delivered. Our approval of these settlements is conditioned upon such interpretation.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61-2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61-2. The settlement proposals also provide that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61-2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding and our approval of the settlements will be so conditioned.

On April 16, 1962, an amendatory agreement dated December 15, 1961, was filed by Skelly as Supplement No. 3 to its Rate Schedule No. 172. This supplement added thereto the interests of Columbian Carbon Company and Hudson Gas & Oil Corporation in certain acreage in the North Scott Field. The certificate issued below in Docket No. CI61-1419 will include such interests.

The "et al." sellers whose interests are covered by Texas Exploration's filings in Docket No. CI61-1125 and Rate Schedule No. 5 are, Sun Oil Company, Southwest Gas Producing Company, Inc., United Producing Company, Inc., H. B. Zachry, Charles B. Wrightsman, Arley A. Sarver and Line Service, Inc. The certificate issued below to Texas Exploration as Operator covers such interests.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, et al., Docket Nos. G-13221, et al., omit the intermediate decision in regard to these dockets⁴ and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

The Commission finds:

(1) Each of the applicants herein is a "natural-gas" company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of

⁴ The hearings in the Union Texas Petroleum, et al., consolidated proceeding concluded July 25, 1963.

any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) Each of the applicants herein is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motions for waiver of the intermediate decisions are granted.

(B) The matters in Docket Nos. CI60-721, CI63-813, CI61-1125, CI61-1419 and CI62-930 are hereby severed from the consolidated proceeding Union Texas Petroleum, et al., Dockets Nos. G-13221, et al.

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to the applicants for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that the applicants comply fully with the terms of this order and the settlement proposals which settlement proposals are expressly approved, as modified by this order.

(E) Interest shall be paid on all amounts to be refunded under the terms of the settlements and this order (including refunds of all amounts collected for deliveries made since April 31, 1963, above that which would have been collected at the settlement rates) at a rate of 7 percent per annum, such interest to accrue through the last day of the months in which the respective settlements were filed August 31, 1963, in the case of Skelly and September 30, 1963, in the case of Colorado and Texas Exploration. All refunds required by this order shall be made within 90 days from the date of issuance hereof.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals the applicants shall report to the Commission, in triplicate, the amount of the refunds made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the

purchases showing receipt of the refunds in conformity with the settlements and the conditions of this order.

(G) Upon full compliance of the applicants with all the terms of this order and of the settlement proposals as modified, the applicants shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as the applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of section 4 of the Natural Gas Act, or Part 154 of the regulations thereunder: *Provided, however*, That the 30-day notice provisions of § 154.94(b) and the detailed submittal requirements of § 154.94(f) are hereby waived insofar as they apply to the fil-

ing of reductions in rates as required by this order and the settlement proposals.

(J) The grant of certificates herein and approval of the settlement proposals is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceeding under section 5 of the Natural Gas Act or section 5(c) of the Outer Continental Shelf Lands Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(K) Upon full compliance of Skelly with all the terms of this order and of its settlement proposal as modified, Supplement No. 3 to Rate Schedule No. 172 shall be accepted for filing effective as of the date of initial delivery.

By the Commission.

[SEAL]

JOSEPH H. GUTRIE,
Secretary.

APPENDIX

Docket No.	Rate schedule No.	Seller	Purchaser	Current rate (cents Mcf)	Proposed settlement rate (cents Mcf)
CI60-721	44	Colorado Oil and Gas Corp.	Florida Gas Transmission Co.	23.55	20.625
CI63-813	52	do	Texas Gas Transmission Corp.	20.75	20.625
CI61-1419	172	Skelly Oil Co. (Operator), et al.	do	21.25	20.625
CI61-1125	5	Texas Gas Exploration Corp. (Operator) et al.	Hope Natural Gas Co.	21.75	20.625
CI62-930	9	Texas Gas Exploration Corp.	Transcontinental Gas Pipe Line Corp.	19.5	19.0

¹ Contract initial price of 23.8 cents per Mcf was conditioned down to 21.25 cents per Mcf in temporary authorization.

² Contract initial price of 21.4 cents per Mcf was conditioned down to 19.5 cents per Mcf in temporary authorization.

[F.R. Doc. 63-13360; Filed, Dec. 26, 1963; 8:47 a.m.]

TARIFF COMMISSION

[TEA-225(b)-1 to 15; TEA-221(b)-1]

REQUESTS FOR RESERVATION OF CERTAIN ARTICLES FROM TRADE AGREEMENT NEGOTIATIONS

Notice of Investigations and Hearings

Part III of the Tariff Commission's notice of investigation and hearings under section 221 of the Trade Expansion Act of 1962 with respect to the President's list of articles for possible consideration in trade agreement negotiations provided information to interested parties regarding the filing of requests for reservation from the negotiations of certain articles in the President's list (identified in the Annex to the Notice) for which reservation is required under conditions specified in section 225(b) of the Trade Expansion Act (28 F.R. 11290).

Requests for reservation have been properly filed with the Commission for fifteen (15) of the articles identified in the aforementioned Annex, and appropriate investigations have been instituted in accordance with the Commission's rules of practice and procedure (19 CFR 205.9(a)). As provided in 19 CFR 205.9(b) and 205.10, these investigations have been consolidated with the investigation being conducted for the purposes of section 221(b) of the Trade Expansion Act,

and the Commission's advice to the President under section 225(b) of the Act will be included in the Commission's report to the President under section 221(b).

Notice is hereby given that interested parties desiring to present oral testimony with regard to any article identified below, either for the purposes of section 221(b) or section 225(b) of the Trade Expansion Act, will be given opportunity to do so on the dates specified below.

ARTICLES REFERRED TO IN PART III OF TARIFF COMMISSION NOTICE

[NOTE: "TSUS" refers to "Tariff Schedules of the United States"; "pt" after an item number means that only part of the item is involved]

Inv. No., date, and time of hearing		TSUS Item No.
		1964
(1) Jan. 13, 10:00 a.m.	Garlic	136.30
(2) Jan. 28, 10:00 a.m.	Cod, cusk, haddock, hake, pollock, and Atlantic ocean perch (rosefish), "otherwise processed."	110.50 110.55
(3) and (4) Jan. 29, 2:30 p.m.	Tartaric acid	425.94
(5) Feb. 3, 10:00 a.m.	Cream of tartar.	426.76
	Ribs and stretchers of metal for umbrellas or parasols of the kind commonly carried in the hand when in use, in frames or otherwise, and tubes (rods) for such umbrellas, whether or not of metal.	751.20 (pt)

ARTICLES REFERRED TO IN PART III OF TARIFF COMMISSION NOTICE—Continued

[NOTE: "TSUS" refers to "Tariff Schedules of the United States"; "pt" after an item number means that only part of the item is involved.]

Inv. No., date, and time of hearing		TSUS Item No.
(6) Feb. 5, 2:30 p.m.	Baseball (including softball) gloves and mitts.	734.55 (pt)
(7) Feb. 10, 10:00 a.m.	Fur, not on the skin, prepared for hatters' use, and carotied furskins.	186.20
(8) Feb. 17, 2:30 p.m.	Ceramic mosaic tiles (except such tiles valued at 95 cents or more per square foot, and except tiles in sheets (1) containing over 300 tiles per square foot, or (2) having none, or not more than half, of the tiles with faces which (disregarding rounded corners) are in the form of triangles, rectangles, or polygons and with such triangles, rectangles, or polygons as there may be forming an integral part of the pattern).	532.21 (pt)
(9) Feb. 19, 2:30 p.m.	Scissors and shears and blades therefor, valued over \$1.75 per dozen.	650.91
(10) Feb. 24, 10:00 a.m.	Ferrocium and other cerium alloys.	755.35 (pt)
(11) Feb. 26, 2:30 p.m.	Spring type clothespins.	790.05
		732.02
		732.04
		732.06
		732.08
		732.10
		732.12
		732.14
		732.16
		732.18
		732.20
		732.22
		732.24
(12) Mar. 2, 10:00 a.m.	Bicycles.	756.20 (pt)
(13) Mar. 4, 2:30 p.m.	Tobacco pipes and pipe bowls, of briar wood or root, valued not over \$5 per dozen.	745.52
(14) Mar. 6, 2:30 p.m.	Dressmakers' or common pins.	346.15
(15) Mar. 9, 10:00 a.m.	Velveteens, of cotton.	346.20
		346.22
		346.24

Because of the limited time available, the following special procedures have been adopted in connection with the above hearings under section 225(b):

1. In scheduling appearances, the time to be allotted to witnesses for the presentation of oral testimony will be limited as circumstances require.

2. Parties who have properly filed requests will be individually notified of the time allotted for their testimony.

3. Questioning of witnesses will be limited to members of the Commission.

4. Oral testimony should be brief and may be supplemented by additional material, which should be submitted at the time of presentation of oral testimony.

5. Written statements in lieu of appearance may be filed on or before the date of the hearings.

6. The Tariff Commission will make public its conclusion on each of the reservation items.

No. 250—Pt. I—7

Parties interested who have previously requested opportunity to appear need make no further request. Parties desiring to appear who have not previously entered an appearance must do so by filing a request in writing with the Secretary, U.S. Tariff Commission, Washington, D.C., 20436, not later than 10 days before the opening date of each hearing, with the exception of the request for the hearing on garlic, which must be filed 5 days before the hearing.

Issued: December 23, 1963.

By order of the Commission.

[SEAL]

DONN N. BENT,
Secretary.

[F.R. Doc. 63-13382; Filed, Dec. 26, 1963; 8:48 a.m.]

Principal ingredient	Amount	Combined with—	Amount	Limitations	Indications for use
Estradiol monopalmitate.	10 mg. per dose.	-----	-----	For chickens one dose per bird by injection under skin at base of skull at not less than 5 weeks of age. Not to be used within 6 weeks of slaughter.	Produce uniform fat distribution; improve finish.

The basic analytical method proposed by the Commissioner for tissue residue examination consists of the determination of the hormone activity by the mouse uterine weight method of E. J. Umberger, G. H. Gass, and J. M. Curtis, published in "Endocrinology," Vol. 63, page 806 (1958).

Dated: December 20, 1963.

J. K. KIRK,
Assistant Commissioner of
Food and Drugs.

[F.R. Doc. 63-13385; Filed, Dec. 26, 1963; 8:49 a.m.]

Office of Education

FEDERAL FINANCIAL ASSISTANCE IN CONSTRUCTION OF NONCOMMERCIAL EDUCATIONAL TELEVISION BROADCAST FACILITIES

Notice of Acceptance for Filing of Applications

Notice is hereby given that effective with this publication the following described applications for Federal financial assistance in the construction of noncommercial educational television broadcast facilities are accepted for filing in accordance with 45 CFR 60.7:

The State Board of Education, State of Rhode Island and Providence Plantations, Roger Williams Building, Providence, Rhode Island, File No. 43, for the establishment of a new noncommercial educational television broadcasting station on Channel 36, Providence, Rhode Island.

Alabama Educational TV Commission, 2151 Highland Avenue, Suite 206, Bir-

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration
MATTOX AND MOORE, INC.

Notice of Filing of Petition Regarding Food Additive Estradiol Monopalmitate

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b) (5), 72 Stat. 1786; 21 U.S.C. 343-(b) (5)), notice is given that a petition (FAP 701) has been filed by Mattox and Moore, Inc., 1503 East Riverside Drive, Indianapolis 7, Indiana, proposing the issuance of a regulation to provide for the safe use of estradiol monopalmitate in chickens as follows:

irmingham 5, Alabama, File No. 44, for the establishment of a new noncommercial educational television broadcasting station on Channel 44, Huntsville, Alabama.

Alabama Educational TV Commission, 2151 Highland Avenue, Suite 206, Birmingham 5, Alabama, File No. 45, for the establishment of a new noncommercial educational television broadcasting station on Channel 42, Mobile, Alabama.

The University of Washington, Seattle, Washington, 98105, File No. 46, to expand the facilities of the noncommercial television broadcasting station KCTS-TV on Channel 9, Seattle, Washington.

Yakima School District No. 7, 104 North 4th Avenue, Yakima, Washington, File No. 47, to expand the facilities of the noncommercial educational television broadcasting station KYVE-TV on Channel 47, Yakima, Washington.

Tacoma Public Schools, P.O. Box 1357, Tacoma, Washington, 98401, File No. 48, to expand the facilities of the noncommercial educational television broadcasting station KTPS-TV on Channel 62 in Tacoma, Washington.

Any interested person may, pursuant to 45 CFR, § 60.8, within 30 calendar days from the date of this publication, file comments regarding the above applications with the Director, Educational Television Facilities Program, U.S. Office of Education, Washington, D.C., 20202. (76 Stat. 64, 47 U.S.C. 390)

RAYMOND J. STANLEY,
Director, Educational Television
Facilities Program, U.S. Office
of Education.

[F.R. Doc. 63-13384; Filed, Dec. 26, 1963; 8:48 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

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Announcing first5-year Cumulation

**UNITED STATES
STATUTES AT LARGE**
TABLES OF LAWS AFFECTED
in Volumes 70-74

Lists all prior laws and other Federal instruments which were amended, repealed, or otherwise affected by the provisions of public laws enacted during the years 1956-1960. Includes index of popular name acts affected in Volumes 70-74.

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PART II

FEDERAL REGISTER

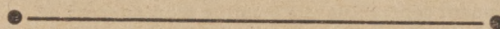
THE NATIONAL ARCHIVES
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SCRIPTA
MANET
OF THE UNITED STATES
1934

VOLUME 28 NUMBER 250

Washington, Friday, December 27, 1963

Department of Labor

OFFICE OF LABOR-MANAGEMENT AND
WELFARE-PENSION REPORTS



Recodification of Regulations

Title 29—LABOR

Chapter IV—Office of Labor-Management and Welfare-Pension Reports, Department of Labor

Recodification of Regulations

The Bureau of Labor-Management Reports, which administered the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519; 29 U.S.C. 401 et seq.) and the Office of Welfare and Pension Plans, which administered the Welfare and Pension Plans Disclosure Act (72 Stat. 997, 76 Stat. 35; 29 U.S.C. 301 et seq.) were consolidated to form the Office of Labor-Management and Welfare-Pension Reports (Secretary's Order No. 24-63 (28 F.R. 9172) and Secretary's Order No. 25-63 (28 F.R. 9173)). The Office of Labor-Management and Welfare-Pension Reports now administers both acts. It is, therefore, appropriate to recodify regulations issued under the two acts (formerly found in § 2.11 of Subtitle A and in Chapters IV and XI of Title 29 of the Code of Federal Regulations) to form one chapter of the Code.

Accordingly, the title of Chapter IV is changed to read as set forth above. An outline of Chapter IV, as recodified and showing former part numbers is set out as follows:

SUBCHAPTER A—LABOR-MANAGEMENT REPORTS

New Part designation, and amended part heading, where appropriate

	<i>Old Part designation</i>
401 (Meaning of terms used in this subchapter).	401 (Meaning of terms used in this chapter).
402.....	402 (Labor organization information reports).
403.....	403 (Labor organization annual financial reports).
404.....	404 (Labor organization officers and employees report).
405.....	405 (Employer reports).
406.....	406 (Reporting by labor relations consultants and other persons, certain agreements with employers).
408.....	408 (Labor organization trusteeship reports).
451.....	451 (Labor organizations as defined in the Labor-Management Reporting and Disclosure Act of 1959).
452.....	452 (General statement concerning the election provisions of the Labor-Management Reporting and Disclosure Act of 1959).
453.....	453 (General statement concerning the bonding requirements of the Labor-Management Reporting and Disclosure Act of 1959).

SUBCHAPTER B—WELFARE-PENSION REPORTS

460 (Filing of description of employee welfare or pension benefit plans—annual reports).	§ 2.11 of Subtitle A, Title 29.
461.....	1302 (Certification of information by insurance carriers or service or other organizations).
462 (Variation from publication requirements).	1303 (Procedure for requesting variations from publication requirements).
463.....	1320 (Variation from publication requirement—certain employee benefit plans utilizing Blue Cross and Blue Shield organizations).
464.....	1304 (Welfare and pension plans with less than 100 participants).
465.....	1306 (Basic bonding requirements).
466.....	1307 (Exemption from bonding requirements).
485.....	1309 (Prohibition against bonding by parties interested in the plan).
486.....	1340 (General statement concerning the retention of records provisions of the Welfare and Pension Plans Disclosure Act).

Other changes modify titles of offices and officers made necessary by the reorganization and minor editorial amendments have been made for clarity. As the rules presented in these amendments are not substantially changed, I find good cause to, and do hereby, dispense with notice and public procedure thereon as unnecessary. For the same reason good cause is also found to make these amendments effective, and they are hereby made effective, December 31, 1963.

As recodified, Chapter IV of Title 29 of the Code of Federal Regulations is set forth below.

Signed at Washington, D.C., this 24th day of December 1963.

JAMES J. REYNOLDS,
*Labor-Management
Services Administrator.*

SUBCHAPTER A—LABOR-MANAGEMENT REPORTS

Part	
401	Meaning of terms used in this subchapter.
402	Labor organization information reports.
403	Labor organization annual financial reports.
404	Labor organization officers and employees report.

Part

- 405 Employer reports.
- 406 Reporting by labor relations consultants and other persons, certain agreements with employers.
- 408 Labor organization trusteeship reports.
- 451 Labor organizations as defined in the Labor-Management Reporting and Disclosure Act of 1959.
- 452 General statement concerning the election provisions of the Labor-Management Reporting and Disclosure Act of 1959.
- 453 General statement concerning the bonding requirements of the Labor-Management Reporting and Disclosure Act of 1959.

SUBCHAPTER B—WELFARE-PENSION REPORTS

- 460 Filing of description of employee welfare or pension benefit plans—annual reports.
- 461 Certification of information by insurance carriers or service or other organizations.
- 462 Variation from publication requirements.
- 463 Welfare and pension plans with less than 100 participants.
- 464 Basic bonding requirements.
- 465 Exemption from bonding requirements.
- 485 Prohibition against bonding by parties interested in the plan.
- 486 General statement concerning the retention of records provisions of the Welfare and Pension Plans Disclosure Act.

SUBCHAPTER A—LABOR-MANAGEMENT REPORTS

PART 401—MEANING OF TERMS USED IN THIS SUBCHAPTER

- Sec.
- 401.1 Commerce.
- 401.2 State.
- 401.3 Industry affecting commerce.
- 401.4 Person.
- 401.5 Employer.
- 401.6 Employee.
- 401.7 Labor dispute.
- 401.8 Trusteeship.
- 401.9 Labor organization.
- 401.10 Labor organization engaged in an industry affecting commerce.
- 401.11 Secret ballot.
- 401.12 Trust in which a labor organization is interested.
- 401.13 Labor relations consultant.
- 401.14 Officer.
- 401.15 Member or member in good standing.
- 401.16 Secretary.
- 401.17 Act.
- 401.18 Office.

AUTHORITY: §§ 401.1 to 401.18 issued under secs. 3, 208, 301, 401, 402, 73 Stat. 520, 529, 530, 532, 534; 29 U.S.C. 402, 438, 461, 481, 482; Secretary's Order No. 24-63 (28 F.R. 9172).

§ 401.1 Commerce.

"Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

§ 401.2 State.

"State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

§ 401.3 Industry affecting commerce.

"Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

§ 401.4 Person.

"Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

§ 401.5 Employer.

"Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (a) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (b) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

§ 401.6 Employee.

"Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

§ 401.7 Labor dispute.

"Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

§ 401.8 Trusteeship.

"Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

§ 401.9 Labor organization.

"Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged

in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

§ 401.10 Labor organization engaged in an industry affecting commerce.

A labor organization shall be deemed to be engaged in an industry affecting commerce if it—

(a) Is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(b) Although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(c) Has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (a) or (b) of this section; or

(d) Has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (a) or (b) of this section as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(e) Is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this section, other than a State or local central body.

§ 401.11 Secret ballot.

"Secret ballot" means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

§ 401.12 Trust in which a labor organization is interested.

"Trust in which a labor organization is interested" means a trust or other fund or organization (a) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (b) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

§ 401.13 Labor relations consultant.

"Labor relations consultant" means any person who, for compensation, advises or represents an employer, em-

ployer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

§ 401.14 Officer.

"Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

§ 401.15 Member or member in good standing.

"Member" or "member in good standing", when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

§ 401.16 Secretary.

"Secretary" means the Secretary of Labor.

§ 401.17 Act.

"Act" means the Labor-Management Reporting and Disclosure Act of 1959.

§ 401.18 Office.

"Office" means the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor.

PART 402—LABOR ORGANIZATION INFORMATION REPORTS

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402.2	Labor organization initial information report.
402.3	Filing of initial reports.
402.4	Subsequent reports.
402.5	Terminal reports.
402.6	Receipt of reports and documents.
402.7	Effect of acknowledgment and filing by the Office of Labor-Management and Welfare-Pension Reports.
402.8	Personal responsibility of signatories of reports.
402.9	Maintenance and retention of records.
402.10	Dissemination and verification of reports.
402.11	Attorney-client communications exempted.
402.12	Publication of reports required by this part.

AUTHORITY: §§ 402.1 to 402.12 issued under secs. 201, 208, 73 Stat. 524, 529; 29 U.S.C. 431 438; Secretary's Order No. 24-63 (28 F.R. 9172), and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 402.1 Labor organization constitution and bylaws.

Every labor organization shall adopt a constitution and bylaws consistent with the provisions of the Act applicable thereto, not later than December 14, 1959, or within 90 days after the date the labor organization first becomes subject to the Act, whichever is later. This shall not, however, require the formal readoption by a labor organization of such a constitution and bylaws which it has

previously adopted and under which it is operating when the report prescribed by § 402.2 is filed. As used in this part "constitution and bylaws" means the basic written rules governing the organization.

§ 402.2 Labor organization initial information report.

Every labor organization shall file a report signed by its president and secretary or corresponding principal officers containing the information required to be filed by section 201(a) of the Act, and found necessary to be reported under section 208 thereof by the Labor-Management Services Administrator, on the following United States Department of Labor Form LM-1¹ entitled, "Labor Organization Information Report". There shall be attached to such report and made a part thereof a copy of the constitution and bylaws adopted by the reporting labor organization.

§ 402.3 Filing of initial reports.

(a) Every labor organization shall file with the Director, Office of Labor-Management and Welfare-Pension Reports, U.S. Department of Labor, Washington, D.C., 20210, the report and (subject to the provisions of paragraph (b) of this section, where applicable) a copy of its constitution and bylaws required by section 201(a) of the Act and § 402.2, together with one additional copy of each, not later than December 14, 1959, or within 90 days after the date on which it first becomes subject to the Act, whichever is later.

(b) A labor organization subject to paragraph (a) of this section may adopt or may have adopted as its constitution and bylaws (whether by formal action or by virtue of affiliation with a parent organization) a constitution and bylaws of a national or international labor organization which the national or international organization is required to file under section 201(a) of the Act and this part. In such a case, a filing by the national or international labor organization of copies of such constitution and bylaws will be accepted as a filing of such documents by each such adopting labor organization within the meaning of section 201(a) of the Act and this part, if the following conditions are met: (1) The national or international labor organization shows in its report filed under paragraph (a) of this section that copies of its constitution and bylaws are being filed on behalf of such adopting organizations as well as on its own behalf, and files such number of additional copies as the Director, Office of Labor-Management and Welfare-Pension Reports, may request for publication in accordance with § 2.4 of this title; and (2) the adopting labor organization shows in its report filed under paragraph (a) of this section that the national or international constitution and bylaws are also its constitution and bylaws and that copies are filed on its behalf by the national or international labor organization. If the constitution and bylaws of the adopting labor organization include other documents, this shall be shown in such report and

copies shall be filed as provided in paragraph (a) of this section.

§ 402.4 Subsequent reports.

(a) Any change in the information or the content of the documents, or both, required to be filed initially by every labor organization under section 201(a) of the Act which has not previously been reported, shall be reported to the Director, Office of Labor-Management and Welfare-Pension Reports, U.S. Department of Labor, Washington, D.C., 20210, in Items 13, 14, 15, Schedule 8, and where necessary Item 18 of United States Department of Labor Form LM-2 (Revised), entitled "Labor Organization Annual Report," at the same time that the reporting labor organization files with such office its annual financial report required by section 201(b) of the Act and §§ 403.2 and 403.3 of this chapter, for the fiscal year during which the said change occurred. This report shall be signed by the president and treasurer or corresponding principal officers of the labor organization filing the report.

(b) Labor organizations which qualify to use Form LM-3 (Revised) and file their annual financial report on that form shall file the report required by paragraph (a) of this section by submitting the information called for in Items 13, 14, 15, 40, and, where necessary, Item 41 of Form LM-3 (Revised).

§ 402.5 Terminal reports.

(a) Any labor organization required to file reports under the provisions of this part, which ceases to exist by virtue of dissolution or any other form of termination of its existence as a labor organization, or which loses its identity as a reporting labor organization through merger, consolidation or otherwise, shall file a report containing a detailed statement of the circumstances and effective date of such termination or loss of reporting identity, and if the latter, such report shall also state the name and mailing address of the labor organization into which it has been consolidated, merged, or otherwise absorbed. Such report shall be submitted on Form LM-2 (Revised) in connection with the terminal financial report required by § 403.5 of this chapter and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization at the time of its termination or loss of reporting identity and, together with a copy thereof, shall be filed with the Director, Office of Labor-Management and Welfare-Pension Reports, at the place aforesaid, within 30 days of the effective date of such termination or loss of reporting identity, as the case may be.

(b) Labor organizations which qualify to use Form LM-3 (Revised), the Labor Organization Annual Report, pursuant to §§ 403.4 and 403.5 of this chapter may file the terminal report called for in this section on Form LM-3 (Revised). This report must be signed by the president and treasurer, or corresponding principal officers, of the labor organization.

§ 402.6 Receipt of reports and documents.

Upon receipt of all reports and documents submitted for filing under the

provisions of this part, the Office of Labor-Management and Welfare-Pension Reports shall assign to the initial information report filed by each labor organization, an identifying number. This number thereafter shall be entered by the reporting labor organization on all subsequent or terminal reports and all other documents which it thereafter submits for filing under this part, as well as on all communications directed to the Office concerning such reports and documents.

§ 402.7 Effect of acknowledgment and filing by the Office of Labor-Management and Welfare-Pension Reports.

Acknowledgment by the Office of Labor-Management and Welfare-Pension Reports of the receipt of reports and documents submitted for filing under this part, is intended solely to inform the sender of the receipt thereof by the Office, and neither such acknowledgment nor the filing of such reports and documents by the Office constitutes express or implied approval thereof, or in any manner indicates that the content of any such report or document fulfills the reporting or other requirements of the Act, or of the regulations in this chapter, applicable thereto.

§ 402.8 Personal responsibility of signatories of reports.

Each individual required to sign any report under section 201(a) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 402.9 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management and Welfare-Pension Reports may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 402.10 Dissemination and verification of reports.

Every labor organization required to submit a report under section 201(a) of the Act and under this part shall make available to all its members the information required to be contained in such report, including the copy of the constitution and bylaws required to be filed therewith, and every such labor organization and its officers shall be under a duty to permit such member for just cause to examine any books, records, and accounts necessary to verify such report and constitution and bylaws.

§ 402.11 Attorney-client communications exempted.

Nothing contained in this part shall be construed to require an attorney who

¹ Filed as part of the original document.

is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 201(a) of the Act, and of this part, any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 402.12 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management and Welfare-Pension Reports of copies thereof to any person requesting them, shall be governed by § 2.4 of this title.

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

- Sec.
- 403.1 Fiscal year for reports required by this part.
 - 403.2 Annual financial report.
 - 403.3 Form of annual financial report—detailed report.
 - 403.4 Simplified annual report form for smaller labor organizations.
 - 403.5 Terminal financial report.
 - 403.6 Personal responsibility of signatories of reports.
 - 403.7 Maintenance and retention of records.
 - 403.8 Dissemination and verification of reports.
 - 403.9 Attorney-client communications exempted.
 - 403.10 Publication of reports required by this part.

AUTHORITY: §§ 403.1 to 403.10 issued under secs. 201, 208, 301, 73 Stat. 524, 529, 530; 29 U.S.C. 431, 438, 461; Secretary's Order No. 24-63 (28 F.R. 9172) and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 403.1 Fiscal year for reports required by this part.

(a) As used in this part, unless otherwise defined, the term "fiscal year" means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by a labor organization reporting under this part. Where a labor organization designates a new fiscal year period prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order each constitute a fiscal year for purposes of the report required to be filed by section 201(b) of the Act, and of the regulations in this part.

(b) A labor organization which is subject to section 201(b) of the Act for only a portion of its fiscal year because the date of enactment of the Act (September 14, 1959) occurred during such fiscal year or because the labor organization otherwise first becomes subject to the Act during such fiscal year, may consider such portion as the entire fiscal year in making its report under this part.

§ 403.2 Annual financial report.

(a) Every labor organization shall, as prescribed by the regulations in this part, file with the Director, Office of Labor-Management and Welfare-Pension Re-

ports, United States Department of Labor, Washington, D.C., 20210, within 90 days after the end of each of its fiscal years, a financial report signed by its president and treasurer, or corresponding principal officers, together with a true copy thereof.

(b) Every labor organization shall include in its annual financial report filed as provided in paragraph (a) of this section, in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year and in such categories as prescribed by the Labor-Management Services Administrator under the provisions of this part, the information required by section 201(b) of the Act and found by the Labor-Management Services Administrator under section 208 thereof to be necessary in such report.

(c) If, on the date for filing the annual financial report of a labor organization required under section 201(b) of the Act and this section, such labor organization is in trusteeship, the labor organization which has assumed trusteeship over such labor organization shall file such report as provided in § 403.5 of this chapter.

§ 403.3 Form of annual financial report—detailed report.

Every labor organization shall, except as expressly provided otherwise in this part, file an annual financial report as required by § 403.2, prepared on United States Department of Labor Form LM-2 (Revised), "Labor Organization Annual Report," in the detail required by the instructions accompanying the form and constituting a part thereof.

§ 403.4 Simplified annual report form for smaller labor organizations.

If a labor organization, not in trusteeship, has gross annual receipts totalling less than \$30,000 for its fiscal year, it may elect, subject to revocation of the privileges as provided in section 208 of the Act, to file the annual financial report called for in section 201(b) of the Act and § 403.3 of this part on United States Department of Labor Form LM-3 (revised) entitled "Labor Organization Annual Report (Revised)," in accordance with the instructions accompanying such form and constituting a part thereof.

§ 403.5 Terminal financial report.

(a) Any labor organization required to file a report under the provisions of this part, which during its fiscal year loses its identity as a reporting labor organization through merger, consolidation, or otherwise, shall, within 30 days after such loss, file a terminal financial report, and one copy, with the Director, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210, on Form LM-2 (Revised) or Form LM-3 (Revised), as may be appropriate, signed by the president and treasurer or corresponding principal offices of the labor organization immediately prior to the time of its loss of reporting identity.

(b) Every labor organization which has assumed trusteeship over a subordinate labor organization shall file

within 90 days after the termination of such trusteeship on behalf of the subordinate labor organization a terminal financial report, and one copy, with the Director, Office of Labor-Management and Welfare-Pension Reports, at the place aforesaid, on Form LM-2 (Revised) and in conformance with the requirements of this part.

(c) For purposes of the reports required by paragraphs (a) and (b) of this section, the period covered thereby shall be the portion of the labor organization's fiscal year ending on the effective date of its loss of reporting identity, or the portion of the subordinate labor organization's fiscal year ending on the effective date of the termination of trusteeship over such subordinate labor organization, as the case may be.

§ 403.6 Personal responsibility of signatories of reports.

Each individual required to sign a report under section 201(b) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 403.7 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management and Welfare-Pension Reports may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 403.8 Dissemination and verification of reports.

Every labor organization required to submit a report under section 201(b) of the Act and under this part shall make available to all its members the information required to be contained in such reports, and every such labor organization and its officers shall be under a duty to permit such member for just cause to examine any books, records, and accounts necessary to verify such report.

§ 403.9 Attorney-client communications exempted.

Nothing contained in this part shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 201(b) of the Act, and of this part, any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 403.10 Publication of reports required by this part.

For provisions related to this subject see § 2.4 of this title.

PART 404—LABOR ORGANIZATION OFFICERS AND EMPLOYEES REPORT

- Sec.
 404.1 Definitions.
 404.2 Annual report.
 404.3 Form of annual report.
 404.4 Special report.
 404.5 Attorney-client communications exempted.
 404.6 Personal responsibility of signatories of reports.
 404.7 Maintenance and retention of records.
 404.8 Publication of reports required by this part.

AUTHORITY: §§ 404.1 to 404.8 issued under secs. 202, 208, 73 Stat. 525, 529; 29 U.S.C. 432, 438; Secretary's Order No. 24-63 (28 F.R. 9172), and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 404.1 Definitions.

As used in this part the term:

(a) (1) "Fiscal year" means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts of the labor organization officer or employee are kept. Where a labor organization officer or employee designates a new fiscal year period prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order constitute the fiscal year for purposes of the reports required to be filed by section 202(a) of the Act and the regulations in this part.

(2) A labor organization officer or employee who is subject to section 202(a) of the Act for only a portion of his fiscal year because the labor organization officer or employee first becomes subject to the Act during such fiscal year, may consider such portion as the entire fiscal year in making this report under this part.

(b) "Labor organization officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(c) "Labor organization employee" means any individual (other than an individual performing exclusively custodial or clerical services) employed by a labor organization.

(d) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

§ 404.2 Annual report.

Every labor organization officer and employee who in any fiscal year has been involved in transactions of the type described in section 202(a) of the Act, or who holds or has held any interest in an employer or a business of the type referred to therein, or who has received any payments of the type referred to in that section, or who holds or has held an interest in or derived income or economic benefit with monetary value from a business any part of which consists of dealing with a trust in which his labor organization is interested, or whose spouse or minor child has been involved in such transactions, holds or has held any such interests, or has received such payments, is required to file with the Director, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210, within 90 days after the end of his fiscal year, a signed report containing the detailed information required therein by section 202(a) of the Act, and found by the Labor-Management Services Administrator under section 208 thereof to be necessary in such report.

§ 404.3 Form of annual report.

On and after the effective date of this section, every labor organization officer and employee required to file an annual report under § 404.2 shall file such report on United States Department of Labor Form LM-30 entitled "Labor Organization Officer and Employee Report," together with a true copy thereof, in the detail required by the instructions accompanying such form and constituting a part thereof.

§ 404.4 Special report.

In addition to the report on Form LM-30, the Director, Office of Labor-Management and Welfare-Pension Reports, may require from union officers and employees subject to the Act the submission of special reports of pertinent information including, but not necessarily confined to, reports with respect to matters referred to in items (ii) and (iv) of the Instructions relating to Part A of the form and items (ii) and (iii) of the Instructions relating to Part C of the form.

§ 404.5 Attorney-client communications exempted.

Nothing contained in this part shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 202(a) of the Act and of this part any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 404.6 Personal responsibility of signatories of reports.

Every labor organization officer or employee required to file a report under section 202(a) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 404.7 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management and Welfare-Pension Reports may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 404.8 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management and Welfare-Pension Reports of copies thereof to any person requesting them, shall be governed by § 2.4 of this title.

PART 405—EMPLOYER REPORTS

- Sec.
 405.1 Definitions.
 405.2 Annual report.
 405.3 Form of annual report.
 405.4 Terminal report.
 405.5 Special reports.
 405.6 Exceptions from the filing requirements of § 405.2.
 405.7 Relation of section 8(c) of the National Labor Relations Act, as amended, to the reporting requirements of § 405.2.
 405.8 Personal responsibility of signatories of reports.
 405.9 Maintenance and retention of records.
 405.10 Publication of reports required by this part.

AUTHORITY: §§ 405.1 to 405.10 issued under secs. 203, 208, 73 Stat. 526, 529; 29 U.S.C. 433, 438; Secretary's Order No. 24-63 (28 F.R. 9172) and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 405.1 Definitions.

As used in this part the term:

(a) (1) "Fiscal year" means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by an employer. Where an employer designates a new fiscal year period prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order constitute the fiscal year for purposes of the reports required to be filed by section 203(a) of the Act and of the regulations in this part.

(2) An employer who is subject to section 203(a) of the Act for only a portion of his fiscal year because the date of enactment of the Act (September 14, 1959) occurred during such fiscal year or because the employer otherwise first becomes subject to the Act during such fiscal year, may consider such portion as

the entire fiscal year in making his report under this part.

(b) "Corresponding principal officers" shall include any person or persons performing or authorized to perform principal executive functions corresponding to those of president and treasurer, of any employer engaged in whole or in part in the performance of the activities described in section 203(a) of the Act.

§ 405.2 Annual report.

Every employer who in any fiscal year has made any payment, loan, promise, agreement, arrangement or expenditure of the kind described and required by section 203(a) of the Act to be reported, shall, as prescribed by the regulations in this part, file with the Director, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210, within 90 days after the end of each of its fiscal years, a report signed by its president and treasurer, or corresponding principal officers, together with a true copy thereof, containing the detailed information required therein by section 203(a) of the Act and found by the Labor-Management Services Administrator under section 208 thereof to be necessary in such report.

§ 405.3 Form of annual report.

On and after the effective date of this section, every employer required to file an annual report by section 203(a) of the Act and § 405.2 shall file such report on the following United States Department of Labor Form LM-10 entitled, "Employer Report"¹ in the detail required by the following instructions¹ accompanying such form and constituting a part thereof.

§ 405.4 Terminal report.

(a) Every employer required to file a report under the provisions of this part, who during its fiscal year loses its identity as a reporting employer through merger, consolidation, dissolution, or otherwise, shall, within 30 days of the effective date thereof, file a terminal employer report, and one copy, with the Director, Office of Labor-Management and Welfare-Pension Reports, at the place aforesaid on Form LM-10 signed by the president and treasurer or corresponding principal officers of such employer immediately prior to the time of the employer's loss of reporting identity, together with a statement of the effective date of such termination or loss of reporting identity, and if the latter, the name and mailing address of the employer entity into which it has been merged, consolidated or otherwise absorbed.

(b) For purposes of the report required by paragraph (a) of this section, the period covered thereby shall be the portion of the employer's fiscal year ending on the effective date of the employer's termination or loss of reporting identity.

§ 405.5 Special reports.

In addition to the report on Form LM-10, the Director, Office of Labor-

Management and Welfare-Pension Reports, may require from employers subject to the Act the submission of special reports on pertinent information, including but not necessarily confined to reports with respect to specifically identified personnel on the matters referred to in the second box in Part B of Form LM-10.

§ 405.6 Exceptions from the filing requirements of § 405.2.

Nothing contained in this part shall be construed to require:

(a) An employer to file a report unless said employer has made an expenditure, payment, loan, agreement, or arrangement of the kind described in section 203(a) of the Act;

(b) Any employer to file a report covering the services of any person by reason of his (1) giving or agreeing to give advice to such employer or (2) representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or (3) engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder;

(c) Any employer to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer;

(d) An attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this part any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 405.7 Relation of section 8(c) of the National Labor Relations Act, as amended, to the reporting requirements of § 405.2.

While nothing contained in section 203 of the Act shall be construed as an amendment to, or modification of the rights protected by, section 8(c) of the National Labor Relations Act, as amended, activities protected by such section of the said Act are not for that reason exempted from the reporting requirements of section 203(a) of the Labor-Management Reporting and Disclosure Act of 1959 and § 405.2, and, if otherwise subject to such reporting requirements, are required to be reported if they have been engaged in during the course of the reporting fiscal year. However, the information required to be reported in Part D of Form LM-10 does not include matters protected by section 8(c) of the National Labor Relations Act, as amended, because the definition in section 203(g) of the term "interfere with, restrain, or coerce", which is used in Part D, does not cover such matters.

§ 405.8 Personal responsibility of signatories of reports.

Each individual required to sign a report under section 203(a) of the Act and under this part shall be personally responsible for the filing of such report

and for any statement contained therein which he knows to be false.

§ 405.9 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management and Welfare-Pension Reports may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 405.10 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management and Welfare-Pension Reports of copies thereof to any person requesting them, shall be governed by § 2.4 of this title.

PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS

Sec.	
406.1	Definitions.
406.2	Agreement and activities report.
406.3	Receipts and disbursements report.
406.4	Terminal report.
406.5	Persons exempted from filing reports.
406.6	Relation of section 8(c) of the National Labor Relations Act to this part.
406.7	Personal responsibility of signatories of reports.
406.8	Maintenance and retention of records.
406.9	Publication of reports required by this part.

AUTHORITY: §§ 406.1 to 406.9 issued under secs. 203, 207, 208, 73 Stat. 526, 529; 29 U.S.C. 433, 437, 438; Secretary's Order No. 24-63 (28 F.R. 9172), and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 406.1 Definitions.

As used in this part, the term:

(a) "Corresponding principal officers" means any person or persons performing or authorized to perform, principal executive functions corresponding to those of president and treasurer of any entity engaged in whole or in part in the performance of the activities described in section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959.

(b) (1) "Fiscal year" means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by a person. Where a person designated a new fiscal year prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order constitute the fiscal years.

¹ Filed as part of the original document.

(2) A person who is subject to section 203(b) of the Act for only a portion of his fiscal year because the date of enactment of the Act (September 14, 1959) occurred during such fiscal year or because such person otherwise first becomes subject to the Act during such fiscal year, may consider such portion as the entire fiscal year in making his report under this part.

(c) "Undertake" means not only the performing of activities, but also the agreeing to perform them or to have them performed.

(d) "A direct or indirect party to an agreement or arrangement" includes persons who have secured the services of another or of others in connection with an agreement or arrangement of the type referred to in § 406.2 as well as persons who have undertaken activities at the behest of another or of others with knowledge or reason to believe that they are undertaken as a result of an agreement or arrangement between an employer and any other person, except bona fide regular officers, supervisors or employees of their employer to the extent to which they undertook to perform services as such bona fide regular officers, supervisors or employees of their employer.

§ 406.2 Agreement and activities report.

(a) Every person who as a direct or indirect party to any agreement or arrangement with an employer undertakes, pursuant to such agreement or arrangement, any activities where an object thereof is, directly or indirectly, (1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or, (2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; shall, as prescribed by the regulations in this part, file a report with the Director, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210, and one copy thereof, on Form LM-20¹ entitled "Agreement and Activities Report (required of persons, including labor relations consultants and other individuals and organizations)" in the detail required by such form and the instructions accompanying such form and constituting a part thereof. The report shall be filed within 30 days after entering into an agreement or arrangement of the type described in this section. If there is any change in the information reported (other than that required by Item C, 10, (c) of the Form), it must be filed in a report clearly marked "Amended Report" within 30 days of the change.

(b) The report shall be signed by the president and treasurer or corresponding principal officers of the reporting person. If the report is filed by an individual in his own behalf, it need only bear his signature.

§ 406.3 Receipts and disbursements report.

(a) Every person who, as a direct or indirect party to any agreement or arrangement, undertakes any activities of the type described in § 406.2 pursuant to such agreement or arrangement and who, as a result of such agreement or arrangement made or received any payment during his fiscal year, shall, as prescribed by the regulations in this part, file a report and one copy thereof, with the said Director, Office of Labor-Management and Welfare-Pension Reports, on Form LM-21¹ entitled "Receipts and Disbursements Report (required of persons, including labor relations consultants, other individuals and organizations)", in the detail required by such form and the instructions accompanying such form and constituting a part thereof. The report shall be filed within 90 days after the end of such person's fiscal year during which payments were made or received as a result of such an agreement or arrangement.

(b) The report shall be signed by the president and treasurer or corresponding principal officers of the reporting person. If the report is filed by an individual in his own behalf, it need only bear his signature.

§ 406.4 Terminal report.

(a) Every person required to file a report pursuant to the provisions of this part who during his fiscal year loses his identity as a reporting entity through merger, consolidation, dissolution, or otherwise shall within 30 days of the effective date thereof or of the effective date of this section, whichever is later, file a terminal report, and one copy thereof, with the said Director, Office of Labor-Management and Welfare-Pension Reports, on Form LM-21 signed by the president and treasurer or corresponding principal officers immediately prior to the time of the person's loss of reporting identity (or by the person himself if he is an individual), together with a statement of the effective date of termination or loss of reporting identity, and if the latter, the name and mailing address of the entity into which the person reporting has been merged, consolidated or otherwise absorbed.

(b) For purposes of the report referred to in paragraph (a) of this section, the period covered thereby shall be the portion of the reporting person's fiscal year ending on the effective date of the termination or loss of identity.

§ 406.5 Persons excepted from filing reports.

Nothing contained in this part shall be construed to require:

(a) Any person to file a report under this part unless he was a direct or indirect party to an agreement or arrangement of the kind described in § 406.2;

(b) Any person to file a report covering the services of such person by reason of his (1) giving or agreeing to give advice to an employer; or (2) representing or agreeing to represent an employer before any court, administrative agency,

or tribunal of arbitration; or (3) engaging or agreeing to engage in collective bargaining on behalf of an employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder;

(c) Any regular officer, or employee of an employer to file a report in connection with services rendered as such regular officer, supervisor or employee to such employer;

(d) An attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this part any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 406.6 Relation of section 8(c) of the National Labor Relations Act to this part.

While nothing contained in section 203 of the Act shall be construed as an amendment to, or modification of the rights protected by, section 8(c) of the National Labor Relations Act, as amended (61 Stat. 142; 29 U.S.C. 158 (c)), activities protected by such section of the said Act are not for that reason exempted from the reporting requirements of this part and, if otherwise subject to such reporting requirements, are required to be reported. Consequently, information required to be included in Forms LM-20 and 21 must be reported regardless of whether that information relates to activities which are protected by section 8(c) of the National Labor Relations Act, as amended.

§ 406.7 Personal responsibility of signatories of reports.

Each individual required to file a report under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 406.8 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management and Welfare-Pension Reports may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 406.9 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management and Welfare-Pension Reports of copies thereof to any person requesting them, shall be governed by § 2.4 of this title.

¹ Filed as part of the original document.

PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

- Sec.
 408.1 Definitions.
 408.2 Initial trusteeship report.
 408.3 Form of initial report.
 408.4 Semiannual trusteeship report.
 408.5 Annual financial report.
 408.6 Amendments to the Labor Organization Information Report filed by or on behalf of the subordinate labor organization.
 408.7 Terminal trusteeship financial report.
 408.8 Terminal trusteeship information report.
 408.9 Personal responsibility of signatories of reports.
 408.10 Maintenance and retention of records.
 408.11 Dissemination and verification of reports.
 408.12 Publication of reports required by this part.

AUTHORITY: §§ 408.1 to 408.12 issued under secs. 208, 301, 73 Stat. 529, 530; 29 U.S.C. 438, 461; Secretary's Order No. 24-63 (28 F.R. 9172), and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 408.1 Definitions.

(a) "Corresponding principal officers" shall include any person or persons performing or authorized to perform principal executive functions corresponding to those of president and treasurer, of any labor organization which has assumed or imposed a trusteeship over a labor organization within the meaning of section 301(a) of the Labor-Management Reporting and Disclosure Act of 1959.

(b) "Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

(c) "Policy determining body" means any body which is convened by the parent labor organization or other labor organization which is composed of delegates from labor organizations and which formulates policy on such matters as wages, hours, or other conditions of employment or recommends or takes any action in the name of the participating labor organizations. Such a body includes, for example, a district council, area conference or joint board.

§ 408.2 Initial Trusteeship report.

Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Director, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210, within 30 days after the imposition of any such trusteeship, a trusteeship report, pursuant to § 408.3, together with a true copy thereof, signed by its president and treasurer, or corresponding principal officers, as well as by the trustees of such subordinate labor organization.

§ 408.3 Form of initial report.

On and after the effective date of this section, every labor organization required to file an initial report under § 408.2 shall file such report on United States Department of Labor Form LM-15 entitled "Trusteeship Report" in the

detail required by the instructions accompanying such form and constituting a part thereof. The Statement of Assets and Liabilities of Form LM-2 (Revised), Labor Organization Annual Report, issued pursuant to Part 403 of this chapter shall be utilized by the labor organization assuming the trusteeship in the manner set forth in Form LM-15, and the instructions accompanying that form, to report the financial condition of the subordinate labor organization as of the time the trusteeship was imposed.

§ 408.4 Semiannual trusteeship report.

Every labor organization required to file an initial report under § 408.2 shall thereafter during the continuance of trusteeship over the subordinate labor organization, file with the said Office of Labor-Management and Welfare-Pension Reports semiannually, and not later than six months after the due date of the initial trusteeship report, a semiannual trusteeship report on Form LM-15 containing the information required by that form except for the information required by Item 10 thereof relating to the financial condition of the subordinate organization as of the time trusteeship was assumed over it. If in answer to Item 9 of Form LM-15, there was (a) a convention or other policy determining body to which the subordinate organization sent delegates or would have sent delegates if not in trusteeship or (b) an election of officers of the labor organization assuming trusteeship, Form LM-15A should be used to report the required information with respect thereto.

§ 408.5 Annual financial report.

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization, shall file with the Office of Labor-Management and Welfare-Pension Reports on behalf of the subordinate labor organization the annual financial report required by Part 403 of this chapter, signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship, and the trustees of the subordinate labor organization on Form LM-2 (Revised), together with one true copy thereof.

§ 408.6 Amendments to the Labor Organization Information Report filed by or on behalf of the subordinate labor organization.

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization, shall file with the Office of Labor-Management and Welfare-Pension Reports on behalf of the subordinate labor organization any change in the information required by Part 402 of this chapter by furnishing the information called for in Items 13, 14, 15, Schedule 8, and where necessary, Item 18 of Form LM-2 (Revised), together with one true copy thereof at the same time it files the annual financial report referred to in § 408.5. Where the trustee is the principal executive officer of the subordinate labor organization, he shall sign the report as the officer corresponding to the president. If the sub-

ordinate labor organization has no treasurer or corresponding principal officer, the report shall so state and shall in that case be signed only by the trustee. If there is more than one trustee, all shall sign the report.

§ 408.7 Terminal trusteeship financial report.

Each labor organization which has assumed trusteeship over a subordinate labor organization shall file within 90 days after the termination of such trusteeship on behalf of the subordinate labor organization a terminal financial report, and one copy, with the Director, Office of Labor-Management and Welfare-Pension Reports, at the place aforesaid, on Form LM-2 (Revised) and in conformance with the requirements of Part 403 of this chapter.

§ 408.8 Terminal trusteeship information report.

There shall be filed at the same time that the terminal trusteeship financial report is filed a terminal trusteeship information report on Form LM-16 containing the details set forth in the instructions accompanying such form and constituting a part thereof. Where a Form LM-16 is filed, it is not necessary that Items 13, 14, and 15 of Form LM-2 (Revised), filed pursuant to § 408.7 be answered. If in answer to Item 6 of Form LM-16, there was (a) a convention or other policy determining body to which the subordinate organization sent delegates or would have sent delegates if not in trusteeship or (b) an election of officers of the labor organization assuming trusteeship, Form LM-15A should be used to report the required information with respect thereto.

§ 408.9 Personal responsibility of signatories of reports.

Each individual required to sign a report under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 408.10 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management and Welfare-Pension Reports may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 408.11 Dissemination and verification of reports.

Every labor organization required to submit a report shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty to permit

such member for just cause to examine any books, records, and accounts necessary to verify such report.

§ 408.12 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management and Welfare-Pension Reports of copies thereof to any person requesting them, shall be governed by § 2.4 of this title.

PART 451—LABOR ORGANIZATIONS AS DEFINED IN THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

Sec.

451.1 Introductory statement.

451.2 General.

451.3 Requirements of section 3(i).

451.4 Labor organizations under section 3(j).

451.5 "State or local central body."

451.6 Extraterritorial application.

AUTHORITY: §§ 451.1 to 451.6 issued under secs. 3, 208, 401, 73 Stat. 520, 529, 532; 29 U.S.C. 402, 438, 481; Secretary's Order No. 24-63 (28 F.R. 9172), and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 451.1 Introductory statement.

(a) This part discusses the meaning and scope of sections 3(i) and 3(j) of the Labor-Management Reporting and Disclosure Act of 1959¹ (hereinafter referred to as the Act). These provisions define the terms "labor organization" and "labor organization * * * in an industry affecting commerce" for purposes of the Act.²

(b) The Act imposes on labor organizations various obligations and prohibitions relating generally, among other things, to the reporting of information and election and removal of officers. Requirements are also imposed on the officers, representatives, and employees of labor organizations. In addition, certain rights are guaranteed the members thereof. It thus becomes a matter of importance to determine what organizations are included within the applicability of the Act.

(c) The provisions of the Act, other than Title I and amendments to other statutes contained in section 505 and Title VII, are subject to the general investigatory authority of the Director, Office of Labor-Management and Welfare-Pension Reports, embodied in section 601,³ which empowers him to investi-

gate whenever he believes it necessary in order to determine whether any person has violated or is about to violate such provisions. The correctness of an interpretation of these provisions can be determined finally and authoritatively only by the courts. It is necessary, however, for the Labor-Management Services Administrator to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Labor-Management Services Administrator contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently decides that a prior interpretation is incorrect. However, the omission to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Labor-Management Services Administrator with respect to such problem or to constitute an administrative interpretation or practice. Interpretations of the Labor-Management Services Administrator with respect to the meaning of the terms "labor organization" and "labor organization * * * in an industry affecting commerce," as used in the Act, are set forth in this part to provide those affected by the provisions of the Act with "a practical guide * * * as to how the office representing the public interest in its enforcement will seek to apply it."⁴

(d) To the extent that prior opinions and interpretations relating to the meaning of "labor organization" and "labor organization * * * in an industry affecting commerce" are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

§ 451.2 General.

A "labor organization" under the Act must qualify under section 3(i). It must also be engaged in an industry affecting commerce. In accordance with the broad language used and the manifest congressional intent, the language will be construed broadly to include all labor organizations of any kind other than those clearly shown to be outside the scope of the Act.

§ 451.3 Requirements of section 3(i).

(a) *Organizations which deal with employers.* (1) The term "labor organization" includes "any organization of any kind, any agency, or employee representation committee, group, association, or plan * * * in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, * * *." The quoted language is deemed sufficiently broad to encompass any labor organization irrespective of size or formal attributes. While it is

necessary for employees to participate therein, such participating employees need not necessarily be the employees of the employer with whom the organization deals. In determining who are "employees" for purposes of this provision, resort must be had to the broad definition of "employee" contained in section 3(f) of the Act.⁵ It will be noted that the term includes employees whose work has ceased for certain specified reasons, including any current labor dispute.

(2) To come within the quoted language in section 3(i) the organization must exist for the purpose, in whole or in part, of dealing with employers concerning grievances, etc. In determining whether a given organization exists wholly or partially for such purpose, consideration will be given not only to formal documents, such as its constitution or bylaws, but the actual functions and practices of the organization as well. Thus, employee committees which regularly meet with management to discuss problems of mutual interest and handle grievances are "labor organizations", even though they have no formal organizational structure.⁶

(3) Since the types of labor organizations described in subparagraph (2) of this paragraph are those which deal with employers, it is necessary to consider the definition of "employer" contained in section 3(e) of the Act in determining the scope of the language under consideration.⁷ The term "employer" is broadly defined to include "any employer or any group or association of employers engaged in an industry affecting commerce" which is "an employer within the meaning of any law of the United States relating to the employment of any employees * * *." Such laws would include, among others, the Railway Labor Act, as amended, the Fair Labor Standards Act, as amended, the Labor Management Relations Act, as amended, and the Internal Revenue Code. The fact that employers may be excluded from the application of any of

⁵ Sec. 3(f) reads: "'Employee' means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act."

⁶ National Labor Relations Board v. Cabot Carbon Co., 360 U.S. 203.

⁷ Sec. 3(e) reads: "'Employer' means any employer or any group or association of employers engaged in an industry affecting commerce, (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof."

¹ 73 Stat. 520, 521, 29 U.S.C. 402.

² It should be noted that the definition of the term "labor organization," as well as other terms, in section 3 are for purposes of those portions of the Act included in Titles I, II, III, IV, V (except section 505) and VI. They do not apply to Title VII, which contains amendments of the National Labor Relations Act, as amended, nor to section 505 of Title V, which amends Section 302 (a), (b), and (c) of the Labor Management Relations Act, 1947, as amended. The terms used in Title VII and Section 505 of Title V have the same meaning as they have under the National Labor Relations Act, as amended, and the Labor Management Relations Act, 1947, as amended.

³ Sec. 601, 73 Stat. 539, 29 U.S.C. 521.

⁴ Skidmore v. Swift & Co., 323 U.S. 134, 138.

the foregoing acts would not preclude their qualification as employers for purposes of this Act. For example, employers of agricultural labor who are excluded from the application of the Labor Management Relations Act, as amended, would appear to be employers within the meaning of this Act.

(4) In defining "employer," section 3(e) expressly excludes the "United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof." The term "political subdivision" includes, among others, counties and municipal governments. A labor organization composed entirely of employees of the governmental entities excluded by section 3(e) would not be a labor organization for the purposes of the Act. However, in the case of a national or international labor organization composed both of government locals and non-government or mixed locals, the parent organization as well as its mixed and non-government locals would be "labor organizations" and subject to the Act. In such case, the locals which are composed entirely of government employees would not be subject to the Act, although elections in which they participate for national officers or delegates would be so subject.⁹

(b) *Organizations which may or may not deal with employers.* Regardless of whether it deals with employers concerning terms and conditions of employment and regardless of whether it is composed of employees, any conference, general committee, joint or system board, or joint council engaged in an industry affecting commerce and which is subordinate to a national or international labor organization is a "labor organization" for purposes of the Act. Included are the area conferences and the joint councils of the International Brotherhood of Teamsters and similar units of other national and international labor organizations.

§ 451.4 Labor organizations under section 3(j).

(a) *General.* Section 3(j) sets forth five categories of labor organizations which "shall be deemed to be engaged in an industry affecting commerce" within the meaning of the Act. Any organization which qualifies under section 3(i) and falls within any one of these categories listed in section 3(j) is subject to the requirements of the Act.

(b) *Certified employee representatives.* This category includes all organizations certified as employee representatives under the Railway Labor Act, as amended, or under the National Labor Relations Act, as amended.

(c) *Labor organizations recognized or acting as employee representatives though not certified.* This category includes local, national, or international labor organizations which, though not formally certified, are recognized or acting as the representatives of employees of an employer engaged in an industry affecting commerce. Federations, such as the American Federation of Labor and Congress of Industrial Organizations, are

included in this category,¹⁰ although expressly excepted from the election provisions of the Act.¹⁰

(d) *Organizations which have chartered local or subsidiary bodies.* This category includes any labor organization that has chartered a local labor organization or subsidiary body which is within either of the categories discussed in paragraph (b) or (c) of this section. Under this provision, a labor organization not otherwise subject to the Act, such as one composed of Government employees, would appear to be "engaged in an industry affecting commerce" and, therefore, subject to the Act if it chartered one or more local labor organizations which deal with an "employer" as defined in section 3(c).¹¹ This category includes, among others, a federation of national or international organizations which directly charters local bodies.¹²

(e) *Local or subordinate bodies which have been chartered by a labor organization.* This category includes any labor organization that has been chartered by an organization within either of the categories discussed in paragraph (b) or (c) of this section as the local or subordinate body through which such employees may enjoy membership or become affiliated with the chartering organization.

(f) *Intermediate bodies.* Included in this category is any conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the categories discussed in paragraphs (b), (c), (d) and (e) of this section. Excluded from this definition, however, are State or local central bodies.¹³ The following is a description of typical intermediate bodies:

(1) *Conference.* A conference is an organic body within a national or international labor organization formed on a geographical area, trade division, employer-wide or similar basis and composed of affiliate locals of the parent national or international organization. The various conferences of the International Brotherhood of Teamsters, for example, are in this category.

(2) *General committees.* Typical of those bodies are the general committees of the railroad labor organizations. The term includes any subordinate unit of a national railroad labor organization, regardless of the title or designation of such unit, which under the constitution and bylaws of the organization of which it is a unit, is authorized to represent that organization on a particular railroad or portion thereof in negotiating with respect to wages and working conditions.¹⁴ General committees are some-

times known as system boards of adjustment, general grievance committees, and general committees of adjustment. They are to be distinguished from system boards of adjustment established under the Railway Labor Act, which are composed of management and labor members. These joint labor-management boards are not included within the definition of a labor organization under the Act.

(3) *Joint or system boards.* As mentioned above, in connection with railroad labor organizations the term "general committee" includes system boards. However, as used here the term has a broader meaning and includes, among others, boards which have members from more than one labor organization.

(4) *Joint councils.* A joint council is composed of locals not necessarily of the same national or international labor organization located in a particular area, such as a city or county. These bodies are sometimes called joint boards, joint executive boards, joint councils, or district councils. Included, for example, are councils of building and construction trades labor organizations.

§ 451.5 "State or local central body."

The definition of "labor organization" in section 3(i) and the examples of a labor organization deemed to be engaged in an industry affecting commerce in section 3(j) (5) both except from the term "labor organization" a "State or local central body." As used in these two subsections, it is apparent that Congress was using the phrase as words of art. In trade union usage, State and local central bodies are those organizations which are now chartered directly by the American Federation of Labor and Congress of Industrial Organizations, and which are required to admit to membership all local unions of national and international unions and organizing committees affiliated with that federation together with other local or other subordinate bodies having such affiliation.¹⁵ Pending complete merger of all State Federations of Labor, formerly affiliated with the American Federation of Labor, and State Industrial Union Councils, formerly affiliated with the Congress of Industrial Organizations, the State and local central bodies of the two federations were permitted to continue to exist as State and local central bodies representing the local unions or organizations affiliated with each. There is no counterpart of State and local central bodies subordinate to the labor organizations representing the railway workers in the United States. State, district, or local councils of national or international labor organizations or of departments of the AFL-CIO, such as the Building and Construction Trades Department, are not included in the phrase "State or local central body" as used in sections 3 (i) and (j).

§ 451.6 Extraterritorial application.

(a) It is not the purpose of the Act to impose on foreign labor organizations

⁹ See National Labor Relations Board v. Highland Park Mfg. Co., 341 U.S. 322. See, also, paragraph (d) of this section.

¹⁰ Act, sec. 401(a).

¹¹ See § 451.3(a).

¹² See, also, paragraph (c) of this section.

¹³ For discussion of State and local central bodies see § 451.5.

¹⁴ See definition of term "General Committee" under Railroad Retirement Act in 20 CFR 201.1(k).

¹⁵ See also, § 452.3 of this chapter which discusses the election provisions of the Act.

¹⁵ Article XIV, Constitution of the AFL-CIO, December 5, 1955.

any regulation of the activities they carry on under the laws of the countries in which they are domiciled or have their principal place of business. The applicability of the Act is limited to the activities of persons or organizations within the territorial jurisdiction of the United States. The foregoing would be applicable, for example, to Canadian locals affiliated with international labor organizations organized within the United States.

(b) On the other hand, labor organizations otherwise subject to the Act are not relieved of the requirements imposed upon them with respect to actions taken by them in the United States or which will have effect in the United States, by virtue of the fact that they have foreign members or affiliates that participate in these actions. For example, a national or international labor organization which conducts its required election of officers by referendum or at a convention of delegates must comply with the election provisions of the Act,¹⁶ even though members of foreign locals participate in the balloting, or delegates of foreign locals participate in the election at the convention.

(c) Similarly, the provisions of the Act with respect to imposition of trusteeships¹⁷ are applicable to United States national or international labor organizations subject to this Act even though the action of the United States organization is taken with respect to a foreign local.

PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

GENERAL CONSIDERATIONS

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452.1 Introductory statement.
452.2 Other provisions of the Act affecting Title IV.

COVERAGE OF ELECTION PROVISIONS

- 452.3 Organizations to which election provisions apply.
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FREQUENCY AND KINDS OF ELECTIONS

- 452.5 Frequency of elections.
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CANDIDACY FOR OFFICE

- 452.7 Persons who may be candidates and hold office.
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- 452.10 Persons eligible to vote.
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452.14 Elections of officers of intermediate bodies.

SPECIAL ENFORCEMENT PROVISIONS

- 452.15 Complaints of members.
452.16 Investigation of complaint by Director, Office of Labor-Management and Welfare-Pension Reports, and court action by the Secretary.

¹⁶ See § 452.12 of this chapter.

¹⁷ See Title III of the Act.

DATES AND SCOPE OF APPLICATION

- Sec.
452.17 Effective dates.
452.18 Application of other laws.

AUTHORITY: §§ 452.1 to 452.18 issued under secs. 401, 402, 73 Stat. 532, 534, 29 U.S.C. 481, 482, Secretary's Order No. 24-63 (28 F.R. 9172), and Secretary's Order No. 25-63 (28 F.R. 9173).

GENERAL CONSIDERATIONS

§ 452.1 Introductory statement.

(a) This part discusses the meaning and scope of the provisions of Title IV of the Labor-Management Reporting and Disclosure Act¹ (hereinafter referred to as the Act), which deal with the election of officers of labor organizations. These provisions require periodic election of union officers, and prescribe minimum standards to insure that such elections will be fairly conducted. Although there are specific requirements in the title regarding the right to vote, nominate and run for office, notice of elections, secret ballots, preservation of election records, and other safeguards to insure a fair election, the Act does not attempt to prescribe the complete, detailed procedure of nomination and election of officers which all unions must follow. Elections required to be held as provided in the title are to be conducted in accordance with the constitution and bylaws of the labor organizations insofar as they are not inconsistent with the provisions of the Act.

(b) The provisions of Title IV are subject to the general investigatory authority of the Director, Office of Labor-Management and Welfare-Pension Reports, embodied in section 601 of the Act which empowers him to investigate whenever he believes it necessary in order to determine whether any person has violated or is about to violate any provisions of the Act (except Title I or amendments to other statutes made by section 505 or Title VII). The Secretary is also charged with enforcement of the substantive requirements concerning election of officers, upon a valid complaint by a member that a violation has occurred and has not been remedied.² The Labor-Management Services Administrator may issue rules and regulations relating to elections which the Federal courts may direct to be held under his supervision.³ Title IV also authorizes the issuance of rules and regulations prescribing minimum standards and procedures for determining the adequacy of removal procedures in the constitution and bylaws of local labor organizations and provides a remedy for the enforcement of the removal provisions.⁴ However, this part is limited to a discussion of elections and related procedures. The removal provisions will be treated separately.

(c) Interpretations of the Labor-Management Services Administrator with respect to the election provisions are set forth in this part to provide those affected by these provisions of the Act

with "a practical guide * * * as to how the office representing the public interest in its enforcement will seek to apply it."⁵ The correctness of an interpretation can be determined finally and authoritatively only by the courts. It is necessary, however, for the Labor-Management Services Administrator to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Labor-Management Services Administrator contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently decides that a prior interpretation is incorrect. However, the omission to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Labor-Management Services Administrator with respect to such problem or to constitute an administrative interpretation or practice.

(d) To the extent that prior opinions and interpretations relating to the election of officers of labor organizations under the Act are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

§ 452.2 Other provisions of the Act affecting Title IV.

(a) The provisions of Title I, "Bill of Rights of Members of Labor Organizations,"⁶ (particularly section 101 (a) (1) "Equal Rights," section 101(a) (2) "Freedom of Speech and Assembly," and section 101(a) (5) "Safeguards against Improper Disciplinary Action") are related to the rights pertaining to elections. Direct enforcement of Title I rights, as such, is limited to civil suit in a district court of the United States by the person whose rights have been infringed.⁷ The exercise of particular rights of members is subject to reasonable rules and regulations of the labor organization's constitution and bylaws.⁸ Title I also requires a secret ballot vote, or vote by delegates at a regular convention, on the question of increases in dues, initiation fees and assessments.⁹ However, the requirements of Title IV are not directly applicable to elections under that provision of Title I.

(b) There are other provisions of the Act which have a direct bearing on Title IV. Among the safeguards for labor organizations provided in Title V is a prohibition against the holding of office by certain classes of persons.¹⁰ This provision makes it a crime for any person willfully to serve as an officer or employee of a labor organization (other than ex-

⁵ Skidmore v. Swift & Co., 323 U.S. 134, 138.
⁶ 73 Stat. 522, 29 U.S.C. 411.

⁷ But the Secretary may bring suit to enforce section 104.

⁸ Act, sec. 101(a) (1), 101(a) (2), and 101(b).

⁹ Act, sec. 101(a) (3).

¹⁰ Act, sec. 504(a). See text at footnote 22.

¹ 73 Stat. 532-535, 29 U.S.C. 481-483.

² Act, sec. 402(a).

³ Act, sec. 402(b).

⁴ Act, sec. 401 (h) and (i), and sec. 402.

clusively as a clerical or custodial employee) within five years after conviction or imprisonment for the commission of specified offenses, conspiracy to commit such offenses, or violation of Titles II or III of the Act, or during or within five years after termination of membership in the Communist Party. It is likewise a crime for any labor organization or officer knowingly to permit such a person to serve in such positions. Persons subject to the prohibition applicable to convicted criminals may serve if their citizenship rights have been fully restored after being taken away by reason of the conviction, or if the Federal Board of Parole determines that their service would not be contrary to the purposes of the Act.

(c) Section 609¹¹ which prohibits labor organizations or their officials from disciplining members for exercising their rights under the Act, and section 610,¹² making it a crime for any person to use or threaten force or violence for the purpose of interfering with or preventing the exercise of any rights protected under the Act, apply to rights relating to the election of officers under Title IV.

COVERAGE OF ELECTION PROVISIONS

§ 452.3 Organizations to which election provisions apply.

(a) Title IV of the Act contains election provisions applicable to national and international labor organizations, except federations of such organizations, to intermediate bodies such as general committees, conferences, system boards, joint boards, or joint councils, and to local labor organizations.¹³ The provisions do not apply to State and local central bodies, which are explicitly excluded from the definition of "labor organization." The organizations now chartered as State and local central bodies under the constitution of the American Federation of Labor and Congress of Industrial Organizations are thus excluded.¹⁴

(b) An organization composed entirely of government employees is not subject to the election provisions of the Act. Section 3(e) of the Act, defining the term "employer", specifically excludes the United States Government, its wholly owned corporations, and the States and their political subdivisions from the scope of that term, and section 3(f), defines an "employee" as an individual employed by an "employer". Since a "labor organization" is defined in section 3(i) as one in which "employees" participate and which exists in whole or in part for the purpose of "dealing with employers", an organization composed entirely of government employees would not be a "labor organization" as that term is defined in the Act. However, where an international or national labor organization has some locals of government employees and other locals which are mixed or are composed entirely of non-government em-

ployees, the parent organization and its mixed and non-government locals would be subject to the election requirements of the Act. The requirements would not apply to locals composed entirely of government employees, except with respect to the election of officers of a parent organization which is subject to those requirements or the election of delegates to a convention of such parent organization or to an intermediate body to which the requirements apply. This is in accordance with the general principles discussed in § 451.3(a) of this chapter.

(c) Although the application of the Act is limited to the activities of persons and organizations within the territorial jurisdiction of the United States,¹⁵ an international or intermediate body is not exempted from the requirements of the Act by virtue of the participation of its foreign locals or foreign membership in its elections. For example, votes received from Canadian members in referendum elections held by an international body must have been cast under procedures meeting the minimum requirements of the Act, and Canadian delegates participating at conventions of the international body must have been elected by secret ballot.

§ 452.4 Offices that must be filled by election.

(a) Section 401 of the Act identifies the types of labor organizations whose officers must be elected and prescribes minimum standards and procedures for the conduct of such elections. Under this section officers of national or international labor organizations (except federations of such organizations), of local labor organizations, and of intermediate bodies such as general committees, system boards, joint boards, joint councils and conferences (e.g., the regional conferences of an international labor organization and other similar subsidiary labor organizations) must be elected.¹⁶

(b) Section 3(n) of the Act defines the word "officer" and it is this definition which must be used as a guide in determining what particular positions in a labor organization are to be filled in the manner prescribed in the Act. For purposes of the Act, "officer" means "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body."

(c) As defined in the Act, the term "officer" is not limited to individuals in positions identified or provided for in the constitution or other organic law of the labor organization.¹⁷ The term includes members of the labor organization's executive board or similar governing body.

¹⁵ See § 451.6 of this chapter.

¹⁶ See § 452.5 for a discussion of the frequency with which the different types of labor organizations must conduct elections of officers. See Part 451 of this chapter for the scope of the term "labor organization."

¹⁷ Cf. *NLRB v. Coca-Cola Bottling Co.*, 350 U.S. 264. See also, *Daily Cong. Rec.* 5867, *Sen.*, Apr. 23, 1959.

(d) The election requirements are not limited to officers designated as such by the labor organization's constitution. They apply as well to all positions vested with the "functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization." The functions of such officers can not be precisely defined. They are the functions typically performed by officers holding those titles in current labor union practice. Decisions in each case will require a practical judgment. As a general rule, a person will be regarded as being authorized to perform the functions of president if he is the chief or principal executive officer of the labor organization. Similarly, he will be regarded as being authorized to perform the functions of treasurer if he has principal responsibility for control and management of the organization's funds and fiscal operations. The name or title that the labor organization assigns to the position will not be controlling.

(e) The purpose of the election requirements is to assure that persons in positions of control in labor organizations will be responsive to the desires of the members.¹⁸ Professional and other staff members of the labor organization who do not determine the organization's policies and who are employed to implement policy decisions and managerial directives established by the governing officials of the organization are not required to be elected.

(f) If delegates to a convention of a national or international labor organization, at which there is an election of officers of such organization, are to participate, they must be elected by secret ballot among the members in good standing of the labor organization they represent. The same is true of individuals who represent members in elections of officers of intermediate bodies who are not elected by direct secret ballot of the members.

FREQUENCY AND KINDS OF ELECTIONS

§ 452.5 Frequency of elections.

(a) The Act requires that all national and international labor organizations (other than federations of such labor organizations) shall elect their officers not less often than every five years. Officers of intermediate bodies, such as general committees, system boards, joint boards, joint councils and conferences, must be elected at least every four years, and officers of local labor organizations not less often than every three years.

(b) The prescribed maximum period of three, four, or five years is measured from the date of the last election or from the date Title IV becomes applicable to the particular labor organization, whichever is later.¹⁹ Thus, a local labor organization which elected its president to a five-year term on August 1, 1959, is required to conduct an election for that office not later than three years after the date the election provisions of this Act become applicable to it, rather than

¹⁸ See, for example, *S. Rept.* 187, 86th Cong., 1st sess., p. 7.

¹⁹ See § 452.17 for discussion of effective dates.

¹¹ Act, sec. 609.

¹² Act, sec. 610.

¹³ For the scope of the term "labor organization," see Part 451 of this chapter.

¹⁴ Act, sec. 3(i) and (j). See § 451.5 of this chapter.

three years from the date of the officer's election.

§ 452.6 Elections which must be held by secret ballot.

(a) The elections required by the Act to be held by local labor organizations²⁰ must be conducted by such organizations by secret ballot among the members in good standing. National and international labor organizations which are required to hold periodic elections²¹ may elect their officers by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot. Intermediate bodies, such as general committees, system boards, joint boards, joint councils or conferences, are authorized to hold the periodic elections of officers required of them either by secret ballot among the members in good standing or by officers representative of such members who have been elected by secret ballot.

(b) A secret ballot must be taken in an election required by the Act to be held by a local labor organization even if the election is uncontested. Similarly, if a required election of officers of a national or international labor organization or of an intermediate body is conducted by secret ballot among the members in good standing (rather than by the alternative methods provided for such organizations by the Act), a secret ballot vote is necessary even though the office is uncontested.

CANDIDACY FOR OFFICE

§ 452.7 Persons who may be candidates and hold office.

(a) Section 401(e) provides that in any election required by the Act which is held by secret ballot, every member in good standing, except as mentioned below, shall be eligible to be a candidate and to hold office. This provision is applicable not only to the election of officers in local labor organizations, but also applies to elections held by secret ballot among the members in good standing of international and national labor organizations or of intermediate bodies, even though the Act does not require elections by such labor organizations to be by secret ballot. The eligibility of members of labor organizations to be candidates and hold office in such organizations is subject only to the provisions of section 504(a),²² which bars certain individuals from holding office in labor organizations, and to reasonable qualifications uniformly imposed.

²⁰ See § 452.4 (Offices that must be filled by election).

²¹ The requirements of the election provisions of the Act are not applicable to federations of national or international labor organizations because they are expressly excepted. Act, sec. 401(a).

²² Section 504(a) of the Act reads: "No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act, or conspiracy to commit any such crimes, shall serve—

(b) The question of whether a qualification is reasonable is a matter which is not susceptible to precise definition and in the last analysis will be determined by the courts. Under certain circumstances a prerequisite for such candidacy may on its face appear to be reasonable, but this would not be controlling if, as a matter of fact, the effect of its application would be unreasonable and inharmonious with the intent of the Act's election provisions. For example, a requirement that to be eligible to be a candidate for office an individual must have been a "member in good standing" for a prescribed period of time, such as two or three years, would not be, in many instances, an unreasonable qualification. However, should the actual effect of such qualification in a particular case be to disqualify from holding office all but a handful of the labor organization's members, its reasonableness would be subject to serious question.

(c) In the case of a position which is representative of a unit defined on a geographic, craft, shift, or similar basis, a labor organization may by its constitution or bylaws limit eligibility for candidacy and for holding office to members of the represented unit. For example, a national or international labor organization may establish regional vice-presidencies and require that each vice-president be a member of his respective region.

§ 452.8 Nomination procedures.

Subsection 401(e) provides that in any election required by section 401, which is to be held by secret ballot, a reasonable opportunity shall be given for the nomi-

"(1) As an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization, or

"(2) As a labor relations consultant to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee (other than as an employee performing exclusively clerical or custodial duties) of any group or association of employers dealing with any labor organization,

during or for five years after the termination of his membership in the Communist Party, or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No labor organization or officer thereof shall knowingly permit any person to assume or hold any office or paid position in violation of this subsection."

nation of candidates. To meet this requirement, the labor organization must give reasonable notice of the offices to be filled by the election and of the time, place, and proper form of submitting nominations. Such notice must be given in a manner reasonably calculated to inform all members in good standing and in sufficient time to permit such members to nominate the candidates of their choice. Mailing such notice to the last known address of each member within a reasonable time prior to the date for making nominations would satisfy this requirement. Labor organizations may use other means of giving notice, in accordance with the provisions of their constitution and bylaws insofar as they are not inconsistent with the terms of the Act, as by timely publication in the union newspaper, so long as the method used is reasonably calculated to reach all members and actually provides a reasonable opportunity for nominations to be made.

(b) The Act does not prescribe particular forms of nomination procedures. It requires only that the procedures employed afford reasonable opportunity for making nominations and that they be in accordance with the provisions of the organization's constitution and bylaws insofar as they are not inconsistent with the requirements for reasonable opportunity. Whether a particular procedure is sufficient to satisfy the requirements of the Act is a question which will in each case depend upon the particular facts. While a particular procedure may not on its face violate the requirements of the Act, its application in a given instance may make nomination so difficult as to deny reasonable opportunity to nominate.

§ 452.9 Campaign safeguards.

(a) The Act, section 401 (c) and (g), imposes upon labor organizations and their officers a number of duties with respect to election campaigns for the purpose of insuring fair elections. National, international, and local labor organizations and their officers are under a duty to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of his candidacy to all members in good standing. If any such labor organization or its officers authorize the distribution of campaign literature on behalf of any candidate or for such labor organization itself with reference to an election, similar distribution at the request of any other bona fide candidate must be made by the labor organization and its officers with equal treatment as to the expense of such distribution. Thus, if the labor organization or its officers distribute the campaign literature of one candidate at the candidate's expense, any other bona fide candidate is entitled to have the labor organization or its officers distribute the candidate's campaign literature at his expense. If the distribution for one candidate is without charge, then the distribution for other bona fide candidates must also be without charge."

²³ Daily Cong. Rec., 86th Congress, 1st sess., pp. 6031-6032, April 25, 1959.

It should be noted, however, that section 401(g) prohibits any labor organization from using funds received by way of dues, assessments, or similar levy to promote the candidacy of any person in a labor organization election. Employers are forbidden from contributing any funds for such purposes.

(b) Each bona fide candidate for office has a right, once within 30 days prior to any election in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment. It is the duty of the labor organization and its officers to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Thus, although the right to "inspect" membership lists granted by section 401(c) does not include a right to copy such lists²⁴ if any candidate is permitted to make a copy all bona fide candidates must be accorded the same privilege.²⁵

CONDUCT OF ELECTIONS

§ 452.10 Persons eligible to vote.

(a) All members in good standing are entitled to vote in required elections which are held by secret ballot.²⁶ Members in good standing are persons who have fulfilled the requirements for membership and who have neither voluntarily withdrawn nor been expelled or suspended from membership²⁷ after appropriate proceedings consistent with lawful provisions of the constitution and bylaws.²⁸ A labor organization may, however, prescribe reasonable rules and regulations with respect to voting eligibility.²⁹ Thus, it may, in appropriate circumstances, defer eligibility to vote by requiring a reasonable period of prior membership, such as 6 months or a year, or by requiring apprentice members to complete their apprenticeship training, as a condition of voting. While the right to vote may thus be deferred within reasonable limits, a union may not create special classes of nonvoting members.

(b) A member in good standing whose dues are checked off by his employer pursuant to his voluntary authorization and to a collective bargaining agreement and not be disqualified from voting (or from being a candidate) by reason of alleged delay or default in the payment of dues.³⁰

§ 452.11 General election safeguards.

In every election of officers, delegates, or representatives, each candidate must be permitted to have an observer at the polls and at the counting of the ballots. These and such other safeguards must be

provided as will be adequate to assure a fair election.³¹

§ 452.12 Secret ballot elections.

(a) A "secret ballot" is defined by the Act as "the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote * * * cast in such a manner that the person expressing such choice cannot be identified with the choice expressed."³²

(b) In every election required by the Act which is to be held by secret ballot among members in good standing to choose officers, delegates, or representatives, notice of the election must be mailed to each member at his last known home address not less than fifteen days prior to the election.³³ The notice must include a specification of the time and place of the election and of the offices to be filled. Every such election is required to be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the election provisions of the Act.³⁴ The Act does not, however, prescribe the particular election procedures which must be followed. Thus, a local labor organization which conducts an election of its officers, delegates, or representatives by secret ballot may by its constitution and bylaws provide for the election of the candidate who receives the greatest number of votes, although he does not have a majority of all the votes cast. Alternatively, it may by its constitution and bylaws provide that when no candidate receives a majority of all the votes cast, a run-off election be held between the two candidates having the highest vote. Similarly, a labor organization conducting an election to choose five members of an executive board may, if its constitution and bylaws so provide, designate as elected from among all the nominees for the five positions, the five candidates who receive the highest vote. Other methods which may be provided for by a labor organization's constitution and bylaws are not prohibited by the Act so long as they permit the members to support the candidates of their choice. In the exercise of this right to support candidates of their choice, members may not be subjected to penalty, discipline, or improper interference or reprisal of any kind by the labor organization or any of its members.

(c) In every election required by the Act which is held by secret ballot as provided in Title IV, the votes cast by members of each local labor organization must be counted, and the results published, separately.³⁵

(d) In every election required by the Act which is held by secret ballot as provided in Title IV, all election records, including ballots, must be preserved for one year by the election officials designated in the constitution and bylaws of the labor organization conducting the election or by the secretary of such or-

ganization if no other official is designated.³⁶

§ 452.13 Elections at conventions.

(a) Elections of officers of national or international labor organizations may be held either by secret ballot of the members or at conventions of delegates elected by secret ballot.³⁷ Where the elections of such officers are by secret ballot of the members, all of the requirements of the Act relating to secret ballot elections must be complied with. Whether such elections are conducted in open convention or by direct secret ballot among the members, the convention or the secret ballot, as the case may be, must be conducted in accordance with the constitution and bylaws of the labor organization, insofar as they are not inconsistent with the election requirements of the Act.

(b) So long as officers of a national or international labor organization are elected "at a convention of delegates chosen by secret ballot," and in accordance with provisions of the constitution and bylaws which are consistent with Title IV and Title I of the Act, the manner in which the vote of the delegates is cast is not subject to special limitations. There is no prohibition on delegates in a convention voting by proxy, if the constitution and bylaws permit.

(c) The credentials of delegates, and all minutes and other records pertaining to the election of officers at conventions, must be preserved for one year by the officials designated in the constitution and bylaws or by the secretary of the national or international labor organization, if no such official is designated.

§ 452.14 Elections of officers of intermediate bodies.

(a) Elections of officers of intermediate bodies such as conferences, general committees, joint or system boards or joint councils, may be either by secret ballot among the members in good standing of the labor organizations which are represented in such intermediate bodies or by the officers or delegates representing such members. The officers or delegates who represent the members of particular labor organizations in the election of officers of intermediate bodies must have been elected by secret ballot of their respective memberships. Officers of labor organizations so elected, who by virtue of election to office are also delegates to such intermediate bodies, would qualify to vote in the election of officers of the intermediate bodies where the constitution and bylaws of the labor organizations so provide.

(b) The elections in these intermediate bodies are to be conducted in accordance with the constitution and bylaws of such organizations insofar as they are not inconsistent with the provisions of the Title IV³⁸ and Title I.

SPECIAL ENFORCEMENT PROVISIONS

§ 452.15 Complaints of members.

(a) Any member of a labor organization may file a complaint with the Direc-

²⁴ H. Rept. No. 114, 86th Cong., 1st sess., p. 34.

²⁵ See Daily Cong. Rec. 86th Cong., 1st sess., pp. 6031-6032, April 25, 1959.

²⁶ Act, sec. 401(e).

²⁷ Act, sec. 101(a)(5) prohibits the expulsion or suspension of members without a hearing upon specific written charges and after reasonable time for preparation of defense, except for non-payment of dues.

²⁸ Act, sec. 3(o).

²⁹ Act, sec. 101(a)(1).

³⁰ Act, sec. 3(k).

³¹ Act, sec. 401(e).

³² Act, sec. 401(e). See also S. Rept. 187, 86th Cong., 1st sess., p. 47; Daily Cong. Rec., p. 13682, Aug. 3, 1959, and p. A6573, July 29, 1959.

³³ Act, sec. 401(a).

³⁴ Act, sec. 402(a)(2).

tor, Office of Labor-Management and Welfare-Pension Reports, alleging that there have been violations of requirements of the Act concerning the election of officers, delegates, and representatives (including violations of election provisions of the organization's constitution and bylaws that are not inconsistent with the Act).³⁵ The complaint may not be filed until one of the two following conditions has been met: (1) The member must have exhausted the remedies available to him under the constitution and bylaws of the organization and its parent body, or (2) he must have invoked such remedies without obtaining a final decision within three calendar months after invoking them.

(b) If the member obtains an unfavorable final decision within three calendar months after invoking his available remedies, he must file his complaint within one calendar month after obtaining the decision. If he has not obtained a final decision within three calendar months, he has the option of filing his complaint or of waiting until he has exhausted the available remedies within the organization. In the latter case, if the final decision is ultimately unfavorable, he will have one month in which to file his complaint.

§ 452.16 Investigation of complaint by Director, Office of Labor-Management and Welfare-Pension Reports and court action by the Secretary.

(a) The Director, Office of Labor-Management and Welfare-Pension Reports is required to investigate each complaint of a violation filed in accordance with the requirements of the Act and, if the Secretary finds probable cause to believe that a violation has occurred and has not been remedied, he is directed to bring, within 60 days after the complaint has been filed, a civil action against the labor organization in a Federal district court. In any such action brought by the Secretary the statute provides that if, upon a preponderance of the evidence after a trial upon the merits, the court finds (1) that an election has not been held within the time prescribed by the election provisions of the Act or (2) that a violation of these provisions "may have affected the outcome of an election", the court shall declare the election, if any, to be void and direct the conduct of an election under the supervision of the Secretary and, so far as is lawful and practicable, in conformity with the constitution and bylaws of the labor organization.

(b) Violations of the election provisions of the Act which occurred in the conduct of elections held within the prescribed time are not grounds for setting aside an election unless they "may have affected the outcome." The Secretary, therefore, will not institute court proceedings upon the basis of a complaint alleging such violations unless he finds probable cause to believe that they "may have affected the outcome of an election."

(c) Elections challenged by a member are presumed valid pending a final decision. The statute provides that until

such time, the affairs of the labor organization shall be conducted by the elected officers or in such other manner as the union constitution and bylaws provide. However, after suit is filed by the Secretary, the court has power to take appropriate action to preserve the labor organization's assets.

DATES AND SCOPE OF APPLICATION

§ 452.17 Effective dates.

(a) Section 404 states when the election provisions of the Act become applicable.³⁶ In the case of labor organizations whose constitution and bylaws can be lawfully modified or amended by action of the organization's "constitutional officers or governing body," the election provisions become applicable 90 days after the enactment of the statute (December 14, 1959). Where the modification of the constitution and bylaws of a local labor organization requires action by the membership at a general meeting or by referendum, the general membership would be a "governing body" within the meaning of this provision. In the cases where any necessary modification of the constitution and bylaws can be made only by a constitutional convention of the labor organization, the election provisions become applicable not later than the next constitutional convention after the enactment of the statute, or one year after the enactment of the statute whichever is sooner.

(b) The statute does not require the calling of a special constitutional convention to make such modifications. However, if no convention is held within the one-year period, the executive board or similar governing body that has the power to act for the labor organization between conventions is empowered by the statute to make such interim constitutional changes as are necessary to carry out the provisions of Title IV of the Act. Any election held thereafter would have to comply with the requirements of the Act.

§ 452.18 Application of other laws.

(a) Section 403³⁷ provides that no labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by the election provisions of the Act.

(b) The remedy³⁸ provided in the Act for challenging an election already conducted is exclusive.³⁹ However, existing rights and remedies to enforce the constitutions and bylaws of such organizations before an election has been held are unaffected by the election provisions.⁴⁰ Section 603,⁴¹ which applies to the entire Act, states that except where explicitly provided to the contrary, noth-

ing in the Act shall take away any right or bar any remedy of any union member under other Federal law or law of any State.

PART 453—GENERAL STATEMENT CONCERNING THE BONDING REQUIREMENTS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

INTRODUCTION

Sec. 453.1 Scope and significance of this part.

CRITERIA FOR DETERMINING WHO MUST BE BONDED

- 453.2 Provisions of the statute
- 453.3 Labor organizations within the coverage of section 502(a).
- 453.4 Trusts (in which a labor organization is interested) within the coverage of section 502(a).
- 453.5 Officers, agents, shop stewards, or other representatives or employees of a labor organization.
- 453.6 Officers, agents, shop stewards or other representatives or employees of a trust in which a labor organization is interested.
- 453.7 "Funds or other property" of a labor organization or of a trust in which a labor organization is interested.
- 453.8 Personnel who "handle" funds or other property.
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SCOPE OF THE BOND

- 453.10 The statutory provision.
- 453.11 The nature of the "duties" to which the bonding requirement relates.
- 453.12 Required coverage of the bonds.

AMOUNT OF BONDS

- 453.13 The statutory provision.
- 453.14 The meaning of "funds".
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- 453.17 Term of the bond.

FORM OF BONDS

- 453.18 Bonds "individual or schedule in form."
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QUALIFIED AGENTS, BROKERS, AND SURETY COMPANIES FOR THE PLACING OF BONDS

- 453.20 Corporate sureties holding grants of authority from the Secretary of the Treasury.
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MISCELLANEOUS PROVISIONS

- 453.22 Prohibition of certain activities by unbonded persons.
- 453.23 Persons becoming subject to bonding requirements during fiscal year.
- 453.24 Payment of bonding costs.
- 453.25 Effective date of the bonding requirement.

AUTHORITY: §§ 453.1 to 453.25 issued under sec. 502, 73 Stat. 536, 29 U.S.C. 502; Secretary's Order No. 24-63 (28 F.R. 9172), and Secretary's Order No. 25-63 (28 F.R. 9173).

INTRODUCTION

§ 453.1 Scope and significance of this part.

(a) *Functions of the Department of Labor.* This part discusses the meaning and scope of section 502 of the Labor-Management Reporting and Disclosure Act

³⁵ Act, sec. 402(a).

³⁶ Act, sec. 404.

³⁷ Act, sec. 403.

³⁸ Act, sec. 402. See § 452.14.

³⁹ Act, sec. 403. See Daily Cong. Rec., 86th Cong., 1st sess., pp. 9115, June 8, 1959, pp. 13017 and 13090, July 27, 1959. H. Rept. No. 741, p. 17; S. Rept. No. 187, pp. 21-22, 101, 104. Hearings, House Comm. on Education and Labor, 86th Cong., 1st sess., pt. 1, p. 1611.

⁴⁰ Act, sec. 603.

Act of 1959¹ (hereinafter referred to as the Act), which requires the bonding of certain officials, representatives, and employees of labor organizations and of trusts in which labor organizations are interested. The provisions of section 502 are subject to the general investigatory authority of the Director, Office of Labor-Management and Welfare-Pension Reports, embodied in section 601 of the Act which empowers him to investigate whenever he believes it necessary in order to determine whether any person has violated or is about to violate any provisions of the Act (except Title I or amendments to other statutes made by section 505 or Title VII). The Department of Labor is also authorized, under the general provisions of section 607, to forward to the Attorney General, for appropriate action, any evidence of violations of section 502 developed in such investigations, as may be found to warrant criminal prosecution under the Act or other Federal law.

(b) *Purpose and effect of interpretations.* Interpretations of the Labor-Management Services Administrator with respect to the bonding provisions are set forth in this part to provide those affected by these provisions of the Act with "a practical guide * * * as to how the office representing the public interest in its enforcement will seek to apply it."² The correctness of an interpretation can be determined finally and authoritatively only by the courts. It is necessary, however, for the Labor-Management Services Administrator to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Labor-Management Services Administrator contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently decides that a prior interpretation is incorrect. However, the omission to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Labor-Management Services Administrator with respect to such problem or to constitute an administrative interpretation or practice.

(c) *Earlier interpretations superseded.* To the extent that prior opinions and interpretations under the Act, relating to the bonding of certain officials, representatives, and employees of labor organizations and of trusts in which labor organizations are interested, are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

CRITERIA FOR DETERMINING WHO MUST BE BONDED

§ 453.2 Provisions of the statute.

(a) Section 502(a) requires that—

Every officer, agent, shop steward, or other representative or employee

of any labor organization (other than a labor organization whose property and annual financial receipts do not exceed \$5,000 in value), or of a trust in which a labor organization is interested,

who handles funds or other property thereof shall be bonded for the faithful discharge of his duties.

(b) This section sets forth, in the above language and in its further provisions, the minimum requirements regarding the bonding of the specified personnel. There is no provision in the Act which precludes the bonding of such personnel in amounts exceeding those specified in section 502(a). Similarly, the Act contains no provision precluding the bonding of such personnel as are not required to be bonded by this section. Such excess coverage may be in any amount and in any form otherwise lawful and acceptable to the parties to such bonds.

§ 453.3 Labor organizations within the coverage of section 502(a).

Any labor organization as defined in sections 3(i) and 3(j) of the Act³ is a labor organization within the coverage of section 502(a) unless its property and annual financial receipts do not exceed \$5,000 in value. The determination as to whether a particular labor organization is excepted from the application of section 502(a) is to be made at the beginning of each of its fiscal years on the basis of the total value of all its property at the beginning of, and its total financial receipts during, the preceding fiscal year of the organization.

§ 453.4 Trusts (in which a labor organization is interested) within the coverage of section 502(a).

Section 3(l) of the Act defines a "trust in which a labor organization is interested" as:

* * * a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

Both the language and the legislative history⁴ make it clear that this definition covers pension funds, health and welfare funds, profit sharing funds, vacation funds, apprenticeship and training funds, and funds or trusts of a similar nature which exist for the purpose of, or have as a primary purpose, the providing of the benefits specified in the definition. This is so regardless of whether these trusts, funds, or organizations are administered solely by labor organizations, or jointly by labor organizations and employers, or by a corporate trustee, unless they were neither created or established by a labor organization nor have any trustee or member of the governing body who was selected or appointed by a labor organization.

³ See Part 451 of this chapter.

⁴ Daily Cong. Rec., pp. 5858-59, Senate, April 23, 1959.

§ 453.5 Officers, agents, shop stewards, or other representatives or employees of a labor organization.

With respect to labor organizations, the term "officer, agent, shop steward, or other representative" is defined in section 3(q) of the Act to include "elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority)." Other individuals employed by a labor organization, including salaried non-supervisory professional staff, stenographic, and service personnel are "employees" and must be bonded if they handle⁵ funds or other property of the labor organization.

§ 453.6 Officers, agents, shop stewards or other representatives or employees of a trust in which a labor organization is interested.

(a) *Officers, agents, shop stewards or other representatives.* While the definition of the collective term "Officer, agent, shop steward, or other representative" in section 3(q) of the Act is expressly applicable only "when used with respect to a labor organization", the use of this term in connection with trusts in which a labor organization is interested makes it clear that, in that connection, it refers to personnel of such trusts in positions similar to those enumerated in the definition. Thus, the term covers trustees and key administrative personnel of trusts, such as the administrator of a trust, heads of departments or major units, and persons in similar positions. It covers such personnel, including trustees, regardless of whether they are representatives of or selected by labor organizations, or representatives of or selected by employers,⁶ and such personnel must be bonded if they handle funds or other property of the trust within the meaning of section 502(a).

(b) *Independent institutions not included.* The analogy to the definition of the term "officer, agent, shop steward, or other representative," when used with respect to a labor organization, shows that banks and other qualified financial institutions in which trust funds are deposited are not to be considered as

⁵ For discussion of "handle", see § 453.8.

⁶ See the contrast between section 308 of S. 1555 as passed by the Senate ("All officers, agents, representatives, and employees of any labor organization engaged in an industry affecting commerce who handle funds of such organization or of a trust in which such organization is interested shall be bonded * * *") and section 502 of the Act as finally enacted. The change between the two versions originated in the House Committee on Education and Labor. Prior to the reporting of the bill (H.R. 8342) by that Committee, a joint subcommittee of that Committee held extensive hearings, during the course of which witnesses including President Meany of the AFL-CIO criticized the bonding provision of the Senate bill on the ground that it required only union personnel of joint employer-union trusts to be bonded. (See Record of Hearings before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Congress, 1st Session, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474, pp. 1493-94, 1979.)

¹ 73 Stat. 536; 29 U.S.C. 502.

² Skidmore v. Swift & Co., 323 U.S. 134, 138.

"agents" or "representatives" of trusts within the meaning of section 502 and thus are not subject to the bonding requirement, even though they may also have administrative or management responsibilities with respect to such trusts. Similarly, the bonding requirement does not apply to brokers or other independent contractors who have contracted with trusts for the performance of functions which are normally not carried out by officials or employees of such trusts such as the buying of securities, the performance of other investment functions, or the transportation of funds by armored truck.

(c) *Employees of a trust in which a labor organization is interested.* As in the case of labor organizations, all individuals employed by a trust in which a labor organization is interested are "employees," regardless of whether, technically, they are employed by the trust, by the trustees, by the trust administrator, or by trust officials in similar positions.

§ 453.7 "Funds or other property" of a labor organization or of a trust in which a labor organization is interested.

The affirmative requirement for bonding the specified personnel is applicable only if they handle "funds or other property" of the labor organization or trust concerned. A consideration of the purpose of section 502 and a reading of the section as a whole, including provisions for fixing the amount of bonds, suffice to show that the term "funds or other property", as used in this section of the Act, encompasses more than cash alone but that it does not embrace all of the property of a labor organization or of a trust in which a labor organization is interested. The term does not include property of a relatively permanent nature, such as land, buildings, furniture, fixtures and office and delivery equipment used in the operations of a labor organization or trust. It does, however, include items in the nature of quick assets, such as checks and other negotiable instruments, government obligations and marketable securities, as well as cash, and other property held, not for use, but for conversion into cash or for similar purposes making it substantially equivalent to funds.

§ 453.8 Personnel who "handle" funds or other property.

(a) *General considerations.* Section 502(a) requires "every" person specified in its bonding requirement "who handles" funds or other property of the labor organization or trust to be bonded. It does not contain any exemption based on the amount of the funds or other property handled by particular personnel. Therefore, if the bonding requirement is otherwise applicable to such persons, the amount of the funds or the value of the property handled by them does not affect such applicability. In determining whether a person "handles" funds or other property within the meaning of section 502(a), however, it is important to consider the term "handles" in the light of the basic purpose which Congress sought to achieve

by the bonding requirement and the language chosen to make that purpose effective. Thus, while it is clear that section 502(a) should be considered as representing the minimum requirements which Congress deemed necessary in order to insure the reasonable protection of the funds and other property of labor organizations and trusts within the coverage of the section, it is equally clear from the legislative history⁷ and the language used that Congress was aware of cost considerations and did not intend to require unreasonable, unnecessary or duplicative bonding. In terms of these general considerations, more specific content may be assigned to the term "handles" by reference to the prohibition in section 502(a) against permitting any person not covered by an appropriate bond "to receive, handle, disburse, or otherwise exercise custody or control" of the funds or other property of a labor organization or of a trust in which a labor organization is interested. The phrase "receive, handle, disburse, or otherwise exercise custody or control" is not to be considered as expanding the scope of the term "handles" but rather as indicating facets of "handles" which, in a specific prohibition, Congress believed should be clearly set forth.

(b) *Persons included generally.* The basic objective of section 502(a) is to provide reasonable protection of funds or other property rather than to insure against every conceivable possibility of loss. Accordingly, persons who "handle" funds or other property, within the meaning of the section, will ordinarily be those whose duties with respect to the receipt, safekeeping or disbursement of funds or property are such that some significant risk of loss would result if these duties were not faithfully discharged.

(c) *Physical contact as criterion of "handling".* Physical dealing with funds or other property is, under the principles above stated, not necessarily a controlling criterion in every case for determining the persons who "handle" within the meaning of section 502(a). For example, in the case of shop stewards who personally collect dues from members, a significant risk of loss of the collections would result from failure to faithfully discharge the duties involved in performing such a function. Accordingly, a bond would normally be required unless the risk were adequately covered by the bonding of other personnel as required by section 502(a). On the other hand, bonding may not be required for office personnel who from time to time perform counting, packaging, tabulating or similar duties which involve physical contact with checks, securities, or other funds or property but which are performed under conditions that cannot reasonably be said to give rise to significant risks with respect to the receipt, safekeeping or disbursement of funds or

property. This may be the case where significant risks of mishandling in the performance of duties of an essentially clerical character are precluded by the closeness of the supervision provided or by the nature of the funds or other property handled.

(d) *"Handling" funds or other property without physical contact.* Personnel who do not physically handle funds or property may nevertheless "handle" within the meaning of section 502(a) where they have or perform significant duties with respect to the receipt, safekeeping or disbursement of funds or other property, and bonds for such personnel would be required where their failure to faithfully discharge such duties would not be covered by other bonds meeting the requirements of this section. For example, persons who have access to a safe deposit box or similar depository for the purpose of adding to, withdrawing, checking or otherwise dealing with its contents may be said to "handle" these contents within the meaning of section 502(a) even though they do not at any time during the year actually secure such access for such purposes. Similarly, those charged with general responsibility for the safekeeping of funds or other property, such as the treasurer of a labor organization, should be considered as handling funds or other property. It should also be noted that the extent of actual authority to deal with funds or property may be immaterial where custody or other functions have been granted which create a substantial risk of mishandling. Thus, if a bank account were maintained in the name of a particular officer or employee whose signature the bank were authorized to honor, it could not be contended that he did not "handle" funds merely because he had been forbidden by the organization or by his superiors to make deposits or withdrawals.

(e) *Disbursement of funds or other property.* It is clear from both the purpose and language of section 502(a) that personnel described in the section who actually disburse funds or other property, such as officers or trustees authorized to sign checks or persons who make cash disbursements, must be considered as handling such funds and property. Whether others who may influence, authorize or direct disbursements must also be considered to handle funds or other property can be determined only by reference to the specific duties or responsibilities of these persons in a particular labor organization or trust.

§ 453.9 "Handling" of funds or other property by personnel functioning as a governing body.

(a) (1) *General considerations.* For many labor organizations and trusts special problems involving disbursements will be presented by those who, as trustees or members of an executive board or similar governing body, are, as a group, charged with general responsibility for the conduct of the business and affairs of the organization or trust. Often such bodies may approve contracts, authorize disbursements, audit accounts and exercise similar responsibilities.

⁷ House Report No. 1147, 86th Congress, 1st Session, p. 35; Daily Cong. Record 16419, Senate, Sept. 3, 1959; Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare on S. 505, S. 748, S. 76, S. 1002, S. 1137, and S. 1311, 86th Congress, 1st Session, p. 709.

(2) It is difficult to formulate any general rule for such cases. The mere fact that a board of trustees, executive board or similar governing body has general supervision of the affairs of a trust or labor organization, including investment policy and the establishment of fiscal controls, would not necessarily mean that the members of this body "handle" the funds or other property of the organization. On the other hand, the facts may indicate that the board or other body exercises such close, day-to-day supervision of those directly charged with the handling of funds or other property that it might be unreasonable to conclude that the members of such board were not, as a group, also participating in the handling of such funds and property.⁶ Also, whether or not the members of a particular board of trustees or executive board handle funds or other property in their capacity as such, certain of these members may hold other offices or have other functions involving duties directly related to the receipt, safekeeping or disbursement of the funds or other property of the organization so that it would be necessary that they be bonded for the faithful discharge of these duties irrespective of their board membership.

(b) *Nature of responsibilities as affecting "handling".* With respect to particular responsibilities of boards of trustees, executive boards and similar bodies in disbursing funds or other property, much would depend upon the system of fiscal controls provided in a particular trust or labor organization. The allocation of funds or authorization of disbursements for a particular purpose is not necessarily handling of funds within the meaning of the section. If the allocation or authorization merely permits expenditures by a disbursing officer who has responsibility for determining the validity or propriety of particular expenditures, then the action of the disbursing officer and not that of the board would constitute handling. But if pursuant to a direction of the board, the disbursing officer performed only ministerial acts without responsibility to determine whether the expenditures were valid or appropriate, then the board's action would constitute handling. In such a case, the faithful discharge of the duties of the disbursing officer alone would not necessarily prevent unauthorized, illegal, or irregular disbursements. The person or persons who are charged with or exercise responsibility for determining whether specific disbursements are bona fide, regular, and in accordance with the applicable constitution, trust instrument, resolution or other laws or documents governing the disbursement of funds or other property should be considered to handle such funds and property and be bonded accordingly.

SCOPE OF THE BOND

§ 453.10 The statutory provision.

The only specific statutory provision as to the scope of the bond required by

⁶ As to group coverage, see § 453.16.

section 502(a) of the Act is that every covered person "shall be bonded for the faithful discharge of his duties." It thus becomes necessary to consider the nature of the duties to which this bonding requirement is applicable and the type of bond which is necessary to protect against their unfaithful discharge.

§ 453.11 The nature of the "duties" to which the bonding requirement relates.

The bonding requirement in section 502(a) relates only to duties of the specified personnel in connection with their handling of funds or other property to which this section refers. It does not have reference to the special duties imposed upon representatives of labor organizations by virtue of the positions of trust which they occupy, which are dealt with in section 501(a), and for which civil remedies for breach of the duties are provided in section 501(b). The fact that the bonding requirement is limited to personnel who handle funds or other property indicates the correctness of these conclusions. They find further support in the differences between sections 501(a) and 502(a) of the Act which sufficiently indicate that the scope of the two sections is not coextensive.

§ 453.12 Required coverage of the bonds.

The bonds required by section 502(a) must be conditioned upon "the faithful discharge" by the covered personnel of their duties relating to the handling of funds or other property. Since they would be confined to covering losses resulting from unfaithfulness in the discharge of duties to the extent reasonably necessary for the protection of funds or other property, a bond under this section need not provide insurance against loss to the same extent as might be required in the case of the bond of a public official. The question of precisely what would constitute unfaithfulness in the discharge of duties relating to the handling of funds or other property in any given case is a question of fact to be determined in the light of the existing circumstances. The conditions of the bond should, in any event, be adequate to cover significant risks of loss from any unfaithfulness of the bonded personnel in discharging whatever duties of handling funds or other property (as those terms are used in section 502(a)) such personnel may have by reason of holding the specified positions with the labor organization or trust.

AMOUNT OF BONDS

§ 453.13 The statutory provision.

Section 502(a) of the Act requires that the bond of each "person" handling "funds or other property" who must be bonded be fixed "at the beginning of the organization's fiscal year * * * in an amount not less than 10 percentum of the funds handled by him and his predecessor or predecessors, if any, during the preceding fiscal year, but in no case more than \$500,000." If there is no preceding fiscal year, the amount of each required bond is set at not less than

\$1,000 for local labor organizations and at not less than \$10,000 for other labor organizations or for trusts in which a labor organization is interested.

§ 453.14 The meaning of "funds".

While the protection of bonds required under the Act must extend to any actual loss from the unfaithful discharge of duties relating to the handling of "funds or other property" (§ 453.7), the amount of the bond depends upon the "funds" handled by the personnel bonded and their predecessors, if any. "Funds" as here used is not defined in the Act. As in the case of "funds or other property" discussed earlier in § 453.7, the term would not include property of a relatively permanent nature such as land, buildings, furniture, fixtures, or property similarly held for use in the operations of the labor organization or trust rather than as quick assets. In its normal meaning, however, "funds" would include, in addition to cash, items other than cash such as bills and notes, government obligations and marketable securities, and in a particular case might well include all the "funds or other property" handled during the year in the positions occupied by the particular personnel for whom the bonding is required. In any event, it is clear that bonds fixed in the amount of 10 percent or more of the total "funds or other property" handled by the occupants of such positions during the preceding fiscal year would be in amounts sufficient to meet the statutory requirement. Of course, in situations where a significant saving in bonding costs might result from computing separately the amounts of "funds" and of "other property" handled, criteria for distinguishing particular items to be included in the quoted terms would prove useful. While the criteria to be applied in a particular case would depend on all the relevant facts concerning the specific items handled, it may be assumed as a general principle that at least those items which may be handled in a manner similar to cash and which involve a like risk of loss should be included in computing the amount of "funds" handled.

§ 453.15 The meaning of funds handled "during the preceding fiscal year".

The funds handled by personnel required to be bonded and their predecessors during the course of a fiscal year would ordinarily include the total of whatever such funds were on hand at the beginning of the fiscal year plus any items received or added in the form of funds during the year for any reason, such as dues, fees and assessments, trust receipts, or items received as a result of sales, investments, reinvestments, or otherwise. It would not, however, be necessary to count the same item twice in arriving at the total funds handled by personnel during a year. Once an item properly within the category of "funds" had been counted as handled by personnel during a year, there would be no need to count it again should it subsequently be handled by the same personnel during the same year in some other connection.

§ 453.16 Funds handled by more than one person.

The amount of any required bond is determined by the total funds handled during a fiscal year by each "person" bonded, and any predecessors of such "person". The term "person", however, is defined in section 3(d) of the Act to include "one or more" of the various individuals or entities there listed, so that there may be numerous instances where the bond of a "person" may include several individuals. Wherever this is the case, the amount of the bond for that "person" would, of course, be based on the total funds handled by all who comprise the "person" included in the bond, without regard to the precise extent to which any particular individual might have handled such funds. This would be the situation, for example, in many cases of joint or group activity in the performance of a single function. It would also be true where various individuals performed the same type of function for an organization, even though they acted independently of one another. There would, however, be no objection to bonding each individual separately, and fixing the amount of his bond on the basis of the total funds which he individually handled during the year.

§ 453.17 Term of the bond.

The amount of any required bond must in each instance be based on funds handled "during the preceding fiscal year," and must be fixed "at the beginning" of an organization's fiscal year—that is, as soon after the date when such year begins as the necessary information from the preceding fiscal year can practicably be ascertained. This does not mean, however, that a new bond must be obtained each year. There is nothing in the Act which prohibits a bond for a term longer than one year, with whatever advantages such a bond might offer by way of a lower premium, but at the beginning of each fiscal year during its term the bond must be in at least the requisite amount. If it is below that level at that time for any reason, it would then be necessary either to modify the existing bond to increase it to the proper amount or to obtain a supplementary bond. In either event, the terms upon which this could best be done would be left to the parties directly concerned.

FORM OF BONDS

§ 453.18 Bonds "individual or schedule in form".

(a) *General consideration.* In addition to such substantive matters as the personnel who must be bonded and the scope and the amount of the prescribed bonds, which have been discussed previously, the form of the bonds is the subject of a specific provision of section 502(a). Under this provision, a bond meeting the substantive requirements of the section may be either "individual or schedule in form." These terms are not specially defined and could be descriptive of a variety of possible forms of bonds. According to trade usage, an individual bond is a single bond covering

a single named individual to a designated amount, and bonds "schedule in form" may include either name schedule or position schedule bonds. A name schedule bond is typically a single bond covering a series or list of named individuals, each of whom is bonded separately to a designated amount. A position schedule bond is typically a single bond providing coverage with respect to any occupant or holder of one or more specified positions during the term of the bond, each office or position being covered to a designated amount. In a statute relating to trade or commerce, it is frequently helpful to consider whatever trade or commercial usages may have developed with respect to the statutory terms.⁹ References to individual, schedule and position schedule bonds may be found in other acts of Congress and indicate a clear awareness of trade usages and terminology in this field.¹⁰

(b) *Particular forms of bonds.* If the phrase "individual or schedule in form" is considered in light of the trade usages, section 502(a) at least permits bonds which are individual, name schedule or position schedule in form. Of course, section 502(a) does not require any particular type of individual or schedule bonds where different types exist or may be developed. It could not be said, for example, that a bond which schedules positions according to similarities in duties, risks, or required amounts of coverage is not "schedule in form" within the meaning of section 502(a) merely because the particular form of scheduling involved was not employed in bonds current at the time the section became law. A more specific illustration would be a bond scheduling shop stewards as a group because of the similar duties they perform in collecting dues, or members of an executive board as a group because of the fact that duties are imposed upon the board as such. A bond of this type would be "schedule in form" within the meaning of section 502(a) and, assuming adequacy of amount and coverage of all persons whom it is necessary to bond, such a bond would be in conformity with the statute. Also, a bond scheduling positions or groups of positions according to amounts of funds handled by occupants of the positions could be viewed as "schedule in form."

(c) *Additional bonding.* Section 502(a) neither prevents additional bonding beyond that required by its terms nor prescribes the form in which such additional coverage may be taken. Thus, so long as a particular bond is schedule in form as to the personnel required to be bonded and schedules coverage of these persons in at least the minimum required amount, additional coverage either as to personnel or amount may be taken in any form either in the same or in separate bonds. A bond which provided name or position schedule coverage for all persons required to be bonded under section 502(a), each scheduled

person or position being bonded in at least the required minimum amount, would clearly be "schedule in form" within the meaning of section 502(a) regardless of the extent or form of additional schedule or blanket coverage provided in the same bond.

§ 453.19 The designation of the "insured" on bonds.

Since section 502 is intended to protect the funds or other property of labor organizations and trusts in which labor organizations are interested, bonds under this section should allow for enforcement or recovery for the benefit of the labor organization or trust concerned by those ordinarily authorized to act for it in such matters. For example, in the case of a local labor organization, a bond would not be appropriate under section 502 if it protected only the interests of a national or international labor organization with which the local labor organization is affiliated or if it designated as the insured only some particular officer of the organization who does not legally represent it in similar formal instruments.

QUALIFIED AGENTS, BROKERS, AND SURETY COMPANIES FOR THE PLACING OF BONDS

§ 453.20 Corporate sureties holding grants of authority from the Secretary of the Treasury.

The provisions of section 502(a) require that any surety company with which a bond is placed pursuant to that section must be a corporate surety which holds a grant of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-13), as an acceptable surety on Federal bonds. That Act provides, among other things, that in order for a surety company to be eligible for such grant of authority, it must be incorporated under the laws of the United States or of any State and the Secretary of the Treasury shall be satisfied of certain facts relating to its authority and capitalization. Such grants of authority are evidenced by Certificates of Authority which are issued by the Secretary of the Treasury and which expire on the April 30 following the date of their issuance. A list of the companies holding such Certificates of Authority is published annually in the FEDERAL REGISTER, usually in May or June. Changes in the list, occurring between May 1 and April 30, either by addition to or removal from the list of companies, are also published in the FEDERAL REGISTER following each such change.

§ 453.21 Interests held in agents, brokers, and surety companies.

(a) Section 502(a) of the Act prohibits the placing of bonds required therein through any agent or broker or with any surety company in which any labor organization or any officer, agent, shop steward, or other representative of a labor organization has any direct or indirect interest. The purpose of this provision, as shown by its legislative history, is to insure against the existence of any "financial or other influential" interests which would affect the objectivity of the action of agents, brokers, or surety com-

⁹ See 2 Sutherland, Statutory Construction (3d ed. 1943) § 4919.

¹⁰ Act of August 24, 1954, 68 Stat. 335, 12 U.S.C. 1766(g); Act of August 9, 1955, 69 Stat. 618, 6 U.S.C. 14.

panies in bonding the personnel specified in the section.¹¹ It appears, therefore, that is was the intent of Congress to prevent the placing of bonds through agents or brokers, and with surety companies, in which any labor organization or any officer, agent, shop steward, or other representative of a labor organization holds more than a nominal interest.

(b) Since the statute provides that either a direct or indirect interest by a labor organization or by the specified persons may disqualify an agent, broker, or surety company from having a bond placed through or with it, the disqualification would be effective if a labor organization or any of the specified persons are in a position to influence or control the activities or operations of such brokers, agents, or surety companies, by virtue of interests held either directly by them or by relatives or third parties which they own or control. The question of whether the relationship between the labor organization or the specified persons on the one hand, and another party or parties holding an interest in a broker, agent, or surety company on the other hand, is so close as to put the former in a position to influence or control the activities or operations of such broker, agent, or surety company through the latter, presents a question of fact which must necessarily be determined in each case in the light of all the pertinent circumstances.

(c) It is also to be noted that the statute does not appear to restrict the disqualification to cases in which a direct or indirect interest is held by a labor organization as a whole, or by a substantial number of officers, agents, shop stewards, or other representatives of a labor organization, but provides for the disqualification also in cases where any one officer, agent, shop steward, or other representative of a labor organization holds such an interest.

MISCELLANEOUS PROVISIONS

§ 453.22 Prohibition of certain activities by unbonded persons.

(a) Section 502(a) provides that persons who are not covered by bonds as required by that section shall not be permitted to receive, handle, disburse, or otherwise exercise custody or control of the funds or other property of a labor organization or of a trust in which a labor organization is interested. This prohibits personnel who are required to be bonded, as explained in § 453.8 from performing any of these acts without being covered by the required bonds. In addition, this provision makes it unlawful for any person with power to do so to delegate or assign the duties of receiving, handling, disbursing, or otherwise exercising custody or control of such funds or property to any person who is not bonded in accordance with the provisions of section 502(a).

(b) The legislative history of the Act indicates, however, that it was not the

intent of Congress to make compliance with the bonding requirements of section 502(a) a condition on the right of banks or other financial institutions to serve as the depository of the funds of labor organizations or trusts. Similarly, it appears that the provisions of that section do not require the bonding of brokers or other independent contractors who have contracted with labor organizations or trusts for the performance of functions which are normally not carried out by such labor organizations' or trusts' own officials or employees, such as the buying of securities, the performance of other investment functions, or the transportation of funds by armored truck.¹²

§ 453.23 Persons becoming subject to bonding requirements during fiscal year.

Considering the purpose of section 502, the language of the prohibition should be considered to apply to persons who because of election, employment or change in duties begin to handle funds or other property during the course of a particular fiscal year. Bonds should be secured for such persons, in an amount based on the funds handled by their predecessors during the preceding fiscal year, before they are permitted to engage in any of the fund-handling activities referred to in the prohibition, unless coverage with respect to such persons is already provided by bonds in force meeting the requirements of section 502(a).

§ 453.24 Payment of bonding costs.

The Act does not prohibit payment of the cost of the bonds, required by section 502(a), by labor organizations or by trusts in which a labor organization is interested. The decision whether such costs are to be borne by the labor organization or trust or by the bonded person is left to the duly authorized discretion and agreement of the parties concerned in each case.

§ 453.25 Effective date of the bonding requirement.

While the bonding provision in section 502(a) became effective on September 14, 1959, its requirement for obtaining bonds does not become applicable to a labor organization or a trust in which a labor organization is interested, or to the personnel of any such organization, until the subsequent date when such organization's next fiscal year begins. This is so because the Act requires each such bond to be fixed at the beginning of the organization's fiscal year in an amount based on funds handled in the preceding fiscal year, and it could not well have been intended that the obtaining of a bond would be necessary in advance of the time when it would be possible to meet this requirement.

SUBCHAPTER B—WELFARE-PENSION REPORTS

PART 460—FILING OF DESCRIPTION OF EMPLOYEE WELFARE OR PENSION BENEFIT PLANS—ANNUAL REPORTS

Sec.

460.1 Reports required to be filed.

¹² See § 453.6(b).

Sec.

460.2 Content of reports—signature or certification.

460.3 Plan description form.

460.4 Annual report form.

460.5 Time for filing plan description amendments.

460.6 Time for filing annual report.

460.7 Acknowledgment of receipt.

460.8 Effect of acknowledgment.

AUTHORITY: §§ 460.1 to 460.8 issued under secs. 5, 6, 7, 8; 72 Stat. 999, 1000, 1002, 76 Stat. 36, 37; 29 U.S.C. 304, 305, 306, 307; Secretary's Order No. 24-63 (28 F.R. 9172) and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 460.1 Reports required to be filed.

The administrator of any employee welfare benefit plan, or of any employee pension benefit plan, or of any plan combining benefits of both types, which plan is subject to the provisions of the Welfare and Pension Plans Disclosure Act, as amended by the Welfare and Pension Plans Disclosure Act Amendments of 1962 (hereinafter referred to as the Act), shall file with the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210, two copies of the description of each such plan, and two copies of each annual report thereon. Plans otherwise covered under section 4 of the Act having not more than 25 participants are not required to file a plan description, and such plans having fewer than 100 participants are not required to file an annual financial report: *Provided, however*, That with respect to the exemption set out in this section for filing annual financial reports, the Director, Office of Labor-Management and Welfare-Pension Reports, after investigation, may require the administrator of any plan otherwise covered and not exempt under the Act to publish such annual report when necessary and appropriate to carry out the purposes of the Act.

§ 460.2 Content of reports—signature or certification.

The description of each plan shall contain the information and documents required by section 6 of the Act, and each annual report thereon shall contain the information required by section 7 of the Act. Each of the copies of the description of each such plan submitted to the Office of Labor-Management and Welfare-Pension Reports for filing shall be signed and sworn to by the administrator of the plan. Each copy of each annual report with respect to each such plan shall be signed by the administrator thereof. In addition, each copy of the annual report shall be sworn to by the administrator, or certified to by an independent certified or licensed public accountant based upon a comprehensive audit conducted in accordance with accepted standards of auditing. No audit is required of the books or records of any bank, insurance company, or other institution providing an insurance, investment or related function for the plan, if such books or records are subject to examination by an agency of the Federal Government, or the government of any State.

§ 460.3 Plan description form.

The required publication and filing of the description of each such plan shall

¹¹ Daily Cong. Rec. 9114, Senate, June 8, 1959; Record of Hearings before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Congress, 1st Session, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474, p. 1607.

be made on United States Department of Labor Form D-1, entitled "Employee Welfare or Pension Benefit Plan Description Form" in accordance with the "Notice to Administrators of Welfare and Pension Plans" accompanying this form and this Part 460. Copies of the United States Department of Labor Form D-1 are available to administrators of plans and will be furnished upon request directed to the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210.

§ 460.4 Annual report form.

The required publication and filing of each annual report shall be made on United States Department of Labor Form D-2, entitled "Employee Welfare or Pension Benefit Plan Annual Report Form" in accordance with the "Notice to Administrators of Welfare and Pension Plans" accompanying this form and this Part 460. Copies of United States Department of Labor Form D-2 will be furnished to administrators of plans upon receipt by the Office of Labor-Management and Welfare-Pension Reports of information which is submitted for initial filing as a description of the plan. After the initial annual report for each plan has been submitted for filing, and within a sufficient period of time prior to the date each succeeding annual report is required to be filed, administrators of plans will receive from the Office of Labor-Management and Welfare-Pension Reports, copies of United States Department of Labor Form D-2. Additional copies of United States Department of Labor Form D-2 will be furnished to administrators of plans upon request directed to the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210.

§ 460.5 Time for filing plan description—amendments.

Copies of the descriptions of such plans shall be filed with and received by the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210, within 90 days after the establishment of such plan, or within 90 days after the time the plan becomes subject to the requirements of the Act. Whenever any amendment or modification of any such plan, reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7 of the Act, is made, two copies shall be filed with the Office of Labor-Management and Welfare-Pension Reports within 60 days after the change has been effectuated. Such amendments shall be filed with the Office of Labor-Management and Welfare-Pension Reports either by submitting the additional information properly executed and labeled "to be incorporated into original submission which has been marked with file number (insert file number)" or, by submitting a completely new and corrected plan description on a properly executed Form D-1. If the latter method is adopted, the administrator shall check the box indicating "amend-

ed filing" on Form D-1, or otherwise identify the submission as a revised filing.

§ 460.6 Time for filing annual report.

Copies of each annual report with respect to each such plan, shall be filed with and received by the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210, within 150 days after the end of the calendar year, or if the records of the plan are kept on a policy or other fiscal year basis, within 150 days after the end of such policy or fiscal year.

§ 460.7 Acknowledgment of receipt.

The Office of Labor-Management and Welfare-Pension Reports will acknowledge in writing the receipt of documents submitted for filing as copies of the description of a welfare or pension benefit plan, and will give such submission an identifying number which will be endorsed on the acknowledgment. This number shall be entered on any document subsequently submitted for filing relating to such plan and on each annual report thereon, and on any communications directed to the Office of Labor-Management and Welfare-Pension Reports concerning such plan descriptions or annual reports.

§ 460.8 Effect of acknowledgment.

The acknowledgment by the Office of Labor-Management and Welfare-Pension Reports of the receipt of documents submitted as copies of a description of a plan or of any amendment or modification thereto, or of an annual report, does not constitute approval thereof, or indicate that the content of such documents fulfills the requirements of the Welfare and Pension Plans Disclosure Act.

PART 461—CERTIFICATION OF INFORMATION BY INSURANCE CARRIERS OR SERVICE OR OTHER ORGANIZATIONS

Sec.	
461.1	Purpose and scope.
461.2	Information to be certified.
461.3	Period of coverage.
461.4	Optional use of forms.
461.5	Certification.
461.6	Time for submission of information.

AUTHORITY: §§ 461.1 to 461.6 issued under secs. 5, 7, 72 Stat. 999, 1000, 76 Stat. 36, 37; 29 U.S.C. 304, 306; Secretary's Order No. 24-63 (28 F.R. 9172) and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 461.1 Purpose and scope.

Section 7 of the Welfare and Pension Plans Disclosure Act, as amended by section 13 of the Welfare and Pension Plans Disclosure Act Amendments of 1962, provides, in part, for the publication of annual financial reports by administrators of welfare or pension benefit plans. In the case of plans under which all or some of the benefits are provided by an insurance carrier, or service or other organization (hereinafter referred to in this part as "the carrier"), it further requires that the carrier is to certify to the administrator of the plan

reasonable information determined to be necessary to enable the administrator to publish the annual financial report. The purpose of this part is to prescribe the information to be certified to administrators of welfare or pension benefit plans by carriers, if some or all of the benefits under such plans are provided by such carriers.

§ 461.2 Information to be certified.

The information required to be certified by the carrier to a plan administrator shall be that which is specified in section 7(d)(2) of the Act. However, in the case of an employee pension benefit plan, the information specified in section 7(f)(2) of the Act shall also be included.

§ 461.3 Period of coverage.

The information certified by the carrier to the administrator of a plan shall be for the period covered by the plan's annual report; *Provided however*, If the information is not available for such period, information for the latest completed policy year may be certified.

§ 461.4 Optional use of forms.

The transmission to a plan administrator of a properly completed and certified Exhibit A-1, or A-3, of United States Department of Labor Form D-2, whichever is applicable, and, if the carrier provides pension benefits for the plan, a properly completed and certified Exhibit A-2 by the carrier required to certify information to an administrator of a welfare or pension benefit plan under section 7 of the Act, shall meet the requirements of section 7(g) of the Act and § 461.2. United States Department of Labor Form D-2 is available from the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C., 20210.

§ 461.5 Certification.

Any document containing the information required by this part to be certified to a plan administrator shall be signed by either the President, Vice-President, or Secretary-Treasurer, or any corresponding principal officer of the carrier.

§ 461.6 Time for submission of information.

Information required to be certified as provided in this part must be certified to the administrator of a welfare or pension benefit plan within 120 days after the end of the calendar, policy, or other fiscal year on which the annual financial report of the plan is based.

PART 462—VARIATION FROM PUBLICATION REQUIREMENTS

Subpart A—Procedures GENERAL RULES

Sec.	
462.1	Definitions.
462.2	Application of this part.
462.3	Petition for rule granting variation.
462.4	Review of petition; informal conferences.
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462.6	Denials.
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HEARING PROCEDURES

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462.8	Notice.
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462.11	Transcripts.
462.12	Appearances; representation.
462.13	Evidence and procedure.
462.14	Rights of participants.
462.15	Objections to evidence.
462.16	Certification of record.
462.17	Tentative decision.
462.18	Exceptions to tentative decisions.
462.19	Final decision.
462.20	Official notice.

Subpart B—Variations

CERTAIN EMPLOYEE BENEFIT PLANS UTILIZING BLUE CROSS AND BLUE SHIELD ORGANIZATIONS

462.25	Rule of variation.
462.26	Conditions of variation.

AUTHORITY: §§ 462.1 to 462.26 issued under sec. 5, 72 Stat. 999; 76 Stat. 36; 29 U.S.C. 304. Secretary's Order No. 24-63 (28 F.R. 9172) and Secretary's Order No. 25-63 (28 F.R. 9173).

Subpart A—Procedures

GENERAL RULES

§ 462.1 Definitions.

(a) "Interested person" means any person whose interests are or will be affected by the granting or denying of any variation as to the manner or period for publication of information required to be contained in any plan description or annual report.

(b) "Act" means the Welfare and Pension Plans Disclosure Act as amended by the Welfare and Pension Plans Disclosure Act Amendments of 1962.

(c) "Administrator" means the Labor-Management Services Administrator.

(d) "Parties of record" mean interested persons entering appearances at a hearing.

(e) "Person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

§ 462.2 Application of this part.

Section 5(a) of the Act provides for the publication of a plan description and an annual financial report for an employee welfare benefit plan or an employee pension benefit plan containing the information required in sections 6 and 7 of the Act. The form and detail of such reports are prescribed by the Labor-Management Services Administrator and are contained in Part 460 of this chapter. It is further provided that if the Labor-Management Services Administrator finds, on the record, after giving interested persons an opportunity to be heard, that specific information on plans of certain kinds or on any class or classes of benefits provided by such plans cannot in the normal method of operation of such plans be practicably ascertained or made available for publication in the manner or for the period prescribed by the Act, or that the information if published in such manner or for such period would be duplicative or uninformative, the Administrator may by regulation prescribe such other manner or such other period for the publication of such information as he may determine to be

necessary and appropriate to carry out the purposes of the Act. The purpose of this part is to provide procedures to govern the application, consideration, and decision upon petition for a variation as to the manner or period of publishing information on plan descriptions or annual reports under section 5(a) of the Act.

§ 462.3 Petition for rule granting variation.

(a) Any interested person may petition the Administrator, on behalf of a welfare or pension benefit plan, or on behalf of welfare or pension benefit plans of certain kinds, or with respect to information on any class or classes of benefits provided by such plans, for a rule prescribing a different manner or period for publication of certain information than is otherwise required by the Act and Part 460 of this chapter.

(b) A petition shall be submitted in writing, accompanied by three copies, and shall set out in detail:

(1) The name of the plan, or if the petition concerns a type or class of plan, a complete description of such type or class of plan;

(2) If the petition concerns a class or type of benefit provided by the plan, a description of the benefit provided;

(3) The petitioner's capacity or function with respect to the plan, or otherwise his interest in obtaining the variation requested;

(4) The information concerning which the variation as to the filing and publication is requested;

(5) Whether the petition concerns the "plan description" as provided for in section 6 of the Act, or the "annual report" as provided for in section 7 of the Act, or both;

(6) Whether the petition concerns publication to participants or beneficiaries as provided for in section 8(a) of the Act, or filing as provided in section 8(b) of the Act, or both;

(7) Whether the petition concerns the manner or period prescribed for publication or filing or both.

(8) A full explanation as to why the information desired to be reported in a different manner or for a different period than prescribed cannot be practicably ascertained or made available for publication in the manner or for the period prescribed by the Act, or why such information if published in such manner or for such period would be duplicative or uninformative.

(c) Where the Administrator deems a variation from reporting as set out in section 5(a) of the Act necessary and appropriate to carry out the purposes of the Act, he may initiate the rule-making process provided in this part on his own motion.

§ 462.4 Review of petition; informal conferences.

Petitions described in § 462.3 shall be reviewed by appropriate personnel of the Department of Labor. Notice of receipt of the petition may be accorded other interested persons as is deemed appropriate. The petitioner and other interested persons may be requested to confer informally regarding the petition, and

the petitioner may be required to submit additional information concerning the petition.

§ 462.5 Consolidation.

Upon motion and good cause shown or upon his own initiative, the Administrator may at any stage in the consideration of a petition or petitions as set out in this part, contemporaneously consider or consolidate for hearing, or for other purposes, two or more proceedings if he finds such action appropriate and equitable to all interested persons.

§ 462.6 Denials.

Upon consideration of the facts and reasons stated in a petition, the Administrator may without further proceedings deny in whole or in part the petition on the ground that it fails to allege facts entitling the petitioner to the variation requested, or on such other grounds as shall be stated in notice given to the petitioner.

§ 462.7 Opportunity for hearing.

(a) Upon consideration and investigation of the facts and reasons stated in a petition, or with respect to a proposal on his own motion, the Administrator may take the action prescribed in either paragraph (b) or (c) of this section.

(b) The Administrator may set the petition, or other proposed action, for hearing before a Hearing Examiner.

(c) The Administrator may notify the petitioner and such other persons as he deems appropriate of, and publish in the FEDERAL REGISTER, a proposed finding or rule with respect to the petition, or with respect to a proposal made on his own motion, for variation from publication and reporting. In the event that the Administrator promulgates a proposed finding or rule, a minimum of 15 days shall be allowed following publication thereof within which the Administrator shall receive objection and request for hearing from any interested person. Upon receipt of objection and request for hearing, the Administrator shall set the petition for hearing before a Hearing Examiner. If no objection and request for hearing is received within 15 days the Administrator shall issue a final finding or rule.

HEARING PROCEDURES

§ 462.8 Notice.

Notice of the time, place, the nature of any hearing, the terms or substance of the proposed rule or the subjects and issues involved, and the authority under which the rule is proposed, shall be published in the FEDERAL REGISTER and may also otherwise be given to all known interested persons at least 15 days prior to the date of such hearing.

§ 462.9 Designation of Hearing Examiner; disqualification.

The Administrator shall designate a Hearing Examiner appointed pursuant to section 11 of the Administrative Procedure Act to preside at the hearing. To the extent practicable, the name of the Hearing Examiner designated will be

included in the notice of hearing, or if omitted from the notice, made known to the persons as soon as possible thereafter, prior to the holding of the hearing. A Hearing Examiner may withdraw from a proceeding if he considers himself disqualified. In addition an interested person may by the filing of a sufficient affidavit prior to completion of a hearing, present to the Administrator the issue of the personal bias or disqualification of such officer; thereupon the Administrator shall determine the matter as part of the record and decision in the case.

§ 462.10 Powers of Hearing Examiners.

(a) A Hearing Examiner shall have the authority between the time he is designated and certification of the record to the Administrator:

(1) To give notice concerning, and to conduct, hearings;

(2) To administer oaths and affirmations;

(3) To rule upon offers of proof and receive relevant evidence;

(4) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(5) To regulate the course of the hearing;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To dispose of procedural requests or other matters;

(8) To call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence;

(9) To limit the number of witnesses at hearings, and exclude evidence or testimony which may be irrelevant, immaterial or cumulative;

(10) If appropriate or necessary, to exclude persons or counsel from participation in hearings for refusing any proper request for information or documentary evidence, or for contumacious conduct;

(11) To grant continuances or reschedule hearings for good cause shown;

(12) To consider and decide procedural matters;

(13) To take any other action authorized by this part.

(b) The Hearing Examiner's authority in the proceeding shall terminate upon certification of the record to the Administrator, or when he shall have withdrawn from the case upon considering himself disqualified, or upon termination of his authority by the Administrator for good cause stated. However, the Hearing Examiner's authority may be reinstated upon referral of the issues by the Administrator for rehearing of all or some of the issues. This authority will again terminate upon certification of the rehearing record to the Administrator.

§ 462.11 Transcripts.

The hearing shall be stenographically reported and a transcript shall be made available to interested persons on terms prescribed by the Hearing Examiner.

§ 462.12 Appearances; representation.

The Department of Labor does not maintain a register of persons or attor-

neys who may practice at hearings. Any interested person may appear and be heard in person or be represented by counsel.

§ 462.13 Evidence and procedure.

(a) Formal rules of evidence or procedure in use in courts of law or equity shall not apply. However, it shall be the policy to exclude testimony or matter which is irrelevant, immaterial or unduly repetitious. Contumacious or disorderly conduct at a hearing may be ground for exclusion therefrom. The refusal of a witness at any hearing to answer any questions which have been ruled to be proper shall, in the discretion of the Hearing Examiner, be ground for striking all testimony previously given by such witness on related matter.

(b) Where evidence might involve extensive technical or statistical data, the Hearing Examiner may require or permit such material to be submitted in orderly documentary form rather than be read into the record by witnesses. At any stage of the hearing the Hearing Examiner may call for further evidence or testimony on any matter. After the hearing has been closed, no further information shall be received on any matter, unless provision shall have been made for it at the hearing, or except as the Administrator may direct by reopening the hearing.

§ 462.14 Rights of participants.

Each interested person shall have the right to present oral or documentary evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full and true disclosure of the facts (all subject to the rulings of the Hearing Examiner), and to object to admissions or exclusions of evidence.

§ 462.15 Objections to evidence.

Objections to the admission or exclusion of evidence shall be in short form, stating the grounds for such objection. The transcript shall not include argument thereon except as required by the Hearing Examiner. Rulings on such objections shall be a part of the transcript. No such objection shall be deemed waived by further participation in the hearing. Formal exceptions to rulings on objections are unnecessary.

§ 462.16 Certification of record.

With reasonable dispatch after the close of the hearing, the Hearing Examiner shall certify to the Administrator a complete record of the proceedings. All parties of record shall be notified of the certification of the record to the Administrator.

§ 462.17 Tentative decision.

Upon conclusion of the hearing, within such time as the Hearing Examiner shall provide, parties of record shall be accorded opportunity to submit proposed findings and conclusions. Thereafter, the Administrator shall serve a tentative decision on all interested persons participating in the hearing: *Provided, however, That in any case in which the Administrator finds upon the record that due and timely execution of his func-*

tions imperatively and unavoidably so require, he may issue a final decision without having issued a prior tentative decision.

§ 462.18 Exceptions to tentative decisions.

Within 20 days following a tentative decision, parties of record may file exceptions to such decision and supporting reasons therefor for consideration by the Administrator. Exceptions shall be in writing (original and two copies), and shall refer to the specific findings of facts or conclusions of law excepted to.

§ 462.19 Final decision.

Within a reasonable time following expiration of the period for filing exceptions, the Administrator shall issue a final decision granting or denying in whole or in part a variation as to the manner or period for the publication of information.

§ 462.20 Official notice.

The Hearing Examiner or the Administrator may at any stage of the Hearing Procedure take official notice of matters not appearing in the evidence in the record: *Provided, however, That any parties of record on timely request shall be afforded an opportunity to show the contrary.*

Subpart B—Variations

CERTAIN EMPLOYEE BENEFIT PLANS UTILIZING BLUE CROSS AND BLUE SHIELD ORGANIZATIONS

§ 462.25 Rule of variation.

All employee benefit plans, which utilize Blue Cross and Blue Shield member organizations for the purpose of providing benefits, which are presently required under section 7(d)(2)(A) of the Act to attach to their annual reports a copy of the financial report of the Blue Cross or Blue Shield member organization utilized, will no longer be required to attach a copy of such financial report to their annual report, required to be filed with the Secretary of Labor under section 8(b) of the Act, subject to the following conditions.

§ 462.26 Conditions of variation.

(a) Each member Blue Cross and Blue Shield organization providing benefits for plans to which this variation applies shall:

(1) Submit to the Office of Labor-Management and Welfare-Pension Reports, within 120 days after the end of its fiscal year, 10 copies of its latest financial report. In addition to the financial information contained therein, each such member Blue Cross or Blue Shield organization shall provide in such report or in an attachment thereto, its name, address, and code number;

(2) Thereafter make timely written notification to each plan administrator of a participating employee benefit plan required to submit a copy of the financial report of such organization under section 7(d)(2)(A) of the Act that such member Blue Cross or Blue Shield organization has submitted its latest financial report to the Office of Labor-Management and Welfare-Pension Reports.

(b) In lieu of submitting to the Office of Labor-Management and Welfare-Pension Reports the financial report of such Blue Cross or Blue Shield organization, each plan administrator of an employee benefit plan to which this variation applies shall report in Item (1) of Exhibit A-3 of Department of Labor Annual Report Form D-2, or in an attachment thereto, the name, address and code number of each Blue Cross or Blue Shield organization which the plan utilizes and shall indicate that the financial report of each such Blue Cross or Blue Shield organization is on file with the Office of Labor-Management and Welfare-Pension Reports.

(c) Blue Cross and Blue Shield organizations and employee benefit plans utilizing their services are cautioned that:

(1) This variation does not apply to any employee benefit plan for which the Blue Cross or Blue Shield organization maintains separate experience records for such plan, since such plan is not required to file a financial report of the carrier or other organization under section 7(d)(2).

(2) This variation does not affect the responsibilities of each member Blue Cross and Blue Shield organization involved, to comply with the certification requirements of section 7(g) of the Act (29 U.S.C. 306(g)) and Part 461 of this chapter.

PART 463—WELFARE AND PENSION PLANS WITH LESS THAN 100 PARTICIPANTS

Sec.

- 463.1 Purpose and scope.
- 463.2 Definitions.
- 463.3 Identification of plans covering less than 100 participants.
- 463.4 Scope of exemption.
- 463.5 Withdrawal of exemption.

AUTHORITY: §§ 463.1 to 463.5 issued under sections 5, 7, 72 Stat. 999, 1000, 76 Stat. 36, 37; 29 U.S.C. 304, 306; Secretary's Order No. 24-63 (28 F.R. 9172) and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 463.1 Purpose and scope.

The purpose of this part is to implement section 7 of the Welfare and Pension Plans Disclosure Act (72 Stat. 1000, 76 Stat. 36; 29 U.S.C. 306), as amended by the Welfare and Pension Plans Disclosure Act Amendments of 1962. As implemented by Secretary's Orders Nos. 24-63, 25-63 (28 F.R. 9172, 9173), that section provides an exemption from the requirement of publishing an annual financial report concerning employee welfare or pension benefit plans that cover less than 100 participants. After investigation, the Director, Office of Labor-Management and Welfare-Pension Reports may require the administrator of any plan otherwise covered by the Act to publish an annual report when necessary and appropriate to carry out the purposes of the Act.

§ 463.2 Definitions.

The term "participant" means any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from

an employee welfare or pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit.

§ 463.3 Identification of plans covering less than 100 participants.

The administrator of any covered employee welfare or pension benefit plan covering less than 100 participants is not required to publish (as otherwise required by sections 8 (a) and (b) of the Act) the annual financial report specified in section 7 of the Act: *Provided, however*, That the administrator of such a plan shall submit two copies of U.S. Department of Labor Form D-3 completed and executed in accordance with instructions contained thereon. Such forms shall be submitted within 150 days after the end of each calendar, policy, or other fiscal year during which the plan covers less than 100 participants, as provided in § 463.4. The form calls for identification of the plan and information relating to the greatest number of participants covered by the plan at any one time during the reporting year. Copies of the form may be obtained by request directed to the Office of Labor-Management and Welfare-Pension Reports, U.S. Department of Labor, Washington, D.C., 20210.

§ 463.4 Scope of exemption.

The exemption contained in § 463.3 shall not apply to any plan which covers 100 or more participants at any time during the calendar, policy, or other fiscal year upon which the records of the plan are maintained.

§ 463.5 Withdrawal of exemption.

The Labor-Management Services Administrator, after investigation, may require the administrator of any plan otherwise subject to the provisions of the Act, but exempt from the requirement of publishing an annual financial report by reason of covering fewer than 100 participants, to publish an annual financial report containing the information required by section 7 of the Act in the form and detail prescribed in Part 460 of this chapter, when he finds that publication of such a report is necessary and appropriate to carry out the purposes of the Act.

PART 464—BASIC BONDING REQUIREMENTS

Subpart A—Criteria for Determining Who Must Be Bonded

Sec.

- 464.1 Statutory provisions.
- 464.2 Coverage of section 13.
- 464.3 Plans exempt from the coverage of section 13.
- 464.4 Plan administrators, officers and employees for purposes of section 13.
- 464.5 "Funds or other property" of a plan.
- 464.6 Determining when "funds or other property" belong to a plan.
- 464.7 Determining when "funds or other property" are "handled" so as to require bonding.

Subpart B—Scope and Form of the Bond

- 464.8 Statutory provision—scope of the bond.
- 464.9 The nature of the duties or activities to which the bonding requirement relates.

Sec.

- 464.10 Meaning of fraud or dishonesty.
- 464.11 Individual or schedule or blanket form of bonds.

Subpart C—Amount of the Bond

- 464.12 Statutory provision.
- 464.13 Relationship of determining the amount of the bond to "handling".
- 464.14 The meaning of "funds" in determining the amount of the bond.
- 464.15 Determining the amount of funds "handled" during the preceding reporting year.
- 464.16 Procedures to be used for estimating the amount of funds to be "handled" during the current reporting year in those cases where there is no preceding reporting year.
- 464.17 Amount of bond required in given types of bonds or where more than one plan is insured in the same bond.
- 464.18 Bonds over \$500,000.

Subpart D—General Bond Rules

- 464.19 Naming of insureds.
- 464.20 Term of the bond, discovery period, other bond clauses.
- 464.21 Use of existing bonds, separate bonds and additional bonding.

Subpart E—Qualified Agents, Brokers and Surety Companies for the Placing of Bonds

- 464.22 Corporate sureties holding grants of authority from the Secretary of the Treasury.
- 464.23 Interests held in agents, brokers and surety companies.

Subpart F—Miscellaneous Provisions

- 464.24 Prohibition of certain activities by unbonded persons.
- 464.25 Payment of bonding costs.
- 464.26 Powers of the Secretary of Labor to regulate and exempt.
- 464.27 Enforcement.
- 464.28 Relationship to other laws.
- 464.29 Effective date of the bonding requirement.

AUTHORITY: §§ 464.1 to 464.29 issued under sec. 13, 76 Stat. 39; 29 U.S.C. 308d; Secretary's Order No. 24-63 (28 F.R. 9172) and Secretary's Order No. 25-63 (28 F.R. 9173).

Subpart A—Criteria for Determining Who Must Be Bonded

§ 464.1 Statutory provisions.

Section 13(a) of the Welfare and Pension Plans Disclosure Act of 1958, as amended, states, in part, that—

Every administrator, officer and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this Act who handles funds or other property of such plan shall be bonded as herein provided; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers and employees of such plan shall be exempt from the bonding requirements of this section.

* * * Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others.

§ 464.2 Coverage of section 13.

Any employee welfare benefit plan and any employee pension benefit plan as defined in section 3(1) and 3(2) of the Act and covered within the terms of section 4 is subject to the bonding requirements of section 13 of the Act and to the rules and regulations promulgated

thereunder; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the plan is not subject to section 13 and the administrator, officers and employees of such plan are exempt from the bonding requirements of the section. Exemption from the annual report requirements of section 7 for plans having fewer than 100 participants does not exempt such plans from the bonding requirements of section 13. It should be noted, however, that the fact that a plan is not exempt from the coverage of section 13 does not necessarily mean that its administrators, officers or employees are required to be bonded. This will depend in each case on whether or not they "handle" funds or other property of the plan within the meaning of section 13 and under the standards set forth in § 464.7. The sections immediately following, §§ 464.3 through 464.6 are not, by themselves, determinative of whether bonding is required. These sections are merely intended to identify and define those plans, persons, property and conditions to which the bonding requirements apply if there is "handling" within the meaning of § 464.7.

§ 464.3 Plans exempt from the coverage of section 13.

Only completely unfunded plans in which the plan benefits derive solely from the general assets of a union¹ or employer, and in which plan assets are not segregated in any way from the general assets of a union or employer and remain solely within the general assets until the time of distribution of benefits, shall be exempt from the bonding provisions. As such, the language "where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer" shall not be deemed to exempt a plan from the coverage of section 13 if the plan is one in which:

(a) Any benefits thereunder are provided or underwritten by an insurance carrier or service or other organization, or

(b) There is a trust or other separate entity to which contributions are made or out of which benefits are paid, or

(c) Contributions to the plan are made by the employees, either through withholding or otherwise, or from any source other than the employer or union involved, or

(d) There is a separately maintained bank account or separately maintained books and records for the plan or other evidence of the existence of a segregated or separately maintained or administered fund out of which plan benefits are to be provided.

¹ For purposes of the exemption discussed in § 464.3, the term "union" shall include " * * * any organization of any kind or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning an employee welfare or pension benefit plan, or other matters incidental to employment relationships * * * " (29 U.S.C. 302(a) (3)).

As a general rule, the presence of special ledger accounts or accounting entries for plan funds as an integral part of the general books and records of an employer or union shall not, in and of itself, be deemed sufficient evidence of segregation of plan funds to take a plan out of the exempt category, but shall be considered along with the other factors and criteria discussed above in determining whether the exemption applies. Again, it should be noted, however, that the fact that a plan is not exempt from the coverage of section 13 does not necessarily mean that its administrators, officers or employees are required to be bonded. As stated previously, this will depend in each case on whether or not they "handle" funds or other property of the plan within the meaning of section 13 and under the standards set forth in § 464.7.

§ 464.4 Plan administrators, officers and employees for purposes of section 13.

(a) *Administrator.* (1) For purposes of the bonding provisions, the term "administrator" is defined in the same manner as under section 5 of the Act and refers to—

(i) The person or persons designated by the terms of the plan or the collective bargaining agreement with responsibility for the ultimate control, disposition, or management of the money received or contributed; or

(ii) In the absence of such designation, the person or persons actually responsible for the control, disposition, or management of the money received or contributed, irrespective of whether such control, disposition, or management is exercised directly or through an agent or trustee designated by such person or persons.

(2) Where by virtue of this definition, or regulations, interpretations or opinions issued with respect thereto, the term embodies natural persons such as members of the board of trustees of a trust, the bonding requirements shall apply to such persons.

(3) However, when by virtue of this definition or regulations, interpretations, or opinions issued with respect thereto, the administrator in a given case is an entity such as a partnership, corporation, mutual company, joint stock company, trust, unincorporated organization, union or employees' beneficiary association, the term shall be deemed to apply, in meeting the bonding requirements, only to those natural persons who—

(i) Are vested under the authority of the entity-administrator with the responsibility for carrying out functions constituting control, disposition or management of the money received or contributed within the definition of administrator, or who, acting on behalf of or under the actual or apparent authority of the entity-administrator, actually perform such functions, and who

(ii) "Handle" funds or other property of the plan within the meaning of these regulations.

(b) *Officers.* For purposes of the bonding provisions, the term "officer" shall include any person designated by

the terms of a plan or collective bargaining agreement as an officer, any person performing or authorized to perform executive functions of the plan or any member of a board of trustees or similar governing body of a plan. The term shall include such persons regardless of whether they are representatives of or selected by an employer, employees or an employee organization. In its most frequent application the term will encompass those natural persons appointed or elected as officers of the plan or as members of boards or committees performing executive or supervisory functions for the plan, but who do not fall within the definition of administrator.

(c) *Employees.* For purposes of the bonding provisions the term "employee" shall, to the extent a person performs functions not falling within the definition of officer or administrator, include any employee who performs work for or directly related to a covered plan, regardless of whether technically he is employed, directly or indirectly, by or for a plan, a plan administrator, a trust, or by an employee organization or employer within the meaning of section 3(3) or 3(4) of the Act.

(d) *Other persons covered.* For purposes of the bonding provisions, the terms "administrator, officer, or employee" shall include any persons performing functions for the plan normally performed by administrators, officers or employees of a plan. As such, the terms shall include persons indirectly employed, or otherwise delegated, to perform such work for the plan (unless such persons fall within the category of independent institutions set forth in paragraph (e) of this section as not being included within the terms of the definition). In its most frequent application, such persons will include pension consultants and planners, and attorneys, who perform "handling" functions within the meaning of § 464.7.

(e) *Independent institutions not included.* The terms "administrator, officer, and employee" shall not be deemed to include the following independent institutions, or natural persons acting in an employment or other representative capacity for such institutions, except with respect to covered plans for the benefit of their own employees.

(1) Any bank or trust company subject to regulation and examination by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation or chartered under the laws of any state and operating in accordance with state law and subject to state supervision and examination.

(2) Any insurance carrier or service or other organization providing or underwriting benefits under the plan in accordance with state law.

(3) Brokers or independent contractors who have contracted for the performance of functions which are not normally carried out by the administrators, officers, or employees of a plan, such as securities brokers who purchase and sell securities or armored motor vehicle companies.

§ 464.5 "Funds or other property" of a plan.

The affirmative requirement for bonding persons falling within the definition of administrator, officer or employee is applicable only if they handle "funds or other property" of the plan concerned. The term "funds or other property" is intended to encompass all property which is used or may be used as a source for the payment of benefits to plan participants. It does not include permanent assets used in the operation of the plan such as land and buildings, furniture and fixtures or office and delivery equipment used in the operation of the plan. It does include all items in the nature of quick assets, such as cash, checks and other negotiable instruments, government obligations and marketable securities. It also includes all other property or items convertible into cash or having a cash value and held or acquired for the ultimate purpose of distribution to plan participants or beneficiaries. In the case of a plan which has investments, this would include all the investments of the plan even though not in the nature of quick assets, such as land and buildings, mortgages, and securities in closely held corporations. However, in a given case, the question of whether a person was "handling" such "funds or other property" so as to require bonding would depend on whether his relationship to this property was such that there was a risk that he, alone or in connivance with others, could cause a loss of such "funds or other property" through fraud or dishonesty.

§ 464.6 Determining when "funds or other property" belong to a plan.

With respect to any contribution to a plan from any source, including employers, employees or employee organizations, the point at which any given item or amount becomes "funds or other property" of a plan for purposes of the bonding provisions shall be determined as described in this section.

(a) Where the plan administrator is a board of trustees, person or body other than the employer or employee organization establishing the plan, a contribution to the plan from any source shall become "funds or other property" of the plan at the time it is received by the plan administrator. Employee contributions collected by an employer and later turned over to the plan administrator would not become "funds or other property" of the plan until receipt by the plan administrator.

(b) Where the employer or employee organization establishing the plan is itself the plan administrator:

(1) Contributions from employees or other persons who are plan participants would normally become "funds or other property" of the plan at the time they are received by the employer or employee organization, except however that contributions made by withholding from employees' salaries shall not be considered "funds or other property" of the plan for purposes of the bonding provisions so long as they are retained in and not segregated in any way from the general assets of the withholding employer or employee organization.

(2) Contributions made to a plan by such employer or employee organization and contributions made by withholdings from employees' salaries would normally become "funds or other property" of the plan if and when they are taken out of the general assets of the employer or employee organization and placed in a special bank account or investment account; or identified on a separate set of books and records; or paid over to a corporate trustee or used to purchase benefits from an insurance carrier or service or other organization; or otherwise segregated, paid out or used for plan purposes, whichever shall occur first. Thus, if a plan is operated by a corporate trustee and no segregation from general assets is made of monies to be turned over to the corporate trustee prior to the actual transmittal of such monies, the contribution represented in the transmission becomes "funds or other property" of the plan at the time of receipt by the corporate trustee. On the other hand, if a special fund is first established from which monies are paid over to the corporate trustee, a given item would become "funds or other property" of the plan at the time it is placed in the special fund. Similarly, if plan benefits are provided through the medium of an insurance carrier or service or other organization and no segregation from general assets of monies used to purchase such benefits is made prior to turning such monies over to the organization contracting to provide benefits, plan funds or other property come into being at the time of receipt of payment for such benefits by the insurance carrier or service or other organization. In such a case, the "funds or other property" of the plan would be represented by the insurance contract or other obligations to pay benefits and would not be normally subject to "handling". Bonding would not be required for any person with respect to the purchase of such benefits directly from general assets nor with respect to the bare existence of the contract obligation to pay benefits. However, if the particular arrangement were such that monies derived from, or by virtue of, the contract did subsequently flow back to the plan, bonding may be required if such monies returning to the plan are handled by plan administrators, officers or employees. (Further discussion on bonding of insured plans is contained in § 464.7(b)(7).)

§ 464.7 Determining when "funds or other property" are "handled" so as to require bonding.

(a) *General scope of term.* (1) A plan administrator, officer, or employee shall be deemed to be "handling" funds or other property of a plan, so as to require bonding under section 13, whenever his duties or activities with respect to given funds or other property are such that there is a risk that such funds or other property could be lost in the event of fraud or dishonesty on the part of such person, acting either alone or in collusion with others. While ordinarily, those plan administrators, officers and employees who "handle" within the meaning of section 13 will be those per-

sons with duties related to the receipt, safekeeping and disbursement of funds, the scope of the term "handles" and the prohibitions of paragraph (b) of section 13 shall be deemed to encompass any relationship of an administrator, officer or employee with respect to funds or other property which can give rise to a risk of loss through fraud or dishonesty. This shall include relationships such as those which involve access to funds or other property or decision making powers with respect to funds or property which can give rise to such risk of loss.

(2) Section 13 contains no exemptions based on the amount or value of funds or other property "handled", nor is the determination of the existence of risk of loss based on the amount involved. However, regardless of the amount involved, a given duty or relationship to funds or other property shall not be considered "handling", and bonding is not required, where it occurs under conditions and circumstances in which the risk that a loss will occur through fraud or dishonesty is negligible. This may be the case where the risk of mishandling is precluded by the nature of the funds or other property (e.g., checks, securities or title papers which can not be negotiated by the persons performing duties with respect to them). It may also be the case where significant risk of mishandling in the performance of duties of an essentially clerical character is precluded by fiscal controls.

(b) *General criteria for determining "handling".* Subject to the application of the basic standard of risk of loss to each situation, general criteria for determining whether there is "handling" so as to require bonding are:

(1) *Physical contact.* Physical contact with cash, checks or similar property generally constitutes "handling". However, persons who from time to time perform counting, packaging, tabulating, messenger or similar duties of an essentially clerical character involving physical contact with funds or other property would not be "handling" when they perform these duties under conditions and circumstances where risk of loss is negligible because of factors such as close supervision and control or the nature of the property.

(2) *Power to exercise physical contact or control.* Whether or not physical contact actually takes place, the power to secure physical possession of cash, checks or similar property through factors such as access to a safe deposit box or similar depository, access to cash or negotiable assets, powers of custody or safekeeping, power to withdraw funds from a bank or other account generally constitutes "handling", regardless of whether the person in question has specific duties in these matters and regardless of whether the power or access is authorized.

(3) *Power to transfer to oneself or a third party or to negotiate for value.* With respect to property such as mortgages, title to land and buildings, or securities, while physical contact or the possibility of physical contact may not, of itself, give rise to risk of loss so as to constitute "handling", a person shall be regarded as "handling" such items where

he, through actual or apparent authority, can cause those items to be transferred to himself or to a third party or to be negotiated for value.

(4) *Disbursement.* Persons who actually disburse funds or other property, such as officers or trustees authorized to sign checks or other negotiable instruments, or persons who make cash disbursements, shall be considered to be "handling" such funds or property. Whether other persons who may influence, authorize or direct disbursements or the signing or endorsing of checks or similar instruments will be considered to be "handling" funds or other property shall be determined by reference to the particular duties or responsibilities of such persons as applied to the basic criteria of risk of loss.

(5) *Signing or endorsing checks or other negotiable instruments.* In connection with disbursements or otherwise, any persons with the power to sign or endorse checks or similar instruments or otherwise render them transferable, whether individually or as co-signers with one or more persons, shall each be considered to be "handling" such funds or other property.

(6) *Supervisory or decision making responsibility.* To the extent a person's supervisory or decision making responsibility involves factors in relationship to funds discussed in subparagraphs (1), (2), (3), (4), or (5) of this paragraph, such persons shall be considered to be "handling" in the same manner as any person to whom the criteria of those subparagraphs apply. To the extent that only general responsibility for the conduct of the business affairs of the plan is involved, including such functions as approval of contracts, authorization of disbursements, auditing of accounts, investment decisions, determination of benefit claims and similar responsibilities, such persons shall be considered to be "handling" whenever the facts of the particular case raise the possibility that funds or other property of the plan are likely to be lost in the event of their fraud or dishonesty. The mere fact of general supervision would not necessarily, in and of itself, mean that such persons are "handling." Factors to be accorded weight are the system of fiscal controls, the closeness and continuity of supervision, who is in fact charged with, or actually exercising final responsibility for determining whether specific disbursements, investments, contracts, or benefit claims are bona fide, regular and made in accordance with the applicable trust instrument or other plan documents.

(i) For example, persons having supervisory or decision making responsibility would be "handling" to the extent they:

(a) Act in the capacity of plan "administrator" and have ultimate responsibility for the plan within the meaning of the definition of "administrator" (except to the extent that it can be shown that such persons could not, in fact, cause a loss to the plan to occur through fraud or dishonesty);

(b) Exercise close supervision over corporate trustees or other parties charged with dealing with plan funds or

other property; exercise such close control over investment policy that they, in effect, determine all specific investments;

(c) Conduct, in effect, a continuing daily audit of the persons who "handle" funds;

(d) Regularly review and have veto power over the actions of a disbursing officer whose duties are essentially ministerial.

(ii) On the other hand, persons having supervisory or decision making responsibility would not be "handling" to the extent:

(a) They merely conduct a periodic or sporadic audit of the persons who "handle" funds;

(b) Their duties with respect to investment policy are essentially advisory;

(c) They make a broad general allocation of funds or general authorization of disbursements intended to permit expenditures by a disbursing officer who has final responsibility for determining the propriety of any specific expenditure and making the actual disbursement;

(d) A bank or corporate trustee has all the day to day functions of administering the plan;

(e) They are in the nature of a Board of Directors of a corporation or similar authority acting for the corporation rather than for the plan and do not perform specific functions with respect to the operations of the plan.

(7) *Insured plan arrangements.* In many cases, plan contributions made by employers or employee organizations or by withholding from employees' salaries are not segregated from the general assets of the employer or employee organization until payment for purchase of benefits from an insurance carrier or service or other organization. No bonding is required with respect to the payment of premiums or other payments made to purchase such benefits directly from general assets, nor with respect to the bare existence of the contract obligation to pay benefits. Such arrangements would not normally be subject to bonding except to the extent that monies returned by way of benefit payments, cash surrender, dividends, credits or otherwise, and which by the terms of the plan belonged to the plan (rather than to the employer, employee organization, insurance carrier or service or other organization) were subject to "handling" by plan administrators, officers or employees.

Subpart B—Scope and Form of the Bond

§ 464.8 Statutory provision-scope of the bond.

The statute requires that the bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of a plan administrator, officer, or employee, directly or through connivance with others.

§ 464.9 The nature of the duties or activities to which the bonding requirement relates.

The bond required under section 13 is limited to protection for those duties and activities from which loss can arise

through fraud or dishonesty. It is not required to provide the same scope of coverage that is required in faithful discharge of duties bonds under the Labor-Management Reporting and Disclosure Act of 1959 or in the faithful performance bonds of public officials.

§ 464.10 Meaning of fraud or dishonesty.

The term "fraud or dishonesty" shall be deemed to encompass all those risks of loss that might arise through dishonest or fraudulent acts in handling of funds as delineated in § 464.7. As such, the bond must provide recovery for loss occasioned by such acts even though no personal gain accrues to the person committing the act and the act is not subject to punishment as a crime or misdemeanor, provided that within the law of the state in which the act is committed, a court would afford recovery under a bond providing protection against fraud or dishonesty. As usually applied under state laws, the term "fraud or dishonesty" encompasses such matters as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or any other fraudulent or dishonest acts. For the purposes of section 13, other fraudulent or dishonest acts shall also be deemed to include acts where losses result through any act or arrangement prohibited by Title 18, section 1954 of the United States Code.

§ 464.11 Individual or schedule or blanket form of bonds.

Section 13 provides that "any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class". Any form of bond which may be described as individual, schedule or blanket in form or any combination of such forms of bonds shall be acceptable to meet the requirements of section 13, provided that in each case, the form of the bond, in its particular clauses and application, is not inconsistent with meeting the substantive requirements of the statute for the persons and plan involved and with meeting the specific requirements of the regulations in this part. Basic types of bonds in general usage are:

(a) *Individual bond.* Covers a named individual in a stated penalty.

(b) *Name schedule bond.* Covers a number of named individuals in the respective amounts set opposite their names.

(c) *Position schedule bond.* Covers each of the occupants of positions listed in the schedule in the respective amounts set opposite such positions.

(d) *Blanket bonds.* Cover all the insured's officers and employees with no schedule or list of those covered being necessary and with all new officers and employees bonded automatically, in a blanket penalty which takes two forms—an aggregate penalty bond and a multiple penalty bond which are described below:

(1) The aggregate penalty blanket bond such as the Commercial Blanket

Bond; the amount of the bond is available for dishonesty losses caused by persons covered thereunder or losses in which such person is concerned or implicated. Payment of loss on account of any such person does not reduce the amount of coverage available for losses other than those caused by such person or in which he was concerned or implicated.

(2) The multiple penalty bond such as the Blanket Position Bond giving separate coverage on each person for a uniform amount—the net effect being the same as though a separate bond were issued on each person covered thereunder and all of such bonds being for a uniform amount.

NOTE: For the purpose of section 13 blanket bonds which are either aggregate penalty or multiple penalty in form shall be permissible if they otherwise meet the requirements of the Act and the regulations in this part.

Bonding, to the extent required, of persons indirectly employed, or otherwise delegated, to perform functions for the plan which are normally performed by "administrators, officers, or employees" as described in § 464.4(d) may be accomplished either by including them under individual or schedule bonds or other forms of bonds meeting the requirements of the Act, or naming them in what is known under general trade usage as an "Agents Rider" attached to a Blanket Bond.

Subpart C—Amount of the Bond

§ 464.12 Statutory provision.

Section 13 requires that the amount of the bond be fixed at the beginning of each calendar, policy or other fiscal year, as the case may be, which constitutes the reporting year of the plan for purposes of the reporting provisions of the Act. The amount of the bond shall be not less than 10 per centum of the amount of funds handled, except that any such bond shall be in at least the amount of \$1,000 and no such bond shall be required in an amount in excess of \$500,000: *Provided*, That the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of \$500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in the regulations in this part. With respect to persons required to be bonded, section 13 shall be deemed to require the bond to insure from the first dollar of loss up to the requisite bond amount and not to permit the use of deductible or similar features whereby a portion of the risk within such requisite bond amount is assumed by the insured. Any request for variance from these requirements

shall be made pursuant to the provisions of section 13(e) of the Act. (See § 464.26.)

§ 464.13 Relationship of determining the amount of the bond to "handling".

A determination of whether persons falling within the definition of administrator, officer or employee are required to be bonded depends on whether they "handle" funds or other property. Determining the amount of the bond is an aspect of the same process in that it requires a determination of what funds or other property are being handled or what amounts of funds or other property are subject to risk of loss with respect to the duties or powers of an administrator, officer or employee of a covered plan. Once this calculation is made, the required amount for which that person must be covered by a bond, either by himself or as a part of a group or class being bonded under a blanket or schedule bond, is not less than 10 percent of the amount "handled" or \$1,000, whichever is the greater amount, except that no such bond shall be required in an amount greater than \$500,000 by virtue of these regulations. (See § 464.18.)

§ 464.14 The meaning of "funds" in determining the amount of the bond.

The amount of the bond depends on the amount of "funds" "handled", and shall be sufficient to provide bonding protection against risk of loss through fraud or dishonesty for all plan funds, including other property similar to funds or in the nature of funds. As such, the term "funds" shall be deemed to include and be equivalent to "funds and other property" of the plan as described in § 464.5. With respect to any item of "funds or other property" which does not have a cash or readily ascertainable market value, the value of such property may be estimated on such basis as will reasonably reflect the loss the plan might suffer if it were mishandled.

§ 464.15 Determining the amount of funds "handled" during the preceding reporting year.

(a) The amount of funds "handled" by each person falling within the definition of administrator, officer, or employee (or his predecessors) during the preceding reporting year shall be the total of funds subject to risk of loss, within the meaning of the definition of "handling" (see § 464.7), through acts of fraud or dishonesty, directly or in connivance with others, by such person or his predecessors during the preceding reporting year. The relationship of the determination of the amount of funds "handled" to the determination of who is "handling" can best be illustrated by a situation that commonly arises with respect to executive personnel of a plan, where a bank or corporate trustee has the responsibility for the receipt, safekeeping, physical handling and investment of a plan's assets and the basic function of the executive personnel is to authorize payments to beneficiaries and payments for services to the corporate trustee, the actuary and the employees of the plan itself. Normally, in

any given year, only a small portion of the plan's total assets is disbursed, and the question arises as to whether an administrator or executive personnel are "handling" only the amounts actually disbursed each year or whether they are "handling" the total amounts of the assets. The answer to this question depends on the same basic criterion that governs all questions of "handling", namely, the possibility of loss. If the authorized duties of the persons in question are strictly limited to disbursements of benefits and payments for services, and the fiscal controls and practical realities of the situation are such that these persons cannot gain access to funds which they are not legitimately allowed to disburse, the amount on which the bond is based may be limited to the amount actually disbursed in the reporting year. This would depend, in part, on the extent to which the bank or corporate trustee which has physical possession of the funds also has final responsibility for questioning and limiting disbursements from the plan, and on whether this responsibility is embodied in the original plan instruments. On the other hand, where insufficient fiscal controls exist so that the persons involved have free access to, or can obtain control of, the total amount of the fund, the bond shall reflect this fact and the amount "handled" shall be based on the total amount of the fund. This would generally occur with respect to persons such as the "administrator", regardless of what functions are performed by a bank or corporate trustee, since the "administrator" by definition retains ultimate power to revoke any arrangement with a bank or corporate trustee. In such case, the "administrator" would have the power to commit the total amount of funds involved to his control, unless the plan itself or other specific agreement (1) prevents the "administrator" from so doing or (2) requires that revocation cannot be had unless a new agreement providing for similar controls and limitations on the "handling" of funds is simultaneously entered into.

(b) Where the circumstances of "handling" are such that the total amount of a given account or fund is subject to "handling", the amount "handled" shall include the total of all such funds on hand at the beginning of the reporting year, plus any items received during the year for any reason, such as contributions or income, or items received as a result of sales, investments, reinvestment, interest or otherwise. It would not, however, be necessary to count the same item twice in arriving at the total funds "handled" by a given person during a reporting year. For example, a given person may have various duties or powers involving receipt, safekeeping or disbursement of funds which would place him in contact with the same funds at several times during the same year. Different duties, however, would not make it necessary to count the same item twice in arriving at the total "handled" by him. Similarly, where a person has several different positions with respect to a plan, it would not be necessary to count the

same funds each time that they are "handled" by him in these different positions, so long as the amount of the bond is sufficient to meet the 10 percent requirement with respect to the total funds "handled" by him subject to risk of loss through fraud or dishonesty, whether acting alone or in collusion with others. In general, once an item properly within the category of "funds" has been counted as "handled" by a given person, it need not be counted again even though it should subsequently be "handled" by the same person during the same year.

§ 464.16 Procedures to be used for estimating the amount of funds to be "handled" during the current reporting year in those cases where there is no preceding reporting year.

If for any reason a plan does not have a complete preceding reporting year, the amount "handled" by persons required to be covered by a bond shall be estimated at the beginning of the calendar, policy or other fiscal year, as the case may be, which would constitute either the operating year or the reporting year of the plan, whichever shall occur first, as follows:

(a) In the case of a plan having a previous experience year, even though it has no preceding reporting year, the estimate of the amount to be "handled" for any person required to be covered shall be based on the experience in the previous year by applying the same standards and criteria as in a plan which has a preceding reporting year. Similarly, where a plan is recently established, but has had, at the time a bond is obtained, sufficient experience to reasonably estimate a complete year's experience for persons required to be bonded, the amount of funds to be "handled" shall be projected to the complete year on the basis of the period in which the plan has had experience, unless, to the knowledge of the plan administrator, the given period of experience is so seasonal or unrepresentative of the complete year's experience as not to provide a reasonable basis for projecting the estimate for the complete year.

(b) Where a plan does not have any prior experience sufficient to allow it to estimate the amount "handled" in the manner outlined in paragraph (a) of this section, the amount to be "handled" by the administrators, officers and employees of the plan during the current reporting year shall be that amount initially required to fund or set up the plan, plus the amount of contributions required to be made under the plan formula from any source during the current reporting year. In most cases, the amount of contributions will be calculated by multiplying the total yearly contribution per participant (required by the plan formula from either employers, employees, employer organizations or any other source) by the number of participants in the plan at the beginning of such reporting year. In cases where the per capita contribution cannot readily be determined, such as in the case of certain insured plans covered by the Act, the amount of contributions

shall be estimated on the amount of insurance premiums which are actuarially estimated as necessary to support the plan, or on such other actuarially estimated basis as may be applicable. In the case of a newly formed profit-sharing plan covered by the Act, if the employer establishing the plan has a previous year of experience, the amount of contributions required by the plan formula shall be estimated on the basis of the profits of the previous year. The amount of the bond shall then be fixed at 10 percent of this calculation, but not more than \$500,000. A bond for such amount shall be obtained in any form the plan desires on all persons who are administrators, officers or employees of the plan and who "handle" funds or other property of the plan.

§ 464.17 Amount of bond required in given types of bonds or where more than one plan is insured in the same bond.

(a) As indicated in § 464.11, the Act permits the use of blanket, schedule and individual forms of bonds so long as the amount of the bond penalty is sufficient to meet the requirements of the Act for any person who is an administrator, officer or employee of a plan handling funds or other property of the plan. Such person must be bonded for 10 percent of the amount he handles, and the amount of the bond must be sufficient to indemnify the plan for any losses in which such person is involved up to that amount.

(b) When individual or schedule bonds are written, the bond amount for each person must represent not less than 10 percent of the funds "handled" by the named individual or by the person in the position. When a blanket bond is written, the amount of the bond shall be at least 10 percent of the highest amount handled by any administrator, officer or employee to be covered under the bond. It should also be noted that if an individual or group or class covered under a blanket bond "handle" a large amount of funds or other property, while the remaining bondable persons "handle" only a smaller amount, it is permissible to obtain a blanket bond in an amount sufficient to meet the 10 percent requirements for all except the individual, group or class "handling" the larger amounts, with respect to whom excess indemnity shall be secured in an amount sufficient to meet the 10 percent requirement.

(c) The Act does not prohibit more than one plan from being named as insured under the same bond. However, any such bond must allow for recovery by each plan in an amount at least equal to that which would be required if bonded separately. This requirement has application where a person or persons sought to be bonded pursuant to the requirements of section 13 have "handling" functions in more than one plan covered under the bond. Where such is the case, the amount of the bond must be sufficient to cover any such persons having functions in more than one plan for at least 10 percent of the total amount "handled" by them in all the plans covered under the bond.

For example, X is the administrator of two welfare plans run by the same employer and he "handled" \$100,000 in the preceding reporting year for Plan A and \$500,000 in the preceding reporting year for Plan B. If both plans are covered under the same bond, the amount of the bond with respect to X shall be at least \$60,000 or ten percent of the total "handled" by X for both plans covered under the bond in which X has powers and duties of "handling" since Plan B is required to carry bond in at least the amount of \$50,000 and Plan A, \$10,000.

(d) Additionally, in order to meet the requirement that each plan be protected, it shall be necessary that arrangement be made either by the terms of the bond or rider to the bond or by separate agreement among the parties concerned, that payment of a loss sustained by one of such insureds shall not work to the detriment of any other plan covered under the bond with respect to the amount for which that plan is required to be covered. For example, if Plan A suffered a loss of \$30,000 as described above and such loss was recompensed in its entirety by the surety company, it would receive \$20,000 more than the \$10,000 protection required under section 13, and only \$30,000 would be available for recovery with respect to further losses caused by X. In a subsequently discovered defalcation of \$40,000 by X from Plan B, it would be necessary that the bond, rider, or separate agreement provide that such amount of recovery paid to Plan A in excess of the \$10,000 for which it is required to be covered, be made available by such insured to, or held for the use of, Plan B in such amount as Plan B would receive if bonded separately. Thus, in the instant case, Plan B would be able to recover the full \$40,000 of its loss. Where the funds or other property of several plans are commingled (if permitted by law) with each other or with other funds, such arrangement shall allow recovery to be attributed proportionately to the amount for which each plan is required to be protected. Thus, in the instant case, if funds or other property were commingled, and X caused a loss of these funds through fraud or dishonesty, one-sixth of the loss would be attributable to Plan A and five-sixths of the loss attributable to Plan B.

(e) The maximum amount of any bond with respect to any person in any one plan is \$500,000, but bonds covering more than one plan may be required to be over \$500,000 in order to meet the requirements of the Act, since persons covered by such a bond may have "handling" functions in more than one plan. The \$500,000 limitation for such persons applies only with respect to each separate plan in which they have such functions. The minimum bond coverage for any administrator, officer, or employee "handling" funds or other property of a plan is \$1,000 as respects each plan in which he has "handling" functions.

§ 464.18 Bonds over \$500,000.

The Labor-Management Services Administrator, after due notice and oppor-

tunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of \$500,000, which in no event shall exceed 10 per centum of the funds "handled." Any requirement for bonding in excess of \$500,000 shall be according to such other regulations as may be prescribed.

Subpart D—General Bond Rules

§ 464.19 Naming of insureds.

Since section 13 is intended to protect funds or other property of all plans involved, bonds under this section shall allow for enforcement or recovery by those persons usually authorized to act for such plans in such matters. In most cases, the naming of the plan or plans as insured will provide for such recovery. Where it is not clear that such recovery will be provided, however, a rider shall be attached to the bond or separate agreement made among the parties concerned to make certain that any reimbursement collected under the bond will be for the benefit and use of the plan suffering a loss. Such rider or agreement shall always be required as respects any bond (a) where the employer or employee organization is first named joint insured with one or more plans, or (b) two or more plans are named joint insureds under a single bond with the first named acting for all insureds for the purpose of orderly servicing of the bond.

§ 464.20 Term of the bond, discovery period, other bond clauses.

(a) *Term of the bond.* The amount of any required bond must in each instance be based on the amount of funds "handled" and must be fixed or estimated at the beginning of the plan's reporting year, that is, as soon after the date when such year begins as the necessary information from the preceding reporting year can practically be ascertained. This does not mean, however, that a new bond must be obtained each year. There is nothing in the Act that prohibits a bond for a term longer than one year, with whatever advantages such a bond might offer by way of a lower premium. However, at the beginning of each reporting year the bond shall be in at least the requisite amount. If, for any reason, the bond is below the required level at that time, the existing bond shall either be increased to the proper amount, or a supplemental bond shall be obtained.

(b) *Discovery period.* A discovery period of no less than one year after the termination or cancellation of the bond is required. Any standard form written on a "discovery" basis, i.e., providing that a loss must be discovered within the bond period as a prerequisite to recovery of such loss, however, will not be required to have a discovery period if it contains a provision giving the insured the right to purchase a discovery period of one year in the event of termination or cancellation and the insured has already given the surety notice that it desires such discovery period.

(c) *Other bond clauses.* A bond shall not be adequate to meet the requirements of section 13, if, with respect to bonding coverage required under section

13, it contains a clause, or is otherwise, in contravention of the law of the State in which it is executed.

§ 464.21 Use of existing bonds, separate bonds and additional bonding.

(a) *Additional bonding.* Section 13 neither prevents additional bonding beyond that required by its terms, nor prescribes the form in which additional coverage may be taken. Thus, so long as a particular bond meets the requirements of the regulations in this part as to the persons required to be bonded and provides coverage for such persons in at least the minimum required amount, additional coverage as to persons or amount may be taken in any form, either on the same or separate bond.

(b) *Use of existing bonds.* Insofar as a bond currently in use is adequate to meet the requirements of the Act and the regulations in this part or may be made adequate to meet these requirements through rider, modification or separate agreement between the parties, no further bonding is required.

(c) *Use of separate bonds.* The choice of whether persons required to be bonded should be bonded separately or under the same bond, whether given plans should be bonded separately or under the same bond, whether existing bonds should be used or separate bonds for Welfare and Pension Plans Disclosure Act bonding should be obtained, or whether the bond is underwritten by a single surety company or more than one surety company, either separately or on a cosurety basis, is left to the judgment of the parties concerned, so long as the bonding program adopted meets the requirements of the Act and the regulations in this part.

Subpart E—Qualified Agents, Brokers and Surety Companies for the Placing of Bonds

§ 464.22 Corporate sureties holding grants of authority from the Secretary of the Treasury.

(a) The provisions of section 13 require that any surety company with which a bond is placed pursuant to that section must be a corporate surety which holds a grant of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-13), as an acceptable surety on Federal bonds. The Act provides, among other things, that in order for a surety company to be eligible for such grant of authority, it must be incorporated under the laws of the United States or of any State and the Secretary of the Treasury shall be satisfied of certain facts relating to its authority and capitalization. Such grants of authority are evidenced by Certificates of Authority which are issued by the Secretary of the Treasury and which expire on the April 30 following the date of their issuance. A list of the companies holding such Certificates of Authority is published annually in the FEDERAL REGISTER, usually in May or June. Changes in the list, occurring between May 1 and April 30, either by addition to or removal from the list of companies, are also published in the FEDERAL REGISTER following each such change.

(b) Where a surety becomes insolvent and is placed in receivership, or if for any other reason the Secretary of the Treasury determines that its financial condition is not satisfactory to him and he revokes the authority of such company to act as an acceptable surety under the Act of July 30, 1947, the "administrator" of the insured plan shall, upon knowledge of such facts, be responsible for securing a new bond with an acceptable surety.

(c) In obtaining or renewing a bond, the plan administrator shall assure that the surety is one which satisfies the requirements of this section. If the bond is for a term of more than one year, the plan administrator, at the beginning of each reporting year, shall assure that the surety continues to satisfy the requirements of this subpart.

§ 464.23 Interests held in agents, brokers and surety companies.

Section 13(c) prohibits the placing of bonds, required to be obtained pursuant to section 13, with any surety or other company, or through any agent or broker in whose business operations a plan or any party in interest in a plan has significant control or financial interest, direct or indirect. An interpretation of this section has been issued (Part 485 of this chapter).

Subpart F—Miscellaneous Provisions

§ 464.24 Prohibition of certain activities by unbonded persons.

(a) Section 13(b) makes it unlawful for any administrator, officer or employee to whom subsection 13(a) applies to "receive, handle, disburse or otherwise exercise custody or control of any of the funds or other property of any employee welfare benefit plan or employee pension benefit plan" without being bonded as required by subsection 13(a). Section 13(b) also makes it unlawful for any administrator, officer or employee of such a plan, or any other person having authority to direct the performance of "handling" functions, to permit such functions to be performed by any administrator, officer or employee with respect to whom the requirements of subsection 13(a) have not been met. The effect of this section is to prohibit persons who are required to be bonded from performing any acts for which bonding would be required, if they are not properly bonded. It also prohibits any person with the power to do so, to delegate, assign or permit such persons to receive, handle, disburse or otherwise exercise custody or control of the funds or other property of a covered plan if they are not properly bonded.

(b) While responsibility for prohibiting administrators, officers or employees from performing acts of "handling" without being properly bonded rests with any person who has the authority to do so, the plan administrator shall have initial responsibility for ensuring that a proper bond is obtained.

(c) Prohibitions set forth in this section are not intended to extend to those acts or activities which do not fall within the definition of "handling." Similarly, these prohibitions are not intended to

extend to any person, institution or party not falling within the definition of administrator, officer or employee (e.g., banks or insurance companies are deemed not to fall within those definitions; see § 464.4). The prohibitions shall be applicable, however, to any person falling within the definition of administrator, officer or employee who because of election, employment, appointment, or change in duties, commences to "handle" funds or other property during the course of a particular plan reporting year. Before such persons are permitted to engage in any "handling" activities, a bond shall be secured for them in an amount based on the funds "handled" by their predecessor or predecessors, or by persons in similar positions during the preceding plan reporting year, unless coverage with respect to such persons is currently being provided by bonds which meet the requirements of section 13 and the regulations in this part.

§ 464.25 Payment of bonding costs.

The Act does not prohibit the plan or employers or employee organizations having an interest in the plan from paying all or any part of the costs of bonds required by section 13. The decision as to who should bear cost is left to the duly authorized discretion and agreement of the parties concerned in each case, provided such agreement does not violate state or federal law.

§ 464.26 Powers of the Secretary of Labor to regulate and exempt.

Section 13(e) of the Act provides that the Secretary of Labor shall from time to time issue such regulations as may be necessary to carry out the provisions of section 13 and further provides that when, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt the plan from the requirements of section 13. Pursuant to these powers, regulations with respect to applications for exemptions under section 13(e) have been issued. Any such applications shall be made in accordance with provisions and requirements of the regulations in Part 465 of this chapter.

§ 464.27 Enforcement.

(a) Section 9(a) of the Act provides that any person who wilfully violates any provision of this Act shall be fined not more than \$1,000, or imprisoned not more than six months, or both.

(b) Section 9(f) provides that whenever it shall appear to the Secretary that any person is engaged in any violation of the provisions of this Act, he may in his discretion bring an action in the proper district court of the United States or United States court of any place subject to the jurisdiction of the United States to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted.

§ 464.28 Relationship to other laws.

Section 13(d) provides that nothing in any other provision of law shall require any person, required to be bonded as provided in section 13(a) because he "handles" funds or other property of an employee welfare benefit plan or an employee pension benefit plan, to be bonded insofar as the "handling" by such person of the funds or other property of such plan is concerned. This provision shall be deemed to make inapplicable the bonding requirements of other laws only insofar as an administrator, officer or employee in a covered plan is required to be bonded in "handling" the funds and other property of such plan. The primary purpose of section 13(d) is to relieve from the bonding requirements of the Labor-Management Reporting and Disclosure Act of 1959 any persons required to be bonded within the meaning of section 13 and the regulations promulgated thereunder.

§ 464.29 Effective date of the bonding requirement.

The bonding provisions of section 13 of the Act became effective September 16, 1962. The regulations in this part became effective January 1, 1963.

PART 465—EXEMPTION FROM BONDING REQUIREMENTS

Subpart A—Procedures

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BANKING INSTITUTIONS SUBJECT TO FEDERAL REGULATIONS

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AUTHORITY: §§ 465.1 to 465.20 issued under sec. 13, 76 Stat. 39, 29 U.S.C. 308d; Secretary's Order No. 24-63 (28 F.R. 9172) and Secretary's Order No. 25-63 (28 F.R. 9173).

Subpart A—Procedures

§ 465.1 Definitions.

(a) "Interested persons" means any person whose interests are or will be affected by the granting or denying of any exemption from the requirements of bonding otherwise required by the Act.

(b) "Act" means the Welfare and Pension Plans Disclosure Act, as amended by the Welfare and Pension Plans Disclosure Act Amendments of 1962.

(c) "Director" means the Director of the Office of Labor-Management and Welfare-Pension Reports.

§ 465.2 Application of this part.

(a) Subsection (a) of section 13 of the Act requires every administrator, officer and employee of any employee welfare benefit plan subject to the Act who handles funds or other property to be bonded in the amount of not less than 10 percent of the amount of funds handled except that such bonds shall be in at least the amount of \$1,000 and no bond shall be required in an amount in excess of \$500,000. The Labor-Management Services Administrator may prescribe an amount in excess of \$500,000 after opportunity for a hearing. Bonds must provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of the administrator, officer or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to the Act of July 30, 1947 (6 U.S.C. 6-13). A bond is required to be in a form or of a type approved by the Labor-Management Services Administrator, and is to include individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) Subsection (b) of section 13 makes it unlawful for administrators, officers or employees subject to the Act to receive, handle, disburse or otherwise exercise custody or control of any of the funds or other property of an employee welfare or pension benefit plan without being bonded, and makes it unlawful for an administrator, officer or employee to permit such functions or any of them to be performed by such persons who are not bonded.

(c) Subsection (e) of section 13 provides that when the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, such plan may be exempted from the requirements of section 13.

(d) Consistent with subsection (e) of section 13, the purpose of this Part 465 is to provide procedures to govern the application, consideration, and decision upon petition for an exemption of any employee welfare or pension benefit plan from the requirements of section 13.

§ 465.3 Petition for exemption—who may file.

Any administrator or any person or organization acting on behalf of an administrator or group or class of plan administrators may petition the Director, Office of Labor-Management and Welfare-Pension Reports on behalf of an employee welfare or pension benefit

plan or a group or class of plans for an exemption from one or all of the bonding requirements of section 13 of the Act.

§ 465.4 Petitions concerning individual plans.

If a petition concerns an individual plan, such petition shall be submitted in writing, accompanied by three copies, and shall set out in detail the following:

(a) If an exemption is requested which will not require a bond, the petition shall set out in detail:

(1) The name of the plan, and the identification number, if any, assigned to it by the Office of Labor-Management and Welfare-Pension Reports. Petitions filed on behalf of plans which have not previously filed a Form D-1 and a current Form D-2, as required by sections 6 and 7 of the Act, shall be accompanied by such form or forms as is appropriate, completed as required by Part 460 of this chapter.

(2) The petitioner's capacity or function with respect to the plan or plans, or otherwise a statement of the petitioner's interest in obtaining the exemption requested.

(3) The nature of the exemption requested, and the reasons why such exemption is desired.

(4) Arrangements for a trust company, bank, insurance carrier or other financial institution to manage the funds of the plan, together with a résumé of the control and authority delegated to such trust company, bank, insurance carrier or other financial institution, and the control or authority retained by the plan administrator or trustees.

(5) Whether the plan has suffered any losses within the past 5 years attributable to dishonesty, theft, fraud, embezzlement, or other criminal acts; the amount of the loss; the circumstances; and whether prosecution resulted therefrom.

(6) Whether coverage under any prior bond has been canceled or revoked by a surety with respect to any administrator, officer, or employee, the reasons therefor, and whether, to the best of the petitioner's knowledge, any administrator, officer, or employee of the fund has been indicted for, or convicted of, any felony by the United States, any State or any foreign country.

(7) Details of any civil actions brought by or in the interest of creditors, participants or beneficiaries against the plan within the past 5 years other than litigation resulting from interpretation of the provisions of the plan in connection with the granting or denial of benefits.

(8) If the petition requests an exemption which will not require a bond, a statement concerning the nature and details of the protection afforded the participants or beneficiaries of the fund.

(b) If it is contemplated that a bonding arrangement which would not satisfy the specific terms of the Act is to be obtained, the petitioner shall, in addition to the requirements of paragraph (a) of this section, state:

(1) The name of the bonding company or association, State(s) where licensed to operate, and place of incorporation (if a corporate surety) or home office.

(2) Whether any cash bond or escrow arrangement is contemplated. If so, the amount of such bond or fund, and the terms and details of the arrangement shall be stated. A copy of any instrument creating the bond or arrangement shall accompany the petition.

(3) Petitioners contemplating procurement of a bond other than of a type stipulated in the Act shall attach a copy of the bond and all riders thereto, or other instrument, completely filled out.

§ 465.5 Petitions concerning a class of plans.

If a petition concerns a class of plans, or plans of a certain type, such petition shall be submitted in writing accompanied by three copies, and shall set out in detail:

(a) A description of the type or class of plans involved, a description of the administration of such plans and the petitioner's interest in obtaining the exemption requested.

(b) If it is not contemplated that a bond is to be obtained, evidence and a description of the protection (other than a bond) provided for such plans which would assure adequate protection for the participants and beneficiaries.

(c) If it is contemplated that a bonding arrangement which would not satisfy the terms of the Act is to be obtained, the petitioner shall identify the name of the bonding company or association, State(s) where licensed to operate, corporate structure (e.g., corporation, group of individual underwriters, or other association), place of incorporation (if a corporate surety) or home office. A copy of the bond form(s) proposed to be employed shall accompany such petition.

§ 465.6 Review of petition—informal conferences.

Petitions described in §§ 465.4 and 465.5 shall be reviewed by the Director for adequacy of the protection to be afforded participants and beneficiaries of employee welfare or pension benefit plans consistent with the intent of the Act. Notice of receipt of a petition may be afforded other interested persons, such as participants or beneficiaries, as is deemed appropriate. The petitioner and other interested persons may be requested to confer informally regarding the petition, and the petitioner may be required to submit additional information concerning the petition.

§ 465.7 Consolidation.

Upon motion and good cause shown or upon his own initiative, the Director may at any stage in the consideration of a petition or petitions, as set out in this part, contemporaneously consider or consolidate for conference or hearing, or for other purposes, two or more proceedings if he determines that such action is appropriate and equitable to all interested persons.

§ 465.8 Decisions.

Upon consideration of the facts and reasons stated in a petition, the Director may, without further proceedings or after such other proceedings as are provided for in this Part 465, grant or deny in whole or in part a petition. A petition may be denied on the ground that

it fails to allege facts entitling the petitioner to the exemption requested, or on such other grounds as shall be stated in notice given to the petitioner. An exemption from bonding may be granted with certain stated qualifications. No exemption from the bonding requirements of the Act shall be deemed effective until after express grant by the Director following filing of a petition.

§ 465.9 Hearings.

Upon consideration and investigation of the facts and reasons stated in a petition, the Director may set the matter for formal or informal hearing whenever it is deemed appropriate or necessary in the interests of the proper administration of the Act.

§ 465.10 Cancellation or termination of bond.

(a) Administrators shall notify the Director immediately upon cancellation or termination of a bond permitted or procured pursuant to an exemption granted under this Part 465, or on other failure of, or material change in the nature and details of the protection afforded participants or beneficiaries, unless contemporaneously with or prior to such cancellation, termination, failure or change, a new bond or bonds or other protection meeting the requirements of the Act shall have been provided.

(b) A copy of such substitute bond or a résumé of the current protection afforded the participants or beneficiaries of the fund shall be provided to the Director within 20 days following such cancellation, termination, failure, or change.

§ 465.11 Information—suspension or revocation of exemption.

If at any time there is a material change in the information submitted in support of a request for exemption while such request is pending before the Director, or after such request has been granted, the administrator or person or organization acting on his behalf shall immediately notify the Director in writing, detailing the nature of the change. At any time following granting of an exemption, the Director may request information concerning the administration of an employee welfare or pension benefit plan. An exemption previously granted under section 13 of the Act and this Part 465 may be suspended, withdrawn, or revoked after facts or conduct which may warrant such action shall have been called to the attention of the administrator of a plan by the Director in writing, and the administrator shall have been afforded opportunity to demonstrate or achieve compliance with the requirements of the Act as expressed by the Office of Labor-Management and Welfare-Pension Reports. No such prior notice shall be given if the administrator's conduct is considered willful.

Subpart B—Exemptions

BONDS PLACED WITH CERTAIN REINSURING COMPANIES

§ 465.15 Exemption.

An exemption from the bonding requirements of the Welfare and Pension

Plans Disclosure Act is granted by this section whereby bonding arrangements (which otherwise comply with the requirements of section 13 of the Act and the regulations issued thereunder) with companies authorized by the Secretary of the Treasury as acceptable reinsurers on Federal bonds will satisfy the bonding requirements of the Act.

§ 465.16 Conditions of exemption.

(a) This exemption obtains only with respect to the requirement of section 13(a) of the Act that all bonds required thereunder shall have as surety thereon, a corporate surety company, which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to the Act of July 30, 1947 (6 U.S.C. 6-13).

(b) The exemption is granted upon the condition that if for any reason the authority of any such company to act as an acceptable reinsuring company is terminated, the administrator of a plan insured with such company, shall, upon knowledge of such fact, be responsible for securing a new bond with a company acceptable under the Act and the exemptions issued thereunder.

(c) In obtaining or renewing a bond, the plan administrator shall ascertain that the surety is one which satisfies the requirements of the Act and the exemptions thereunder. If the bond is for a term of more than one year, the plan administrator, at the beginning of each reporting year, shall ascertain that the surety continues to do so.

BONDS PLACED WITH UNDERWRITERS AT LLOYDS, LONDON

§ 465.17 Exemption.

An exemption from the bonding requirements of subsection 13(a) of the Welfare and Pension Plans Disclosure Act is granted by this section whereby arrangements (which otherwise comply with the requirements of section 13 of the Act and the regulations issued thereunder), with the Underwriters at Lloyds, London will satisfy the bonding requirements of the Act.

§ 465.18 Conditions of exemption.

(a) This exemption obtains only with respect to the requirements of section 13(a) of the Act that all bonds required thereunder shall have as surety thereon, a corporate surety company, which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury, pursuant to the Act of July 30, 1947 (6 U.S.C. 6-13).

(b) This exemption is granted on the following conditions:

(1) Underwriters at Lloyds, London shall continue to be licensed in a state of the United States to enter into bonding arrangements of the type required by the Act.

(2) Underwriters at Lloyds, London, shall file with the Office of Labor-Management and Welfare-Pension Reports two (2) copies of each annual statement required to be made to the Commissioner of Insurance of those states in which Underwriters at Lloyds, London are licensed. Copies of annual statements shall be filed with the Office of Labor-Management and Welfare-

Pension Reports within the same period required by the respective states.

(3) All bonding arrangements entered into by Underwriters at Lloyds, London under section 13 of the Act shall contain a "Service of Suit Clause" in substantial conformity with that set forth in the petition for exemption.

BANKING INSTITUTIONS SUBJECT TO FEDERAL REGULATION

§ 465.19 Exemption.

An exemption from the bonding requirements of subsections 13 (a) and (b) of the Welfare and Pension Plans Disclosure Act is granted whereby banking institutions and trust companies specified in § 465.20 are not required to comply with subsections 13 (a) and (b) of the Act, with respect to welfare and pension benefit plans covered by the Act for the benefit of their own employees, where such a banking institution or trust company is the administrator of such plans.

§ 465.20 Conditions of exemption.

This exemption applies only to those banking institutions and trust companies subject to regulation and examination by the Comptroller of the Currency or the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

PART 485—PROHIBITION AGAINST BONDING BY PARTIES INTERESTED IN THE PLAN

Sec.	
485.1	Introductory statement.
485.2	General.
485.3	Disqualification of agents, brokers and sureties.
485.4	Application of 13(c) to "party in interest".

AUTHORITY: §§ 485.1 to 485.4 issued under sec. 13, 76 Stat. 39, 29 U.S.C. 308d; Secretary's Order No. 24-63 (28 F.R. 9172) and Secretary's Order No. 25-63 (28 F.R. 9173).

§ 485.1 Introductory statement.

(a) This part discusses the meaning and scope of section 13(c) of the Welfare and Pension Plans Disclosure Act of 1958 (76 Stat. 39, 29 U.S.C. 308d(c)) (hereinafter referred to as the Act). This provision makes it unlawful "for any person to procure any bond [required by the Act] from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any significant control or financial interest, direct or indirect." Because the prohibition contained in this provision is broadly stated, it becomes a matter of importance to determine more specifically the types of arrangements intended to be prohibited.

(b) The provisions of section 13 of the Act, including 13(c) are subject to the general investigatory authority of the Director, Office of Labor-Management and Welfare-Pension Reports, embodied in section 9 of the Act. The correctness of an interpretation of these provisions can be determined finally and authoritatively only by the courts. It is necessary, however, for the Labor-Management Services Administrator to reach informed conclusions as to the

meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Labor-Management Services Administrator contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide the Labor-Management Services Administrator in performing his duties unless and until he is directed otherwise by authoritative ruling of the courts or unless and until he subsequently decides that his prior interpretation is incorrect. Under section 12 of the Act, the interpretations contained in this part, if relied upon in good faith, will constitute a defense in any action or proceeding based on any Act or omission in alleged violation of section 13(c) of the Act. The omission, however to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Labor-Management Services Administrator with respect to such problem or to constitute an administrative interpretation or practice. Interpretations of the Labor-Management Services Administrator with respect to 13(c) are set forth in this part to provide those affected by the provisions of the Act with "a practical guide * * * as to how the office representing the public interest in its enforcement will seek to apply it" (Skidmore v. Swift & Co., 323 U.S. 134, 138).

(c) To the extent that prior opinions and interpretations relating to 13(c) are inconsistent with the principles stated in this part, they are hereby rescinded and withdrawn.

§ 485.2 General.

The purpose of section 13(c), as shown by its legislative history, is similar to a closely related provision contained in section 502(a) of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 536; 29 U.S.C. 502(a)). The fundamental purpose of Congress under 13(c) is to insure against potential abuses arising from significant financial or other influential interests affecting the objectivity of the plan or parties in interest in the plan and agents, brokers, or surety or other companies, in securing and providing the bond specified in section 13(a). As will be explained more fully below, this prohibition, however, was not intended to preclude the placing of bonds through or with certain parties in interest in plans which provide a variety of services to the plan, one of which is a bonding service.

§ 485.3 Disqualification of agents, brokers and sureties.

Since 13(c) is to be construed as disqualifying any agent, broker, surety or other company from having a bond placed through or with it, if the plan or any party in interest in the plan has a significant financial interest or control in such agent, broker, surety or other company, a question of fact will necessarily arise in many cases as to whether the financial interest or control held is sufficiently significant to disqualify the agent, broker or surety. Although no rule of guidance can be established to

govern each and every case in which this question arises, in general, the essential test is whether the existing financial interest or control held is incompatible with an unbiased exercise of judgment in regard to procuring the bond or bonding the plan's personnel. In regard to the foregoing, it is also to be pointed out that lack of knowledge or consent on the part of persons responsible for procuring bonds with respect to the existence of a significant financial interest or control rendering the bonding arrangement unlawful will not be deemed a mitigating factor where such persons have failed to make a reasonable examination into the pertinent circumstances affecting the procuring of the bond.

§ 485.4 Application of 13(c) to "party in interest".

(a) Under 13(c), an agent, broker or surety or other company is disqualified from having a bond placed through or with it if a "party in interest" in the plan has any significant control or financial interest in such agent, broker, surety or other company. Section 3(13) of the Act defines the term "party in interest" to mean "any administrator, officer, trustee, custodian, counsel, or employee of any employee welfare benefit plan or employee pension benefit plan or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or officer or employee or agent of such employer, or an officer or agent or employee of an employee organization having members covered by such plan."

(b) A basic question presented is whether the effect of 13(c) is to prohibit persons from placing a bond through or with any "party in interest" in the plan. The language used in 13(c) appears to indicate that in this connection the intent of Congress was to eliminate those instances where the existing financial interest or control held by the "party in interest" in the agent, broker, surety or other company is incompatible with an unbiased exercise of judgment in regard to procuring the bond or bonding the plan's personnel. Accordingly, not all parties in interest are disqualified from procuring or providing bonds for the plan. Thus where a "party in interest" or its affiliate provides multiple benefit plan services to plans, persons are not prohibited from availing themselves of the bonding services provided by the "party in interest" or its affiliate merely because the plan has already availed itself, or will avail itself, of other services provided by the "party in interest." In this case, it is inherent in the nature of the "party in interest" or its affiliate as an individual or organization providing multiple benefit plan services, one of which is a bonding service, that the existing financial interest or control held is not, in and of itself, incompatible with an unbiased exercise of judgment in regard to procuring the bond or bonding the plan's personnel. In short, there is no distinction between this type of relationship and the ordinary arm's length business relationship which may be established between a plan-customer and an agent, broker or surety company, a relationship which Congress could not have

intended to disturb. On the other hand, where a "party in interest" in the plan or an affiliate does not provide a bonding service as part of its general business operations, 13(c) would prohibit any person from procuring the bond through or with any agent, broker, surety or other company, with respect to which the "party in interest" has any significant control or financial interest, direct or indirect. In this case, the failure of the "party in interest" or its affiliate to provide a bonding service as part of its general business operations raises the possibility of less than an arm's length business relationship between the plan and the agent, broker, surety or other company since the objectivity of either the plan or the agent, broker or surety may be influenced by the "party in interest".

(c) The application of the principles discussed in this section is illustrated by the following examples:

Example (1). B, a broker, renders actuarial and consultant services to plan P. B has also procured a group life insurance policy for plan P. B may also place a bond for P with surety company S, provided that neither B nor P has any significant control or financial interest, direct or indirect, in S and provided that neither P nor any other "party in interest" in P, e.g., an officer of the plan, has any significant control or financial interest, direct or indirect, in B or S.

Example (2). I, a life insurance company, has provided a group life insurance policy for plan P. I is affiliated with S, a surety company, and has a significant financial interest or control in S. P is not prohibited from obtaining a bond from S since I's affiliation with S does not ordinarily, in and of itself, affect the objectivity of P in procuring the bond or the objectivity of S in bonding P's personnel. However, if any other "party in interest" as defined in Section 3(13) of the Act, such as the employer whose employees are covered by P, should have a significant financial interest or control in S, S could not write the bond for P, since the employer's interest affects the objectivity of P and S.

PART 486—GENERAL STATEMENT CONCERNING THE RETENTION OF RECORDS PROVISIONS OF THE WELFARE AND PENSION PLANS DISCLOSURE ACT

Sec.

- 486.1 Introductory statement.
- 486.2 Persons who must retain records.
- 486.3 Records to be retained.
- 486.4 Manner of keeping records.
- 486.5 Period records must be maintained.

AUTHORITY: §§ 486.1 to 486.5 issued pursuant to sec. 5, 72 Stat. 999, 76 Stat. 36, sec. 11, 76 Stat. 38; 29 U.S.C. 304, 308b; Secretary's Order 24-63 (28 F.R. 9172), and Secretary's Order 25-63 (28 F.R. 9173).

§ 486.1 Introductory statement.

(a) This part reflects interpretive positions of the Department of Labor with respect to several aspects of the record retention requirements of section 11 of the Welfare and Pension Plans Disclosure Act (72 Stat. 997, 76 Stat. 35; 29 U.S.C. 301, et seq.). This section provides that: "Every person required to file any description or report or to certify any information therefor under this Act shall maintain records on the matters of which disclosure is required which will

provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain."

(b) The provisions of section 11 of the Act are subject to the investigatory authority of the Director, Office of Labor-Management and Welfare-Pension Reports, embodied in section 9 of the Act. The correctness of an interpretation of these provisions can be determined finally and authoritatively only by the courts. It is necessary, however, for the Labor-Management Services Administrator (hereafter referred to as "the Administrator") to reach informed conclusions as to the meaning of the law to enable him to carry out his duties of administration and enforcement. The interpretations of the Administrator contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide the Administrator in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently decides that his prior interpretation is incorrect. Under section 12 of the Act, the interpretations contained in this part, if relied upon in good faith, will constitute a defense in any action or proceeding based on any act or omission in alleged violation of section 11 of the Act. The omission, however, to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Administrator with respect to such problem or to constitute an administrative interpretation or practice. Interpretations of the Administrator with respect to section 11 are set forth in this part to provide those affected by the provisions of the Act with a "practical guide * * * as to how the office representing the public interest in its enforcement will seek to apply it" (Skidmore v. Swift & Co., 323 U.S. 134, 138).

(c) To the extent that prior opinions and interpretations relating to section 11 are inconsistent with the principles stated in this part, they are hereby rescinded and withdrawn.

§ 486.2 Persons who must retain records.

(a) Section 11 of the Welfare and Pension Plans Disclosure Act applies to—

(1) Any person or persons required to file any plan description or annual report under section 6 or section 7 of the Act;

(2) Any person or persons who may be required to publish a report upon request pursuant to section 7(a) of the Act; and

(3) Any insurance carrier or service or other organization required under section 7(g) of the Act to certify any information necessary for the preparation or filing of any such description or report.

(b) The statutory duty on such persons to maintain records cannot be avoided by contract, delegation or otherwise. Thus, if the administrator of a plan arranges with an independent contractor (such as a corporate trustee or benefit plan consultant) to perform functions with respect to the plan and, pursuant to the arrangement, such independent contractor prepares or receives the type of records contemplated by § 486.3 and keeps physical custody of such records, the statutory requirement to see that such records are retained for the required period remains with the administrator and he must make such agreements and arrangements with the independent contractor as are necessary to insure that they are so retained.

§ 486.3 Records to be retained.

(a) The records required to be retained are all documents which will provide in sufficient detail the necessary basic information and data from which the description and reports which are required or may be required under the Act may be verified, explained or clarified, and checked for accuracy and completeness.

(b) Such records include (but are not limited to) resolutions and matters relating to the plan for which a description or annual report is or may be required to be filed, journals, ledgers,

checks, invoices, bank statements, contracts, agreements, vouchers, worksheets, receipts, claim records and payrolls of any party described in § 486.2 which would tend to support information required in any report under the Act.

(c) Records maintained shall also include, where appropriate, information certified to the Administrator by an insurance carrier or service or other organization. Other records such as payrolls from contributing employers, which the reporting person, trustee, or organization, as described in § 486.2 obtains in the regular course of its operations, to the extent such records may be used for said verifying or checking shall also be retained.

§ 486.4 Manner of keeping records.

(a) Records must be kept in reasonable order, in a safe and accessible place and in such a manner that they may be readily inspected and examined by the Director, Office of Labor-Management and Welfare-Pension Reports or his duly authorized representative.

(b) The preservation of records on microfilm for the periods required by the Act will satisfy the requirements relating to the retention of records, provided that adequate projection or other viewing equipment is available for inspecting the microfilm and provided further that

the microfilmed records are clear reproductions of the original records, and identifiable as to dates.

(c) Nothing in this section precludes the use of punch cards or magnetic tape for processing records; *Provided, however*, That where records of original entry or worksheets are converted to punch cards or tape, the original records and worksheets must be retained for the required period.

§ 486.5 Period records must be maintained.

Persons described in § 486.2 are required to maintain the described records for a period of not less than five years after the filing of the documents based on the information which they contain. It should be noted that even though a plan administrator need not publish an annual report pursuant to section 7(a) of the Act (unless specifically required to do so), because such plan covers more than 25, but fewer than 100 participants, every person or organization described in § 486.2 must retain for a period of not less than five years after the date that an annual report would have been due (but for the exemption) the records described in § 486.3 which relate to information which would have been required in such report.

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