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HIGHLIGHTS OF THIS ISSUE

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

NOTE: The fourth highlight on the cover of the issue for November 29, 1972 should have read as follows: "ETIOLOGIC AGENT—DoT proposes to permit shipment of cultures on passenger aircraft; comments by 1–23–73."

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FEDERAL REGISTER

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Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

PART 534—PAY UNDER OTHER SYSTEMS

Miscellaneous Amendments

Section 511.201(b) is amended to show exclusion from Part 511 and from classification under the general schedule of position of dance therapy intern, Saint Elizabeth's Hospital, Department of Health, Education, and Welfare. Section 534.202(b) is amended to show additional maximum stipends prescribed for positions of dance therapy intern, Saint Elizabeth's Hospital, Department of Health, Education, and Welfare, as set out below.

1. Effective October 11, 1972, the following item is added to paragraph (b) of § 511.201.

§ 511.201 Coverage of and exclusions from the General Schedule.

* * * * *

(b) *Exclusions.* * * *

Dance therapy intern, Saint Elizabeth's Hospital, Department of Health, Education, and Welfare, approved training after an attainment of a bachelor's degree, or after a minimum of 1 or 2 years of postgraduate training.

* * * * *

(5 U.S.C. sec. 5102)

2. Effective October 11, 1972, the following item is added to paragraph (b) of § 534.202.

§ 534.202 Maximum stipends.

* * * * *

(b) * * *

Dance therapy intern, Saint Elizabeth's Hospital, Department of Health, Education, and Welfare:	
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* * * * *

(5 U.S.C. secs. 5102, 5351, 5352, 5541)

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

[FR Doc.72-20726 Filed 12-1-72;8:45 am]

PART 713—EQUAL OPPORTUNITY

Subpart B—Equal Opportunity Without Regard to Race, Color, Religion, Sex, or Place of National Origin

EFFECTIVE DATE; CORRECTIONS

Except for § 713.271, which is effective March 24, 1972, the effective date of the revision of Subpart B of Part 713 as published in the FEDERAL REGISTER on October 21, 1972 (37 F.R. 22717), (F.R. Doc. 72-18054), is December 1, 1972.

The following corrections are made:

1. The authority citation of the end of the table of contents is amended to read as follows:

AUTHORITY: The provisions of this Part 713 issued under 5 U.S.C. §§ 1301, 3301, 3302, 7151-7154, 7301; 86 Stat. 111; E.O. 10577 3 CFR 1954-58 Comp., p. 218; E.O. 11222, 3 CFR 1964-1965 Comp., p. 306; E.O. 11478, 3 CFR 1966-70 Comp., p. 803.

§ 713.204 [Corrected]

2. Under § 713.204, at the end of subparagraph (6) of paragraph (d) delete the period and add a semicolon; at the end of subparagraph (4) of paragraph (f) delete the period and add a semicolon; at the end of paragraph (g) omit the word "and"; and at the end of paragraph (h) delete the period, add a semicolon and the word "and."

§ 713.213 [Corrected]

3. Under §73.213(a), the fourth sentence and the sixth sentence should read as follows: "If the final interview is not concluded within 21 days and the matter has not previously been resolved to the satisfaction of the aggrieved person, the aggrieved person shall be informed in writing at that time of his right to file a complaint of discrimination. * * * The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint."

§ 713.217 [Corrected]

4. Under § 713.217(a), the second sentence should read as follows: "For this purpose, the agency shall furnish the complainant or his representative a copy of the investigative file promptly after receiving it from the investigator, and provide opportunity for the complainant to discuss the investigative file with appropriate officials."

§ 713.221 [Corrected]

5. Under § 713.221, paragraph (d), a comma should be inserted after the words "the Commission,".

§ 713.262 [Corrected]

6. Under § 713.262, paragraph (c) should appear as (b)(2).

7. Under § 713.281, delete the word "within"; at the begining of paragraphs (a) and (c) add the word "Within"; and at the beginning of paragraphs (b) and (d) add the word "After", making the section read as follows:

§ 713.281 Statutory right.

An employee or applicant is authorized by section 717(c) of the Civil Rights Act, as amended, 84 Stat. 112, to file a civil action in an appropriate U.S. district court:

(a) Within thirty (30) calendar days of his receipt of notice of final action taken by his agency on a complaint.

(b) After one hundred-eighty (180) calendar days from the date of filing a complaint with his agency if there has been no decision.

(c) Within thirty (30) calendar days of his receipt of notice of final action taken by the Commission on his complaint, or,

(d) After one hundred-eighty (180) calendar days from the date of filing an appeal with the Commission if there has been no Commission decision.

§ 713.282 [Corrected]

8. Under § 713.282, in the fifth line, § 713.220 should follow 713.217, making the first sentence read as follows: "An agency shall notify an employee or applicant of his right to file a civil action, and of the 30-day time limit for filing, in any final action on a complaint under §§ 713.215, 713.217, 713.220, or § 713.221."

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

[FR Doc.72-20727 Filed 12-1-72;8:45 am]

Title 6—ECONOMIC STABILIZATION

Chapter III—Price Commission

PART 305—PROCEDURAL REGULATIONS

Compromise of Civil Penalties

The purpose of this amendment is to add new Subpart J to Part 305 of the procedural regulations of the Price Commission to prescribe the procedures used by the Price Commission for the compromise and collection of certain civil penalties provided for by section 208(b) of the Economic Stabilization Act, as amended.

Section 208(b) of the Economic Stabilization Act, as amended, provides that whoever violates any order or regulation issued under that Act is subject to a civil penalty of not more than $2,500 for each violation. Subpart J, as adopted herein, sets forth the procedural rules for the compromise and collection of civil penalties in those cases in which the Price Commission considers it appropriate or advisable to invite settlement through compromise in lieu of other administrative action or before instituting court proceedings.

Since these regulations prescribe procedures relating to the management of the Price Commission, further notice and public procedures thereon are unnecessary and they may be adopted in less than 30 days from the date of their publication in the FEDERAL REGISTER.

(Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Economic Stabilization Act Amendments of 1971, Public Law 92-210, 85 Stat. 743; Executive Order No. 11640, 37 F.R. 1213, January 27, 1972; Cost of Living Council Order No. 4, 36 F.R. 20202, October 16, 1971)

In consideration of the foregoing, effective November 30, 1972, Part 305 of Title 6 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., on November 30, 1972.

C. JACKSON GRAYSON, Jr.,
Chairman, Price Commission.

1. The table of sections is amended by adding the following items at the end thereof:

Subpart J—Compromise of Civil Penalties

Sec.
305.110 Purpose and scope.
305.111 Notice of possible compromise of civil penalties.
305.112 Response to notice.
305.113 Acceptance of offer to compromise.
305.114 No compromise.

2. Section 305.1(a) is amended by adding a new subparagraph (7) to read as follows:

§ 305.1 Purpose and scope.

(a) * * *

(7) Settlement of civil penalties through compromise.

* * * * *

3. A new subpart is added at the end of the part to read as follows:

Subpart J—Compromise of Civil Penalties

§ 305.110 Purpose and scope.

Under section 208(b) of the Economic Stabilization Act of 1970, as amended, whoever violates an order or regulation issued by the Price Commission under that Act is subject to a civil penalty of not more than $2,500 for each violation. This subpart prescribes procedures governing the compromise and collection of those civil penalties which the Price Commission considers appropriate or advisable to settle through compromise.

§ 305.111 Notice of possible compromise of civil penalties.

If the Price Commission considers it appropriate or advisable under the circumstances of a particular civil penalty case to settle it through compromise, the General Counsel of the Price Commission sends a letter to the person charged with the violation advising him of the charges against him, the order or regulation that he is charged with violating, and the total amount of the penalty involved, and that the Price Commission is willing to consider an offer in compromise of the amount of the penalty.

§ 305.112 Response to notice.

(a) A person who receives a notice pursuant to § 305.111 may present to the General Counsel any information or material bearing on the charges that denies, explains, or mitigates the violation. The person charged with the violation may present the information or materials in writing or he may request an informal conference for the purpose of presenting them. Information or materials so presented will be considered in making a final determination as to the amount for which a civil penalty is to be compromised.

(b) A person who receives such a notice may offer to compromise the civil penalty for a specific amount by delivering a certified check for that amount to the General Counsel. An offer to compromise does not admit or deny the violation.

§ 305.113 Acceptance of offer to compromise.

(a) The General Counsel may accept or reject an offer to compromise a civil penalty. If he accepts it, he sends a letter to the person charged with the violation advising him of the acceptance.

(b) If the General Counsel accepts an offer to compromise, that acceptance is in full settlement on behalf of the United States of the civil penalty for the violation. It is not a determination as to the merits of the charges. A compromise settlement does not constitute an admission of violation by the person concerned.

§ 305.114 No compromise.

If a compromise settlement of a civil penalty cannot be reached, the General Counsel may refer the matter to the Attorney General for the initiation of proceedings in a U.S. district court to collect the full amount of the penalty, or take such other action as is necessary.

[FR Doc.72-20849 Filed 12-1-72;8:53 am]

Title 7—AGRICULTURE

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

APPENDIX; COUNTIES DESIGNATED FOR TOBACCO CROP INSURANCE

Correction

In F.R. Doc. 72-19261 appearing on page 23817 of the issue for Thursday, November 9, 1972, the first entry for Muhlenberg County, Ky., reading, "Muhlenberg 22, 31, 3", should be deleted.

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 725—FLUE-CURED TOBACCO

Subpart—Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results

Basis and purpose. Section 725.2 is issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, hereinafter referred to as the "Act", to (1) determine and announce the reserve supply level and total supply for flue-cured tobacco, and (2) determine and announce for flue-cured tobacco for the marketing year beginning July 1, 1973, the amount of the national marketing quota; the national average yield goal; the national acreage allotment; the reserve for making corrections in farm acreage allotments, adjusting inequities, and for establishing acreage allotments for new farms; the national acreage factor; and the national yield factor. The material previously appearing in this section under centerhead "Determinations and Announcements—1972-73 Marketing Year" remain in full force and effect as to the crop to which it was applicable.

The determinations by the Secretary contained in § 725.2 have been made on the basis of the latest available statistics of the Federal Government. Due consideration has been given data, views, and recommendations received from flue-cured tobacco producers and others pursuant to a notice (37 F.R. 21443) given in accordance with the provisions of 5 U.S.C. 553. Recommendations on the amount of the national marketing quota and acreage allotment for the

1973–74 marketing year, ranged from no increase to a 15 percent increase over the quota and allotment announced for the 1972–73 marketing year.

Since farmers are now making their plans for 1973 production of flue-cured tobacco and need to know the acreage allotments and marketing quotas for their farms for 1973 in order to be able to make definite decisions, it is hereby found that compliance with the 30-day effective date provision of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, the determinations and announcements shall become effective upon the date of filing of this document with the Director, Office of the Federal Register.

Section 317(a)(1) provides, in part, that for flue-cured tobacco, the national marketing quota for a marketing year is the amount of flue-cured tobacco produced in the United States which the Secretary estimates will be utilized during the marketing year in the United States and will be exported during the marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports. The yearly average domestic consumption during the 10 marketing years preceding the 1972–73 marketing year was 707 million pounds, and the yearly average exports during such period amounted to 499 million pounds. After adjustment for trends, a normal year's domestic consumption of 700 million pounds and a normal year's exports of 480 million pounds appear reasonable, and result in a reserve supply level of 2,853 million pounds.

The carryover of flue-cured tobacco in the hands of dealers and manufacturers and under Government loan on July 1, 1972, amounted to 1,910 million pounds, farm sales weight. The 1972 crop, plus producer carryover from the 1971 crop sold on the 1972 market, is currently estimated at 1,025 million pounds. The sum of these, 2,935 million pounds, represents the total supply of flue-cured tobacco for the 1972–73 marketing year.

It is estimated that 690 million pounds of flue-cured tobacco will be utilized in the United States during the 1973–74 marketing year and 460 million pounds will be exported. The sum of these, 1,150 million pounds, is the estimated total disappearance. Because it is desirable to maintain an adequate supply, an upward adjustment of 29 million pounds has been made. Accordingly, the national marketing quota for flue-cured tobacco for the marketing year beginning July 1, 1973, is determined to be 1,179 million pounds. It is determined that the national marketing quota of 1,179 million pounds, in view of the anticipated carryover, will insure an adequate supply of flue-cured tobacco for the 1973–74 marketing year.

The "national average yield goal" has been determined to be 1,854 pounds per acre. It has been determined that this yield will improve or insure the usability of flue-cured tobacco and increase the net return per pound to the growers. In making this determination, consideration was given to research data of the Agricultural Research Service of the Department and one of the land-grant colleges in the flue-cured tobacco area.

The community average yields have been determined for flue-cured tobacco and published in the FEDERAL REGISTER, § 724.34u (30 F.R. 6207, 9875, 14487).

The national acreage allotment is 635,922.33 acres, determined in accordance with provisions of the Act by dividing the national marketing quota by the national average yield goal.

In accordance with the Act, a reserve from the national acreage allotment is established in the amount of 300 acres for making corrections in farm acreage allotments, adjusting inequities and establishing allotments for new farms. It is estimated that the reserve acreage will be adequate.

Consideration, in the light of the latest available statistics of the Federal Government, was given as to whether any of the types of flue-cured tobacco should be treated as a kind of tobacco pursuant to the proviso in section 301(b)(15) of the Act at the time the national marketing quota for the 1965–66 marketing year for flue-cured tobacco was determined (30 F.R. 6144), and it was determined that types 11, 12, 13, and 14 constitute one kind of tobacco for purposes of the Act for the 1965–66, 1966–67, and 1967–68 marketing years. This finding was affirmed by the Secretary in his determination of January 18, 1966 (31 F.R. 881), and that determination was sustained in the case of Brown et al. v. Freeman. This finding was made applicable for the 1968–69, 1969–70, and 1970–71 marketing years (32 F.R. 9817), and was made applicable also to the 1971–72, 1972–73, and 1973–74 marketing years (35 F.R. 10838).

No action may be taken under section 313(i) of the Act unless a substantial difference exists in the usage or market outlets for any one or more of the types comprising the kind of tobacco. On the basis of the facts recited (30 F.R. 6144) in connection with the consideration of section 301(b)(15), it was determined that there is no substantial difference existing in the usage or marketing outlets for any one or more of the types of flue-cured tobacco and, therefore, no action was taken for the 1965–66 marketing year (nor for subsequent marketing years) under this section. The same conditions prevail with respect to usage or marketing outlets that prevailed at the time of the determination for the marketing quotas on an acreage-poundage basis for the 1965–66 and subsequent marketing years and, therefore, no action is being taken under section 313(i) of the Act for the 1973–74 marketing year. In addition, section 313(i) of the Act applied only to marketing quotas and acreage allotments established pursuant to section 313. It is, therefore, concluded that, notwithstanding section 4 of Public Law 89–12, the better view is that section 313(i) of the Act should not be applied to acreage allotments and marketing quotas determined under section 317 of the Act.

DETERMINATIONS AND ANNOUNCEMENTS—1972–73 MARKETING YEAR

§ 725.2 Flue-cured tobacco.

(a) *Reserve supply level.* The reserve supply level for flue-cured tobacco is 2,853 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 700 million pounds and a normal year's exports of 480 million pounds.

(b) *National marketing quota.* A national marketing quota for flue-cured tobacco on an acreage-poundage basis for the marketing year beginning July 1, 1973 is hereby determined and announced in the amount of 1,179 million pounds. This quota is based upon an estimated utilization in the United States in such marketing year of 690 million pounds and exports in such marketing year of 460 million pounds, with an upward adjustment determined to be desirable for the purpose of maintaining an adequate supply.

(c) *National average yield goal.* The national average yield goal for flue-cured tobacco for the marketing year beginning July 1, 1973 is determined and announced at 1,854 pounds. This goal is based on the yield per acre which on a national average basis it is determined will improve or insure the usability of flue-cured tobacco and increase the net return per pound to growers.

(d) *National acreage allotment.* The national acreage allotment for flue-cured tobacco on an acreage-poundage basis for the marketing year beginning July 1, 1973 is determined and announced to be 635,922.33 acres. This allotment was determined by dividing the national marketing quota of 1,179 million pounds by the national average yield goal of 1,854 pounds.

(e) *Reserve acreage for making corrections in farm acreage allotments, adjusting inequities, and establishment of*

acreage allotments for new farms. A national reserve from the national acreage allotment in the amount of 300 acres is hereby determined and announced. This reserve is for making corrections in farm acreage allotments, adjusting inequities, and establishing allotments for new farms. Of the 300 acres, 80 acres are hereby set aside to be available for new farms. The remainder, 220 acres, is hereby made available for making corrections in farm acreage allotments and for adjusting inequities.

(f) *National acreage factor.* The national acreage factor for the 1973 crop of flue-cured tobacco is determined and announced to be 1.10.

(g) *National yield factor.* The national yield factor for the 1973 crop of flue-cured tobacco is determined and announced to be .9312.

(Secs. 301, 313, 317, 375, 52 Stat. 38, 47, 66, as amended, 79 Stat. 66; 7 U.S.C. 1301, 1313, 1314c, 1375)

Effective date: Date of filing of this document with the Director, Office of the Federal Register.

Signed at Washington, D.C. on November 29, 1972.

T. K. COWDEN,
Acting Secretary.

[FR Doc.72-20734 Filed 11-29-72;1:46 pm]

PART 729—PEANUTS

Subpart—1973 Crop of Peanuts: Acreage Allotments and Marketing Quotas

Basis and purpose. The provisions of §§ 729.100 to 729.103 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.) (referred to as the "act") with respect to the 1973 crop of peanuts. The purposes of §§ 729.100 to 729.103 are to proclaim a national marketing quota, establish the national acreage allotment and apportion such allotment to the States for the 1973 crop of peanuts in accordance with section 358 of the act (7 U.S.C. 1358). Farmers voting in a referendum held in December 1971 favored marketing quotas for peanuts produced in 1972, 1973, and 1974 as set forth in the FEDERAL REGISTER of February 5, 1972 (37 F.R. 2765); therefore quotas will be effective for the 1973 crop. The findings and determinations made with respect to these matters are based on the latest available statistics of the Federal Government.

Notice that the Secretary was preparing to determine the acreage allotments and marketing quota for the 1973 crop of peanuts was published in accordance with 5 U.S.C. 553 (80 Stat. 383) in the FEDERAL REGISTER on August 31, 1972 (37 F.R. 17762). No submissions were received in response to such notice.

In order that peanut farmers may be notified as soon as possible of farm allotments for the 1973 crop of peanuts it is essential that §§ 729.100 to 729.103 be made effective as soon as possible. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest and §§ 729.100 to 729.103 shall be effective upon filing of this document with the Director, Office of the Federal Register.

Sec.

729.100 Proclamation of national marketing quota for the 1973 crop of peanuts.
729.101 National acreage allotment for the 1973 crop of peanuts.
729.102 [Reserved].
729.103 Apportionment to States.

AUTHORITY: The provisions of this subpart issued under secs. 301, 358, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 52 Stat. 66, as amended, 7 U.S.C. 1301, 1358, 1375.

§ 729.100 Proclamation of national marketing quota for the 1973 crop of peanuts.

(a) *Statutory requirements.* Section 358(a) of the act provides that between July 1 and December 1 of each calendar year the Secretary shall proclaim a national marketing quota for the crop of peanuts to be produced in the next succeeding calendar year. The quota for such crop shall be a quantity of peanuts which will make available for marketing a supply equal to the average quantity of peanuts harvested for nuts during the immediately preceding 5 years, adjusted for current trends and prospective demand conditions. The national marketing quota shall be a quantity of peanuts sufficient to provide a national acreage allotment of not less than 1,610,000 acres.

(b) *Findings and determinations.* The following findings and determinations under section 358(a) of the act are hereby made:

(1) Average quantity of peanuts harvested for nuts during the 5-year period 1967–71, adjusted for current trends and prospective demand conditions—984,000 tons;

(2) Normal yield per acre of peanuts for the United States on the basis of the average yield per acre of peanuts in the 5-year period 1967–71, adjusted for trends in yields and abnormal conditions of production affecting yields—2,200 pounds;

(3) Conversion of the quantity of peanuts determined under (1) of this paragraph into acres on the basis of the normal yield, with an adjustment for under harvesting—1,004,546 acres;

(4) Conversion of the minimum national acreage allotment of 1,610,000 acres into tons of quota on the basis of the normal yield—1,771,000 tons.

(c) *National marketing quota.* The national marketing quota for the 1973 crop of peanuts is hereby proclaimed to be 1,771,000 tons on the basis of the minimum national acreage allotment determined under paragraph (b)(4) of this section since such amount of quota would not be obtained by the smaller amount determined under paragraph (b)(3) of this section.

§ 729.101 National acreage allotment for the 1973 crop of peanuts.

The national acreage allotment for the 1973 crop of peanuts based on the national marketing quota under § 729.100 (c) is hereby established at 1,610,000 acres.

§ 729.102 [Reserved]

§ 729.103 Apportionment to States.

The national acreage allotment for the 1973 crop of peanuts of 1,610,000 acres is hereby apportioned to the States on the basis of their share of the national acreage allotment for 1972 as provided under section 358(c)(1) of the act:

State	State acreage allotment
Alabama	216,713
Arizona	761
Arkansas	4,184
California	930
Florida	55,529
Georgia	529,855
Louisiana	1,945
Mississippi	7,492
Missouri	247
New Mexico	5,787
North Carolina	167,898
Oklahoma	138,348
South Carolina	13,891
Tennessee	3,606
Texas	358,005
Virginia	104,809
Total	1,610,000

Effective date: Date of filing this document with the Director, Office of the Federal Register.

Signed at Washington, D.C., on November 30, 1972.

T. K. COWDEN,
Acting Secretary.

Concurred:

CARROLL G. BRUNTHAVER,
Assistant Secretary for International Affairs and Commodity Programs.

[FR Doc.72-20832 Filed 11-30-72;12:59 pm]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Navel Orange Regulation 276, Amdt. 1]

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

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and

information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

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

(d) *Order, as amended.* The provisions in paragraph (b)(1)(i), (ii), and (iii) of § 907.576 (Navel Orange Regulation 276, 37 F.R. 24904) during the period November 24 through November 30, 1972, are hereby fixed as follows:

§ 907.576 **Navel Orange Regulation 576.**

* * * * *

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

(i) District 1: 910,000 cartons;

(ii) District 2: 64,000 cartons;

(iii) District 3: 90,000 cartons.

* * * * *

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

Dated: November 29, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-20780 Filed 12-1-72;8:48 am]

[Lemon Reg. 562]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.862 **Lemon Regulation 562.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, sa hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 28, 1972.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period December 3, through December 9, 1972, is hereby fixed at 205,000 cartons.

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

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

Dated: November 30, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-20825 Filed 12-1-72;8:52 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

Areas Quarantined

Pursuant to the provisions of sections 1–4 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, sections 4–7 of the Act of May 29, 1884, as amended, and sections 3 and 11 of the Act of July 2, 1962 (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f), § 72.5 of Part 72, Title 9, Code of Federal Regulations which quarantines certain portions of Texas because of splenetic or tick fever in cattle, a contagious, infectious, and communicable disease, is hereby amended in the following respects:

In § 72.5, paragraph (i) is amended to read:

§ 72.5 **Areas quarantined in Texas.**

* * * * *

(i) That portion of Duval, Kleberg, McMullen, Nueces, Live Oak, and Jim Wells Counties bounded by a line beginning at the junction of U.S. Highway 59 and State Highway 16 at Freer in Duval County; thence, following U.S. Highway 59 in a northeasterly direction to Farm Road 624 in McMullen County; thence, following Farm Road 624 in an easterly, then southeasterly direction to the Jim Wells-Nueces County line; thence, following the Jim Wells-Nueces County line in a southwesterly direction to an unnamed caliche county road which connects Farm Road 70 with the Jim Wells-Nueces County line; thence, following the unnamed caliche county road in an easterly direction to Farm Road 70 in Nueces County; thence, following Farm Road 70 in a southerly, then easterly direction to Farm to Market Road 1355; thence, following Farm to Market Road 1355 in a southerly direction to the northern city limits of the city of Kingsville in Kleberg County; thence, following the Kingsville City limits in a westerly, then southerly direction to State Highway 141; thence, following State Highway 141 in a northwesterly direction to U.S. Highway 281 in Jim Wells County; thence, following U.S. Highway 281 in a southwesterly direction to the Jim Wells-Brooks County line; thence, following the Jim Wells-Brooks County line in a westerly direction to the junction of the Brooks-Jim Wells-Duval County lines; thence, following the Brooks-Duval County line in a westerly direction to State Highway 339; thence,

following State Highway 339 in a northwesterly direction to Farm to Market Road 2295 at Benavides in Duval County; thence, following Farm to Market Road 2295 in a westerly direction to State Highway 16; thence, following State Highway 16 in a northeasterly direction to its junction with U.S. Highway 59 at Freer in Duval County.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f; 29 F.R. 16210, as amended; 36 F.R. 20707, 21529, 21530, 37 F.R. 6327, 6505)

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER (12–2–72).

The amendment quarantines portions of Kleberg and Nueces Counties in Texas because of the existence of splenetic or tick fever. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of cattle and certain materials from or through quarantined areas as contained in 9 CFR Part 72, as amended, will apply to the quarantined areas.

The amendment imposes certain further restrictions necessary to prevent the interstate spread of Texas (splenetic) fever in cattle, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rule making proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 29th day of November 1972.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72–20781 Filed 12–1–72;8:48 am]

PART 82—EXOTIC NEWCASTLE DISEASE; AND PSITTACOSIS OR ORNITHOSIS IN POULTRY

Areas Released From Quarantine

Pursuant to the provisions of sections 1, 2, 3, and 4 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, sections 4, 5, 6, and 7 of the Act of May 29, 1884, as amended, and sections 3 and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 112, 113, 115, 117, 120, 123, 124, 125, 126, 134b, 134f), Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects.

In § 82.3, in paragraph (a)(1) relating to the State of California, subdivisions (iv) relating to Orange County; (v) (*a*) through (*f*) relating to Los Angeles County; and (xi), (xii), (xiii), (xiv), and (xv) relating to San Diego County are deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f; 29 F.R. 16210, as amended; 36 F.R. 20707, 21529, 21530, 37 F.R. 6327, 6505)

Effective date. The foregoing amendments shall become effective upon issuance.

The amendments exclude portions of San Diego, Orange, and Los Angeles Counties in California from the areas quarantined because of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded areas.

The amendments relieve certain restrictions presently imposed but no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to the affected persons. It does not appear that public participation in this rule making proceeding would make additional relevant information available to the Department. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and unnecessary, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 29th day of November 1972.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72–20782 Filed 12–1–72;8:48 am]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of International Commerce, Department of Commerce

PART 385—SPECIAL COUNTRY POLICIES AND PROVISIONS

Exports to Southern Rhodesia

Pursuant to 50 U.S.C. App. sections 2402(2)(B), 2403(b) and 22 U.S.C. section 287c, § 385.3 of 15 CFR is amended as provided below:

Section 385.3 of the Export Control Regulations deals with the control of exports to Southern Rhodesia. The section is hereby amended to make it clear that the legal authority for the control of such exports derives from the United Nations Participation Act, as well as from the Export Administration Act of 1969, as amended.

Accordingly, the first sentence of § 385.3 is amended to read as follows:

§ 385.3 Country Groups S; Southern Rhodesia.

Pursuant to the authorities contained in section 5 of the United Nations Participation Act (22 U.S.C. section 287c), as well as the authorities contained in the Export Administration Act of 1969, as amended, and in conformity with the United Nations Security Council Resolutions of 1965, 1966, and 1968, the United States has imposed a virtually total embargo on exports and reexports of U.S.-origin commodities and technical data to Southern Rhodesia. * * *

Effective date: November 29, 1972.

RAUER H. MEYER,
Director, Office of Export Control.

[FR Doc.72–20779 Filed 12–1–72;8:48 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. C–2305]

PART 13—PROHIBITED TRADE PRACTICES

AAMCO Automatic Transmissions, Inc.

Correction

In F.R. Doc. 72–19947 appearing at page 24737 of the issue for Tuesday, November 21, 1972, the word "franchises", which appears at the end of paragraph (4) in the first column on page 24739, should read "franchisees".

Title 20—EMPLOYEES' BENEFITS

Chapter V—Manpower Administration, Department of Labor

PART 609—UNEMPLOYMENT COMPENSATION FOR FEDERAL CIVILIAN EMPLOYEES

PART 614—UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEN

Transfer of Service and Wages for Wage-Combining

Parts 609 and 614 of Title 20 of the Code of Federal Regulations are amended by revising paragraph (d) of §§ 609.16 and 614.13, pertaining to the application of interstate benefit payment and wage-combining plans with respect to claims filed under the Federal unemployment compensation programs for Federal civilian employees and ex-servicemen (5 U.S.C. Chapter 85).

The provisions of 5 U.S.C. 553 which require notice of proposed rule making, public participation in their adoption, and delay in effective date are found to be impracticable and contrary to the public interest because the changes made by this document relieve a restriction with respect to claims filed under the Federal unemployment compensation programs for Federal civilian employees and ex-servicemen.

Effective January 1, 1972 (July 1, 1972 in some instances), the States were required to participate in the interstate arrangement for combining employment and wages (20 CFR Part 616) which had been approved by the Secretary of Labor pursuant to section 3304(a)(9)(B) of the Federal Unemployment Tax Act (26 U.S.C. 3304(a)(9)(B)); and under 5 U.S.C. 8502 and 8521(b) Federal civilian employees and ex-servicemen are required to be paid unemployment benefits on the same terms and conditions as benefits are paid to individuals filing claims under State unemployment compensation laws. Sections 609.16(d) and 614.13 contain provisions which require that wage-combining plans be applied to individuals filing claims under the Federal unemployment compensation programs, but these sections contain a restriction on the transfer of wage credits to effectuate wage-combining. While this restriction on transfer of wage credits was appropriate with respect to wage-combining plans in effect prior to January 1, 1972, it is inconsistent with the provisions of the arrangement approved by the Secretary. The revision of §§ 609.16(d) and 614.13 set out below removes the restriction, and putting these changes into effect immediately is necessary to preclude administration of the Federal unemployment compensation programs in a manner which would deny to Federal civilian employees and ex-servicemen the advantages of wage-combining under the new arrangement.

In accordance with the public policy reflected in 5 U.S.C. 553, interested persons may submit written comments, suggestions, data, or arguments concerning revised §§ 609.16(d) and 614.13 to the Secretary of Labor, U.S. Department of Labor, Washington, D.C. 20210, attention of Robert C. Goodwin, Associate Manpower Administrator for Unemployment Insurance, within 30 days after the publication of this document in the FEDERAL REGISTER. Any material submitted will be evaluated and acted upon in the same manner as if this document were a proposal. Persons interested in inspecting or copying submissions received pursuant to this notice should call 202—961-2701 and necessary arrangements will be made. Until such time as any further changes are made, however, §§ 609.16(d) and 614.13 as revised herein shall remain in effect.

Effective date. These revisions shall become effective on the date of their publication in the FEDERAL REGISTER (12-2-72).

1. Section 609.16(d) is revised to read as follows:

§ 609.16 Assignment of Federal Civilian Service and Wages.

* * * * *

(d) *Interstate plans.* The Interstate Benefit Payment Plan and the Interstate Arrangement for Combining Employment and Wages (Part 616 of this chapter) shall apply, where appropriate, to individuals filing claims under the UCFE program. For these purposes Federal civilian service and wages shall be considered employment and wages under the unemployment compensation law of the State to which they are assigned or reassigned.

* * * * *

2. Section 614.13 is revised to read as follows:

§ 614.13 Interstate Plans.

The Interstate Benefit Payment Plan and the Interstate Arrangement for Combining Employment and Wages (Part 616 of this chapter) shall apply, where appropriate, to individuals filing claims under the UCX program. For these purposes Federal military service and wages shall be considered employment and wages under the unemployment compensation law of the State to which they are assigned or reassigned.

3. In connection with the foregoing revision of § 614.13 the reference in § 614.3(b) to "§ 614.13(b)" is changed to "§ 614.13." As revised § 614.3(b) reads as follows:

§ 614.3 Assignment of Federal military service and wages.

* * * * *

(b) Assigned Federal military service and wages shall be used only by the State to which assigned or reassigned or by the Virgin Islands if assigned or reassigned thereto unless transferred pursuant to § 614.13.

* * * * *

Signed at Washington, D.C., this 28th day of November 1972.

MALCOLM R. LOVELL, Jr.,
Assistant Secretary for Manpower, U.S. Department of Labor.

[FR Doc.72-20718 Filed 12-1-72;8:45 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

GRAS and Food Additive Status Procedures

In the FEDERAL REGISTER of March 25, 1972 (37 F.R. 6207), the Commissioner of Food and Drugs proposed procedures for affirming and determining the GRAS (generally recognized as safe) and food additive status of substances that are components of food, and procedures for interim food additive regulations. Ten comments (four from the regulated industry, three from trade associations, and three from consumer-health groups) were received.

The principal issues raised were that the use of the word "functionality" in the preamble and proposed § 121.4000 was inappropriate; that there were inadequate provisions for protecting confidential information; that interim regulations are not authorized by the Federal Food, Drug, and Cosmetic Act and will remove incentive for industry to test GRAS substances; that proposed § 121.4000 is inconsistent with § 121.74; that the 30 day time period in proposed § 121.4000(c)(2) to satisfy the Commissioner that adequate and appropriate studies have been undertaken is too short; that the mandatory submission of interim progress reports in proposed § 121.4000(c)(3) is unnecessary; that a 90-day time period should be imposed on the Commissioner in proposed § 121.40(b)(3) and (c)(4) for evaluating comments received concerning affirmation of GRAS status; that separate procedures should be established for indirect food additives; and that the names of substances whose GRAS status has been newly affirmed, as well as the date of affirmation, should be clearly identified and distinguished from substances listed in § 121.101.

Having evaluated the comments and other relevant information, the Commissioner concludes as follows:

1. The word "functionality" is a proper term, and as used in the regulation, refers to whether a substance will have its intended physical or other technical effect. Section 409(b)(2)(C) of the act, 21 U.S.C. 348(b)(2)(C), requires functionality data to be included as part of a food additive petition and therefore to be considered by the agency in determining whether a regulation shall be established prescribing the conditions under which the substance may be safely used.

2. None of the data and information to be submitted in support of a petition requesting affirmation of GRAS status may properly be regarded as trade secrets requiring confidential handling. All safety and functionality data must be generally available to the public for there to be any conclusion that the substance is GRAS. Manufacturing and processing trade secrets are not requested and should not be provided. General manufacturing or processing requirements on the basis of which safety depends must be provided and cannot be held confidential if the substance is to be classified as GRAS. The regulation therefore reflects the conclusion that no trade secrets should be included in a petition for GRAS affirmation.

3. The criteria for an interim food additive regulation established in the regulations meet the requirements for a food additive regulation determined to be appropriate by Congress. The purpose of an interim food additive regulation is not to permit the continued use of a substance in food for which there is no reasonable certainty of safety, but rather

to require additional testing of substances for which a reasonable certainty of safety exists whenever a substantial question of safety is raised for which further testing is required before the matter can be resolved. The regulations clearly provide that, if the question raised is so substantial that a reasonable certainty of safety no longer exists, an interim food additive regulation may not be promulgated. Similary, no interim food additive order may be promulgated where there is a reasonable likelihood that the substance is harmful or that continued use of the substance will result in harm to the public health. These criteria in the regulations directly reflect the criteria set out by Congress in the House and Senate reports on the Food Additives Amendment of 1958. The regulations therefore increase consumer protection and assure the public that an appropriate procedure is available to resolve questions that arise from time to time about the safety of food substances in a prompt and efficient manner without jeopardizing the public health. The Commissioner recognizes that, with the vast increase in the quantity of scientific testing and in the sophistication of test methodology, there is virtually not natural or synthetic food substance that cannot be questioned on some technical ground. It would be impossible to require elimination from the food supply of every food substance for which such scientific questions have been or will be raised. The regulations therefore provide a sound scientific basis for further study of those substances for which a sufficiently serious question has been raised to require adequate and appropriate testing to resolve the issue.

4. There is no merit to the comment that an interim food additive regulation will remove industry incentive to test GRAS substances. There is currently no duty whatever for industry to test these substances. Instead, these regulations will encourage additional testing, since a substance will be permitted to remain under an interim food additive regulation only if adequate and appropriate testing is undertaken, and only if informed and competent experts can still conclude with reasonable certainty that the substance is not harmful and that continued and limited use will not harm the public health while the question raised is being resolved.

5. Proposed § 121.4000 complements, and does not conflict with, § 121.74. The latter is applicable only when an interested person proposes a regulation to amend or repeal a food additive regulation or exemption. It is not applicable to petitions for affirmation of GRAS status. The procedures set forth in § 121.41 and § 121.4000 have been revised to state that § 121.74 is applicable to a petition for determination of food additive status and for an interim food additive regulation.

6. A 60- instead of a 30-day time period to satisfy the Commissioner that studies required by an interim regulation have been undertaken is appropriate. The Commissioner recognizes that preparation of adequate protocols and arrangements for testing cannot always be completed within a few days. The purpose of interim regulations, however, is to assure that prompt action is taken to resolve the issue that led to the promulgation of the regulation. This requires that studies be instituted as rapidly as possible. If compliance with the 60-day provision cannot be achieved in a particular case, an extension of time will be granted only for good cause shown.

7. Mandatory progress reports concerning the ongoing studies pursuant to the interim regulation are essential to determine whether the interested person is complying with the regulation and to provide current test results so that the Commissioner can determine whether the preliminary results warrant revocation of the regulation.

8. The Commissioner concludes that, although the concept of a time limitation for review of comments on affirmation of GRAS status is laudable, a specific time period should not be included in the regulation because it is entirely possible that extraneous circumstances will preclude meeting any time limit established. The Commissioner may, for example, wish to consult outside experts on these matters, and the volume of petitions may also preclude meeting any specific time limit. The Commissioner will, however, make every effort to act upon such petitions within 90 days after the comments are received.

9. With respect to indirect food substances, the regulations deal only with those that become a component or otherwise affect the characteristics of food, and do not deal with those for which there is no migration of the substance to food. "Insignificant levels" of migration to food from packages or food contact surfaces would be the proper subject of a GRAS affirmation petition. This regulation does not deal with the question of what level of sensitivity is necessary to determine the migration/no migration issue, nor does it deal with the question of the specific criteria under which indirect food additives may be considered GRAS. These are issues properly deserving further consideration.

10. The Commissioner concurs that newly affirmed GRAS substances should be clearly identified and distinguished from substances previously listed as GRAS under § 121.101. An appropriate mechanism for doing this is being devised.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788, as amended; 21 U.S.C. 321(s), 348, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 121 is amended as follows:

1. By adding the following two new sections to Subpart A:

§ 121.40 Affirmation of generally recognized as safe (GRAS) status.

(a) The Commissioner, either on his initiative or on the petition of an interested person, may affirm the GRAS status of substances that directly or indirectly become components of food.

(b) (1) If the Commissioner proposes on his own initiative that a substance is entitled to affirmation as GRAS, he will place all of the data and information on which he relies on public file in the office of the Hearing Clerk and will publish in the FEDERAL REGISTER a notice giving the name of the substance, its proposed uses, and any limitations proposed for purposes other than safety.

(2) The FEDERAL REGISTER notice will allow a period of 60 days during which any interested person may review the data and information and/or file comments with the Hearing Clerk. Copies of all comments received shall be made available for examination in the Hearing Clerk's office.

(3) The Commissioner will evaluate all comments received. If he concludes that there is convincing evidence that the substance is GRAS as defined in § 121.1 (k), he will publish a notice in the FEDERAL REGISTER listing the substance in Subpart B of this part as GRAS.

(4) If, after evaluation of the comments, the Commissioner concludes that there is a lack of convincing evidence that the substance is GRAS and that it should be considered a food additive subject to section 409 of the act, he shall publish a notice thereof in the FEDERAL REGISTER in accordance with § 121.41.

(c) (1) Persons seeking the affirmation of GRAS status of substances as provided for in § 121.3(e), except those subject to the NAS–NRC GRAS list survey (36 F.R. 20546), shall submit to the Commissioner of Food and Drugs a petition for GRAS affirmation in quadruplicate. Such petition shall contain information to establish that the GRAS criteria as set forth in § 121.3(b) have been met, in the following form:

(i) Description of the substance, including:

(*a*) Common or usual name.

(*b*) Chemical name.

(*c*) Chemical Abstract Service (CAS) registry number.

(*d*) Empirical formula.

(*e*) Structural formula.

(*f*) Specifications for food grade material, including arsenic and heavy metals. (Recommendation for any change in the Food Chemicals Codex monograph should be included where applicable.)

(*g*) Quantitative compositions.

(*h*) Manufacturing process (excluding any trade secrets).

(ii) Use of the substance, including:

(*a*) Date when use began.

(*b*) Information and reports or other data on past uses in food.

(*c*) Foods in which used, and levels of use in such foods, and for what purposes.

(iii) Methods for detecting the substance in food, including:

(*a*) References to qualitative and quantitative methods for determining the substance(s) in food, including the type of analytical procedures used.

(b) Sensitivity and reproducibility of such method(s).

(iv) Information to establish the safety and functionality of the substance in food. Published scientific literature, evidence that the substance is identical to a GRAS counterpart of natural biological origin, and other data may be submitted to support safety. Any adverse information or consumer complaints shall be included. Complete bibliographic references shall be provided where a copy of the article is not provided.

(v) A statement signed by the person responsible for the petition that to the best of his knowledge it is a representative and balanced submission that includes unfavorable information, as well as favorable information, known to him pertinent to the evaluation of the safety and functionality of the substance.

(2) Within 30 days after the date of filing the petition, the Commissioner will place the petition on public file in the office of the Hearing Clerk and will publish a notice of filing in the FEDERAL REGISTER giving the name of the petitioner and a brief description of the petition including the name of the substance, its proposed use, and any limitations proposed for reasons other than safety. A copy of the notice will be mailed to the petitioner at the time the original is sent to the FEDERAL REGISTER.

(3) The notice of filing in the FEDERAL REGISTER will allow a period of 60 days during which any interested person may review the petition and/or file comments with the Hearing Clerk. Copies of all comments received shall be made available for examination in the Hearing Clerk's office.

(4) The Commissioner will evaluate the petition and all available information including all comments received. If the petition and such information provide convincing evidence that the substance is GRAS as defined in § 121.1(k) he will publish an order in the FEDERAL REGISTER listing the substance in Subpart B of this part as GRAS.

(5) If, after evaluation of the petition and all available information, the Commissioner concludes that there is a lack of convincing evidence that the substance is GRAS and that it should be considered a food additive subject to section 409 of the act, he shall publish a notice thereof in the FEDERAL REGISTER in accordance with § 121.41.

§ 121.41 Determination of food additive status.

(a) The Commissioner may, in accordance with § 121.40(b)(4) or § 121.40(c)(5), publish a notice in the FEDERAL REGISTER determining that a substance is not GRAS and is a food additive subject to section 409 of the act.

(b)(1) The Commissioner may, on his own initiative, or on the basis of a petition establishing reasonable grounds therefore in accordance with § 121.74 filed in quadruplicate by an interested person, publish a notice in the FEDERAL REGISTER proposing to determine that a substance is not GRAS and is a food additive subject to section 409 of the act. The Commissioner will place all of the data and information on which he relies on public file in the office of the Hearing Clerk and will include in the FEDERAL REGISTER notice the name of the substance, its known uses, and a summary of the basis for the determination.

(2) The FEDERAL REGISTER notice will allow a period of 60 days during which any interested person may review the data and information and/or file comments with the Hearing Clerk. Copies of all comments shall be made available for examination in the Hearing Clerk's office.

(3) The Commissioner will evaluate all comments received. If he concludes that there is a lack of convincing evidence that the substance is GRAS or is otherwise exempt from the definition of a food additive in section 201(s) of the act, he will publish a notice thereof in the FEDERAL REGISTER. If he concludes that there is convincing evidence that the substance is GRAS, he will publish an order in the FEDERAL REGISTER listing the substance in Subpart B of this part as GRAS.

(c) A FEDERAL REGISTER notice determining that a substance is a food additive shall provide for the use of the additive in food or food contact surfaces as follows:

(1) It may promulgate a food additive regulation governing use of the additive.

(2) It may promulgate an interim food additive regulation governing use of the additive.

(3) It may require discontinuation of the use of the additive.

(4) It may adopt any combination of the above three approaches for different uses or levels of use of the additive.

2. By adding a new section to Subpart H, and changing the subpart heading, as follows:

Subpart H—Food Additives Permitted in Food for Human Consumption or in Contact With Food on an Interim Basis Pending Additional Study

§ 121.4000 General.

(a) Substances having a history of use in food for human consumption or in food contact surfaces may at any time have their safety or functionality brought into question by new information that in itself is not conclusive. An interim food additive regulation for the use of any such substance may be promulgated in this subpart when new information raises a substantial question about the safety or functionality of the substance but there is a reasonable certainty that the substance is not harmful and that no harm to the public health will result from the continued use of the substance for a limited period of time while the question raised is being resolved by further study.

(b) No interim food additive regulation may be promulgated if the new information is conclusive with respect to the question raised or if there is a reasonable likelihood that the substance is harmful or that continued use of the substance will result in harm to the public health.

(c) The Commissioner may propose an interim food additive regulation on his own initiative or on the basis of a petition submitted in quadruplicate by an interested person. Where such petition is deemed to have established reasonable grounds for filing, in accordance with § 121.74, a copy of the petition will be placed on public file in the office of the Hearing Clerk and the proposal in the FEDERAL REGISTER will include the name of the petitioner, and the basis upon which the interim regulation is sought. A final order promulgating an interim food additive regulation shall provide that continued use of the substance in food is subject to each of the following conditions:

(1) Use of the substance in food or food contact surfaces must comply with whatever limitations the Commissioner deems to be appropriate under the circumstances.

(2) Within 60 days following the effective date of the regulation, an interested person shall satisfy the Commissioner in writing that studies adequate and appropriate to resolve the questions raised about the substance have been undertaken, or the Food and Drug Administration may undertake the studies. The Commissioner may extend this 60-day period if necessary to review and act on proposed protocols. If no such commitment is made, or adequate and appropriate studies are not undertaken, an order shall immediately be published in the FEDERAL REGISTER revoking the interim food additive regulation effective upon publication.

(3) A progress report shall be filed on the studies every January 1 and July 1 until completion. If the progress report is inadequate or if the Commissioner concludes that the studies are not being pursued promptly and diligently or if interim results indicate a reasonable likelihood that a health hazard exists, an order will promptly be published in the FEDERAL REGISTER revoking the interim food additive regulation effective upon publication.

(d) Promptly upon completion of the studies undertaken on the substance, the Commissioner will review all available data, will terminate the interim food additive regulation, and will either issue a food additive regulation or will require elimination of the substance from the food supply.

(e) The Commissioner may consult with advisory committees, professional organizations, or other experts in the field, in evaluating:

(1) Whether an interim food additive regulation is justified,

(2) The type of studies necessary and appropriate to resolve questions raised about a substance,

(3) Whether interim results indicate the reasonable likelihood that a health hazard exists, or

(4) Whether the data available at the conclusion of those studies justify a food additive regulation.

Effective date. This procedural order shall be effective upon publication in the FEDERAL REGISTER (12–2–72).

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788, as amended; 21 U.S.C. 321 (s), 348, 371(a))

Dated: November 29, 1972.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.72–20788 Filed 12–1–72;8:52 am]

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

Procaine Penicillin G Aqueous Suspension, Veterinary

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (65–284V) filed by Elanco Products Co., Indianapolis, Ind. 46206, providing for the safe and effective use of procaine penicillin G aqueous suspension, veterinary, in dogs and horses. The supplemental application is approved.

The drug is subject to batch certification under the provisions of section 512 (n) of the act, and accordingly Part 146a is amended to provide that the drug under its approved labeling shall be dispensed on a prescription basis.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347 and 350–1; 21 U.S.C. 360b (i) and (n)) and under authority delegated to the Commissioner (21 CRF 2.120), Parts 135b and 146a are amended as follows:

1. Part 135b is amended by adding the following new section:

§ 135b.49 Procaine penicillin G aqueous suspension, veterinary.

(a) *Specifications.* Procaine penicillin G aqueous suspension, veterinary, conforms to the standards of identity, strength, quality, and purity prescribed by § 146a.47 of this chapter. Each milliliter contains 300,000 units of penicillin activity.

(b) *Sponsor.* See code No. 014 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) It is used as an intramuscular injection both in the treatment of tonsillitis in dogs and in the treatment of strangles in horses when such conditions are caused by pathogens susceptible to penicillin G.

(2) It is administered to dogs at 10,000 to 15,000 units per pound of body weight per day and to horses at 3,000 to 5,000 units per pound of body weight per day.

(3) The label and labeling shall bear, in addition to the other information required by the act, a statement that the drug is not for use in food-producing animals and a statement that Federal law restricts this drug to use by or on the order of a licensed veterinarian.

2. Part 146a is amended by revising § 146a.47(c)(2)(i) to read as follows:

§ 146a.47 Procaine penicillin for aqueous injection.

* * * * *

(c) * * *

(2) * * *

(i) If it does not contain cortisone or a derivative of cortisone, its label and labeling shall comply with all of the requirements prescribed by subparagraph (1) of this paragraph, except in lieu of the statement "Caution: Federal law prohibits dispensing without prescription" each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity in all cases except those in which the veterinary prescription statement is required by regulations under Part 135b of this chapter. In those cases, the veterinary prescription statement shall comply with the requirements prescribed by § 1.106(c) of this chapter.

* * * * *

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (12–2–72).

(Secs. (i) and (n), 82 Stat. 347 and 350–351; 21 U.S.C. 360b (i) and (n))

Dated: November 28, 1972.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.72–20711 Filed 12–1–72;8:46 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER C—AIDS TO NAVIGATION

[CGD 72–160R]

PART 62—U.S. AIDS TO NAVIGATION SYSTEM

Midchannel Buoys

This amendment revises the regulations concerning black and white vertically striped buoys used to mark the fairway or midchannel.

Presently § 62.25–5(d) provides that a vessel proceeding from seaward should pass such a buoy close to, on either side. In recent years the Coast Guard has used black and white vertically striped buoys to mak separation zones which divide opposing traffic separation schemes. Such buoys should not be passed on either side and should not be passed close to.

Further, the wording that such buoys should be "passed close to" implies that vessels should alter their course to pass near fairway buoys and that vessel tracks should converge at such buoys. The Coast Guard feels that unnecessary course changes and needless convergence of vessel tracks are inimical to maritime safety.

Therefore the Coast Guard is deleting from § 62.25–5(d) the words "and should be passed close to, on either side."

This amendment is issued without notice of proposed rule making and public procedures because continued encouragement of passing these buoys close aboard or on either side is, for the reasons described above, contrary to the public interest.

In consideration of the foregoing, Part 62 of Title 33 of the Code of Federal Regulations is amended by revising paragraph (d) of § 62.25–5 to read as follows:

§ 62.25–5 Colors.

* * * * *

(d) Black and white vertically striped buoys mark the fairway or midchannel.

Effective date. This amendment becomes effective on December 31, 1972.

(Sec. 1, 63 Stat. 500, 501, 545; sec. 6(b)(1) 80 Stat. 937; 14 U.S.C. 81, 87, 633; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Dated: November 27, 1972.

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

[FR Doc.72–20736 Filed 12–1–72;8:50 am]

SUBCHAPTER J—BRIDGES

[CGD 71–149 R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Arkansas and White Rivers, Ark.

This amendment changes the regulations for the Missouri Pacific bridge at Yancopin across the Arkansas River and for the automated railroad bridges across the Akransas and White Rivers. This amendment was circulated as a public notice dated November 26, 1971, by the Commander, Second Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CG F.R. 71–149) on November 24, 1971 (36 F.R. 22311). Two comments were received. One suggested changes in the signals used for the Benzel, Junction, and Baring Cross bridges. This suggestion is incorporated in this regulation. The other suggested that openings of all three railroad bridges in Little Rock Harbor be assured so as not to trap a vessel between bridges. This suggestion has merit, however, such action would require a coordinator of train and vessel movements and is not deemed feasible at this time.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by:

(1) Revoking § 117.560 (f) (21), (22), (23), (24), (25), and (26).

(2) Revising § 117.560(f)(20) to read as follows:

§ 117.560 **Mississippi River and its tributaries and outlets; bridges where constant attendance of drawtenders is not required.**

* * * * *

(f) * * *

(20) Arkansas River, Arkansas: Missouri Pacific Railroad bridge at Yancopin, the draw shall open on signal if at least 96 hours notice has been given to the Missouri Pacific dispatcher at Little Rock, Ark. When so directed by the Commander, Second Coast Guard District, a drawtender shall be in constant attendance and when this occurs, the draw shall operate in accordance with § 117.555.

* * * * *

3. Adding a new § 117.556 immediately after § 117.555 to read as follows:

§ 117.556 **Arkansas and White Rivers, automated railroad bridges.**

(a) The bridges in this section do not require constant attendance.

(b) The draws of the Missouri Pacific Railroad bridge (Benzal), mile 7.6, White River and the St. Louis-San Francisco Railroad bridge, mile 295.1, Arkansas River, will normally be maintained in the open position which provides a minimum vertical clearance of 52 feet.

(1) When a train approaches either bridge, amber lights attached to the bridge begin to flash and an audible signal on the bridge is sounded. At the end of 6 minutes the amber light shall continue to flash, however, the audible signal shall stop and the draw shall lower and lock, if the photoelectric boat detection system detects no obstruction under the span. If there is an obstruction, the draw shall be raised to its full height until the obstruction is cleared.

(2) After the train has cleared the bridge, the draw shall be raised to its full height and the amber flashing light shall be stopped and the midchannel lights changed from red to green indicating the navigation channel is open for the passage of vessels.

(c) Across the Arkansas River the draws of the Cotton Belt Railroad bridge, mile 66.3, the Chicago, Rock Island, and Pacfic Railroad bridge, mile 116.2 and the Missouri Pacific Railroad bridges at mile 116.7 and 117.6 (Junction and Baring Crossing) will normally be maintained in the closed position.

(1) The opening signal for these bridges is three short blasts.

(2) The acknowledging signal is flashing white lights visible upstream and downstream.

(3) When the vessel sights the acknowledging signal, one long blast shall be sounded.

(4) This signal shall be acknowledged when the draw is to open by changing the flashing white lights to continuous white lights, while sounding one blast on a horn followed by raising the span to a maximum clearance of 52 feet. When the span is fully raised the navigation lights at midchannel shall change from red to green. If the draw cannot be opened flashing amber warning lights shall be started and four blasts will be sounded indicating that a train is approaching or that maintenance work is in progress. The vessel shall acknowledge that there will be a delay by sounding four blasts of the boat horn and standing by. When the draw will be opened after the train has crossed the closed draw or when maintenance work permits, the amber lights will be turned off and the draw will turn on the white lights while signaling with one blast. The vessel shall acknowledge with one blast and after the draw is open, shall proceed through the draw.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(c)(4))

Effective date. This revision shall become effective on January 2, 1973.

Dated: November 27, 1972.

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

[FR Doc.72–20739 Filed 12–1–72;8:51 am]

[CGD 72–30e]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Richardson Bay Channel, Mills Valley, Calif.

This amendment extends the previously authorized period that the draws of the floating workspan adjacent to the U.S. 101 bridge will be required to open for the passage of vessels. Notice of this action to permit the modification work to the U.S. 101 bridge was published as CGFR 72–30 in 37 F.R. 3897 of February 24, 1972, and further amended by CGFR 72–30d published at 37 F.R. 17388 on August 26, 1972. This extension is required because of unexpected delays in completing the modification. The Coast Guard has found that good cause exists for granting this extension without notice of proposed rule making on the basis that it would be contrary to the public interest to delay this work.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising paragraph (f) to § 117.712 to read as follows:

§ 117.712 **Tributaries of San Francisco Bay and San Pablo Bay, Calif.**

* * * * *

(f) *Work bridge contiguous to U.S. 101 bridge, Richardson Bay, Mills Valley, Calif.* The draw of this span shall open on signal from 8 a.m. to 5 p.m., from February 14, 1972, through December 15, 1972, if at least 2 hours notice has been given. At all other times the draw shall be left in the open position.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(c)(4))

Effective date. This revision is effective from February 14 through December 15, 1972.

Dated: November 27, 1972.

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

[FR Doc.72–20738 Filed 12–1–72;8:51 am]

[CGD 72–94b]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

San Joaquin River, Calif.

This amendment extends the previously authorized period that the draws of the U.S. Navy Highway Bridge No. 10 between Rough and Ready Island and Stockton may remain closed to the passage of vessels. Notice of this action to permit redecking of this bridge was published as CGFR 72–92R in 37 F.R. 10802 of May 31, 1972. This extension is required because of unexpected delays in completing the redecking. The Coast Guard has found that good cause exists for granting this extension without notice of proposed rule making on the basis that it would be contrary to the public interest to delay this work.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding the following revised sentence to paragraph (a)(2) to § 117.714 to read as follows:

§ 117.714 **San Joaquin River and its tributaries, California.**

(a) * * *

(2) U.S. Navy Highway Bridge No. 10 between Rough and Ready Island and Stockton. The draw shall open on signal if at least 12 hours notice has been given. However, from June 15, 1972, through December 31, 1972, the draw need not open for the passage of vessels.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(c)(5), 33 CFR 1.05–1(c)(4))

Effective date. This revision should be effective on June 15, 1972, except the sentence in § 117.714(a)(2) beginning with "However, from" and ending with "vessels." shall be effective June 15, 1972, and terminate December 31, 1972.

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

NOVEMBER 27, 1972.

[FR Doc.72–20737 Filed 12–1–72;8:50 am]

Title 24—HOUSING AND URBAN DEVELOPMENT

Chapter X—Federal Insurance Administration, Department of Housing and Urban Development

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies: (1) The effective date of the authorization of the sale of flood insurance in the area under the emergency or under the regular flood insurance program; (2) the effective date on which the community became ineligible for the sale of flood insurance because of its failure to submit land use and control measures as required pursuant to § 1909.24(a); or (3) the effective date of a community's formal reinstatement in the program pursuant to § 1909.24(b). The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	Alameda	Livermore				Dec. 1, 1972. Emergency.
Florida	Pinellas	Dunedin				Oct. 9, 1970. Emergency. May 19, 1971. Regular. Sept. 15, 1972. Suspended. Nov. 24, 1972. Reinstated.
Illinois	La Salle	Streator				Dec. 1, 1972. Emergency.
Maryland	Montgomery	Rockville				Do.
Massachusetts	Essex	Gloucester				Do.
Michigan	Macomb	St. Clair Shores				Do.
Nevada	Clark	Las Vegas	H 32 003 0120 01 through H 32 003 0120 08	Division of Water Resources, Department of Conservation and Natural Resources, Nye Bldg., Carson City, Nev. 89701. Nevada Insurance Division, Department of Commerce, Nye Bldg., Carson City, Nev. 89701.	Public Works Department, 821 Las Vegas Blvd. N., Las Vegas, NV 89101.	June 18, 1971. Emergency. Dec. 1, 1972. Regular.
North Carolina	Carteret	Beaufort	H 37 031 0350 01 through H 37 031 0350 02	North Carolina Office of Water and Air Resources, Department of Natural and Economic Resources, Post Office Box 27687, Raleigh, NC 27611. North Carolina Insurance Department, Post Office Box 26387, Raleigh, NC 27611.	Office of Town Clerk, Town of Beaufort, Post Office Box 390, Beaufort, NC 28516.	Dec. 3, 1971. Emergency. Dec. 1, 1972. Regular.
Pennsylvania	Luzerne	Edwardsville Borough.				Dec. 1, 1972. Emergency.
Do	Bucks	Lower Makefield Township.				Do.
Do	Delaware	Middletown Township.				Do.
Do	Luzerne	Plains Township				Do.
Rhode Island	Bristol	Bristol	H 44 001 0030 02 through H 44 001 0030 03	Rhode Island Statewide Planning Program, 265 Melrose St., Providence, RI 02907. Rhode Island Insurance Division, 169 Weybosset St., Providence, RI 02903.	Town Hall, 10 Court St., Bristol, RI 03809.	Oct. 30, 1970. Emergency. Dec. 1, 1972. Regular.
Tennessee	Hamilton	Collegedale	H 47 065 0448 01 through H 47 065 0448 04	Tennessee State Planning Commission, Room C2-208, Central Services Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219.	Collegedale City Office, Post Office Box 416, Collegedale, TN 37315.	Mar. 3, 1972. Emergency. Dec. 1, 1972. Regular.
Texas	Comal	New Braunfels	H 48 091 4870 05 through H 48 091 4870 20	Texas Water Development Board, Post Office 13087, Capitol Station, Austin, TX 78711. Texas Insurance Department, 1110 San Jacinto St., Austin, TX 78701.	Office of Planning Director, City of New Braunfels, Post Office Box 644, New Braunfels, TX 78130.	Dec. 4, 1970. Emergency. Dec. 1, 1972. Regular.
West Virginia	Mingo	Kermit				Dec. 1, 1972. Emergency.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended (secs. 408–410, Public Law 91–152, December 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. F.R. 2680, February 27, 1969)

Issued: November 27, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-20667 Filed 12-1-72;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 **List of communities with special hazard areas.**

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	Alameda	Livermore				Dec. 1, 1972.
Illinois	La Salle	Streator				Do.
Maryland	Montgomery	Rockville				Do.
Massachusetts	Essex	Gloucester				Do.
Michigan	Macomb	St. Clair Shores				Do.
Nevada	Clark	Las Vegas	H 32 003 0120 01 through H 32 003 0120 08	Division of Water Resources, Department of Conservation and Natural Resources, Nye Bldg., Carson City, Nev. 89701. Nevada Insurance Division, Department of Commerce, Nye Bldg., Carson City, Nev. 89701.	Public Works Department, 821 Las Vegas Blvd. N., Las Vegas, NV 89101.	June 18, 1971.
North Carolina	Carteret	Beaufort	H 37 031 0350 01 through H 37 031 0350 02	North Carolina Office of Water and Air Resources, Department of Natural and Economic Resources, Post Office Box 27687, Raleigh, NC 27611. North Carolina Insurance Department, Post Office Box 26387, Raleigh, NC 27611.	Office of Town Clerk, Town of Beaufort, Post Office Box 390, Beaufort, NC 28516.	Dec. 3, 1971.
Pennsylvania	Luzerne	Edwardsville Borough.				Dec. 1, 1972.
Do.	Bucks	Lower Makefield Township.				Do.
Do.	Delaware	Middletown Township.				Do.
Do.	Luzerne	Plains Township				Do.
Rhode Island	Bristol	Bristol	H 44 001 0030 02 through H 44 001 0030 03	Rhode Island Statewide Planning Program, 265 Melrose St., Providence, RI 02907. Rhode Island Insurance Division, 169 Weybosset St., Providence, RI 02903.	Town Hall, 10 Court Street, Bristol, RI 02809.	Oct. 30, 1970.
Tennessee	Hamilton	Collegedale	H 47 065 0448 01 through H 47 065 0448 04	Tennessee State Planning Commission, Room C2-208, Central Services Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219.	Collegedale City Office, Post Office Box 416, Collegedale, TN 37315.	Mar. 3, 1972.
Texas	Comal	New Braunfels	H 48 091 4870 05 through H 48 091 4870 20	Texas Water Development Board, Post Office 13087, Capitol Station, Austin, TX 78711. Texas Insurance Department, 1110 San Jacinto St., Austin, TX 78701.	Office of Planning Director, City of New Braunfels, Post Office Box 644, New Braunfels, TX 78130.	Dec. 4, 1970.
West Virginia	Mingo	Kermit				Dec. 1, 1972.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended (secs. 408-410, Public Law 91-152, December 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. F.R. 2680, February 27, 1969)

Issued: November 27, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-20668 Filed 12-1-72;8:45 am]

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1902—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

Temporary Orders

On October 3, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 20728) amending Part 1902 by inserting a new § 1902.16, authorizing the Assistant Secretary to issue temporary orders permitting States to enforce under the provisions of State law standards covering issues contained in a proposed plan which is submitted for approval under Subpart C, before December 28, 1972.

The proposed rule is in furtherance of the policy of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 651), for maximum worker protection by encouraging the States to assume the fullest responsibility for the administration and enforcement of their safety and health laws in an orderly manner; it is issued pursuant to the responsibilities of the Secretary of Labor under section 18(c) of the Act to ensure continuity in State enforcement under the plan during its evaluation.

Temporary orders, issued under the proposed rule would in no way affect the final disposition of the plans and would not entitle a State to financial assistance under section 23(g). Federal enforcement will continue undiminished during the period of this effectiveness of the temporary order pursuant to the provisions of section 18(e). Under an order, a State would be permitted to continue enforcing under State law standards on issues contained in the State plan and would not be subject to preemption challenges in such issues for the period during which the order is effective. The orders would not apply to a State plan submitted after December 28, 1972, as State plans submitted after that date would have already been subject to preemption challenges. However, States may choose to submit State plans under section 18 of the Act and this part at any time, with or without the protection of a temporary order.

The temporary order procedure would not preserve State enforcement of standards in issues not covered under a State

plan, even though such standards were under an agreement entered into under section 18(h) of the Act.

After consideration of the relevant materials which have been submitted by interested persons and after consultation with the National Advisory Committee on Occupational Safety and Health, the proposal is hereby adopted with some changes, the principal one being to limit the maximum duration of a temporary order to 6 months, instead of the proposed 1 year, in line with the Advisory Committee's recommendation. Therefore, pursuant to the general regulatory authority of section 8(g)(2) of the Act and the responsibility of section 18(c) to carry out the policy of section 2(b)(11) (1600, 1608, and 1591; 29 U.S.C. 657, 667, and 651), the new § 1902.16, shall be effective upon publication in the FEDERAL REGISTER (12–2–72) and reads as follows:

§ 1902.16 Temporary orders.

(a) The Assistant Secretary may issue a temporary order permitting a State to enforce under the provisions of State law standards covering issues contained in a proposed plan which is submitted for approval under this Subpart C. Any temporary order shall remain in effect only until final action approving or disapproving a proposed plan is taken under sections 18(c) and (d) of the Act, or 6 months from the date of its issuance, whichever is earlier.

(b) To be the subject of a temporary order under this section, a proposed State plan must have been approved by the Governor of the State, as required by OMB Circular No. A–95, and must meet the submission requirements contained in § 1902.10(a). The proposed plan must also address itself to each of the criteria for State plans and indices of effectiveness prescribed in Subpart B of this Part 1902. The temporary order may be issued ex parte.

(c) No temporary order under this section shall constitute approval of a State plan under sections 18 (c), (d), or (e) of the Act nor shall it affect in any way any final action approving or disapproving a plan under sections 18 (c), (d), or (e), or eligibility for grants under section 23 of the Act.

(d) No temporary order shall preserve State jurisdiction to enforce standards in issues not covered under a State plan, even though such standards were covered under an agreement entered into under section 18(h) of the Act.

(e) Any temporary order issued under this section may be modified or revoked for cause upon reasonable notice to the State.

(f) The termination, modification, or revocation of a temporary order under this section shall in no way affect any proceeding, already commenced under State law, coming within the coverage of the order.

(g) No temporary order shall be issued in the case of proposed plans submitted under this part after December 28, 1972.

(h) State plans may be submitted at any time in accordance with the provisions of this part, but those submitted after December 28, 1972, will be evaluated without the protection of a temporary order preserving State jurisdiction over matters covered by them from preemption challenges.

(Secs. 2(b)(11), 8(g)(2), 18(c), Pub. L. 91–596, 84 Stat. 1591, 1600, 1608 (29 U.S.C. 651, 657, 667))

Signed at Washington, D.C., this 29th day of November 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72–20765 Filed 12–1–72;8:50 am]

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Scaffolding Generally and Pump Jack Scaffolding and Roof Catch Platforms

Proceedings with respect to the above subjects were commenced by notice published in the FEDERAL REGISTER on June 7, 1972 (37 F.R. 11340). The notice concerned: (1) A proposed increase in the height after which guardrails, midrails, and toeboards on scaffolding are required; (2) permitting the use of pump jack scaffolds subject to specific requirements; and (3) requirements for roof catch platforms. The proposals largely reflected the recommendations of the Advisory Committee on Construction Safety and Health.

The regulations to which the changes were proposed have application under the Construction Safety Act (40 U.S.C. 333) and the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.).

The notice of proposed rule making invited interested persons to submit written data, views, and arguments concerning the proposed changes and a hearing was held on July 26, 1972.

The certified record of the hearing, the written comments received as well as staff suggestions were submitted to the Advisory Committee on Construction Safety and Health for its review and advice pursuant to 29 CFR 1911.18. The Advisory Committee has considered this material and has submitted its recommendation to the Assistant Secretary for Occupational Safety and Health for decision.

The major issues for decision are:

1. Whether the height after which guardrails, midrails, and toeboards for scaffolds are required should be raised from 6 feet to 10 feet;

2. Whether the height after which catch platforms must be used below sloped roofs should be raised from 10 feet to 16 feet or some greater height and whether this requirement should continue to apply to slopes greater than three in 12 or should be changed to apply only to some greater slope; and

3. Whether the use of pump jack scaffolds should be permitted and if so under what conditions.

Having considered carefully all written and oral comments contained in the record and having reviewed the views of the Advisory Committee, these issues are discussed and decided as follows:

1. *Ten foot requirement for scaffolding.* The notice of proposed rule making changes the height above which guardrails, midrails, and toeboards are required from 6 feet above the floor or ground to 10 feet. No comments were received objecting to this amendment which tends to bring about a greater uniformity between the Construction Safety Standards and the general industry standards contained in 29 CFR Part 1910. Accordingly this proposal is adopted. The provisions of the proposal relating to form scaffolds (29 CFR 1926.451(x)(6)(iii)) are, however, changed to conform to the requirements applying to other types of scaffolds.

2. *Catch platforms.* Under the notice of proposed rule making the height above which catch platforms are required was raised from 10 feet to 16 feet. Because the occupational safety and health standard for general industry employments is set at 20 feet, it has been contended that in the interest of uniformity this level should be applied to construction as well. The Advisory Committee pointed out, however, that the 16-foot level provides a more practical dividing line for the construction industry as it will generally apply the obligation to the building of structures that exceed one story while in most circumstances will relieve builders of single-story structures. Their recommendation is therefore adopted.

The requirements for catch platforms apply where the slope of a roof exceeds 3 inches in 12 inches without a parapet. The greatest number of comments indicated the belief that this slope did not present any significant danger of falling. Accordingly, the Committee has recommended and I have decided to adopt a standard of 4 inches in 12 inches without a parapet.

At the hearing a contention was made that in certain circumstances a temporary device constructed on a sloped roof could form an economical and equally safe alternative to a catch platform. To the extent that such devices can be said to constitute secure temporary parapets, they may qualify as an acceptable means of protection. Such a solution requires no amendment to the standards as they already permit parapets as an alternative to catch platforms.

3. *Pump jack scaffolds.* Under the present standards the use of pump jack scaffolds is prohibited. Because the Advisory Committee determined that subject to proper safeguards the use of pump jack scaffolding would be safe, the proposal authorized their use subject to itemized minimum safety requirements. Although no objections were received to the proposed authorization to use this type of scaffold, several suggestions were submitted by persons who have had experience with them for improving the safety requirements relating to their use. Accordingly, the proposed § 1926.451(y) has

been revised on the basis of an analysis of these comments.

Accordingly, the amendments as proposed are hereby adopted subject to changes in § 1926.451 (u) (3), (x) (6) (iii), and (y) based upon the findings set forth above. As these amendments will result in relieving restrictions they shall become effective immediately.

Signed at Washington, D.C., this 29th day of November 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

§ 1926.451 **Scaffolding.**

(a) *General requirements.* * * *

(4) Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor, except needle beam scaffolds and floats (see paragraphs (p) and (w) of this section). Scaffolds 4 feet to 10 feet in height, having a minimum horizontal dimension in either direction of less than 45 inches, shall have standard guardrails installed on all open sides and ends of the platform.

* * * * *

(20) The use of shore or lean-to scaffolds is prohibited.

* * * * *

(b) *Wood pole scaffolds.* * * *

(15) Guardrails, made of lumber not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section, when required.

* * * * *

(c) *Tube and coupler scaffolds.* * * *

(13) Guardrails, made of lumber not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboard shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

(d) *Tubular welded frame scaffolds.* * * *

(10) Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), and approximately 42 inches high, with a midrail of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

(e) *Manually propelled mobile scaffolds.* * * *

(10) Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail, of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

* * * * *

(g) *Outrigger scaffolds.* * * *

(5) Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

(h) *Masons' adjustable multiple-point suspension scaffolds.* * * *

(15) Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail, and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

(i) *(Swinging scaffolds) two-point suspension.* * * *

(11) Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail, and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

(j) *Stone setters' adjustable multiple point suspension scaffolds.* * * *

(9) Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail, and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

* * * * *

(m) *Carpenters' bracket scaffolds.* * * *

(6) Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail, of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

* * * * *

(o) *Horse scaffolds.* * * *

(7) Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail, of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

* * * * *

(q) *Plasterers', decorators', and large area scaffolds.* * * *

(4) Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboards, shall be installed on all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

(r) *Interior hung scaffolds.* * * *

(5) Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), approximately 42 inches high, with a midrail of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor. Toeboards shall be a minimum of 4 inches in height. Wire mesh shall be installed in accordance with paragraph (a) (6) of this section.

* * * * *

(u) *Roofing brackets.* * * *

(3) A catch platform shall be installed below the working area of roofs more than 16 feet from the ground to eaves with a slope greater than 4 inches in 12 inches without a parapet. In width, the platform shall extend 2 feet beyond the protection of the eaves and shall be provided with a guardrail, midrail, and toeboard. This provision shall not apply where employees engaged in work upon such roofs are protected by a safety belt attached to a lifeline.

* * * * *

(x) *Form scaffolds.* * * *

(6) * * *

(iii) Guardrails and toeboards shall be installed on all open sides and ends of platforms and scaffolding over 10 feet above floor or ground. Guardrails shall be made of lumber 2 x 4 inch nominal dimension (or other material providing equivalent protection), approximately 42 inches high, supported

at intervals not to exceed 8 feet. Guardrails shall be equipped with midrails constructed of 1 x 6 inch nominal lumber (or other material providing equivalent protection). Toeboards shall extend not less than 4 inches above the scaffold plank.

(y) *Pump jack scaffolds.* (1) Pump jack scaffolds shall:

(i) Not carry a working load exceeding 500 pounds; and

(ii) Be capable of supporting without failure at least four times the maximum intended load.

(iii) The manufactured components shall not be loaded in excess of the manufacturer's recommended limits.

(2) Pump jack brackets, braces, and accessories shall be fabricated from metal plates and angles. Each pump jack bracket shall have two positive gripping mechanisms to prevent any failure or slippage.

(3) The platform bracket shall be fully decked and the planking secured. Planking, or equivalent, shall conform with paragraph (a) of this section.

(4) (i) When wood scaffold planks are used as platforms, poles used for pump jacks shall not be spaced more than 10 feet center to center. When fabricated platforms are used that fully comply with all other provisions of this paragraph (y), pole spacing may exceed 10 feet center to center.

(ii) Poles shall not exceed 30 feet in height.

(iii) Poles shall be secured to the work wall by rigid triangular bracing, or equivalent, at the bottom, top, and other points as necessary, to provide a maximum vertical spacing of not more than 10 feet between braces. Each brace shall be capable of supporting a minimum of 225 pounds tension or compression.

(iv) For the pump jack bracket to pass bracing already installed, an extra brace shall be used approximately 4 feet above the one to be passed until the original brace is reinstalled.

(5) All poles shall bear on mud sills or other adequate firm foundations.

(6) Pole lumber shall be two 2 x 4's, of Douglas fir, or equivalent, straight-grained, clear, free of cross-grain, shakes, large loose or dead knots, and other defects which might impair strength.

(7) When poles are constructed of two continuous lengths, they shall be two by fours, spiked together with the seam parallel to the bracket, and with 10d common nails, no more than 12 inches center to center, staggered uniformly from opposite outside edges.

(8) If two by fours are spliced to make up the pole, the splices shall be so constructed as to develop the full strength of the member.

(9) A ladder, in accordance with § 1926.450, shall be provided for access to the platform during use.

(10) Not more than two persons shall be permitted at one time upon a pump jack scaffold between any two supports.

(11) Pump jacks scaffolds shall be provided with standard guardrails as defined in § 1926.451(a)(15), but no guardrail is required when safety belts with lifelines are provided for employees.

(12) When a work bench is used at an approximate height of 42 inches, the top guardrail may be eliminated, if the work bench is fully decked, the planking secured, and is capable of withstanding 200 pounds pressure in any direction.

(13) Employees shall not be permitted to use a work bench as a scaffold platform.

[FR Doc.72-20766 Filed 12-1-72;8:52 am]

Title 32—NATIONAL DEFENSE

Chapter XVI—Selective Service System

REGISTRATION AND PUBLIC INFORMATION

Whereas, on October 28, 1972, the Director of Selective Service published a notice of proposed amendments of Selective Service Regulations 37 F.R. 23116 of October 28, 1972; and

Whereas more than 30 days have elapsed subsequent to such publication during which period comments from the public have been received and considered.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.) and § 1604.1 of Selective Service Regulations (32 CFR 1604.1), the selective service regulations, constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, the amendment to § 1608.12 to be effective 11:59 p.m., e.s.t., on December 2, 1972, and the other amendments to be effective 11:59 p.m., e.s.t., on December 30, 1972, as follows:

PART 1608—PUBLIC INFORMATION

Section 1608.12(e) is amended to read as follows:

§ 1608.12 Available information.

* * * * *

(e) Each local board maintains a Classification Record (SSS Form 102) which contains the name, selective service number, and the current and past classifications for each person registered with that board. Information in this record will be supplied upon request.

* * * * *

PART 1612—REGISTRATION DUTIES

§ 1612.25 [Revoked]

Section 1612.25 *Care and custody of registration cards and registration certificates,* is revoked.

PART 1613—REGISTRATION PROCEDURES

Section 1613.2 *Local board of jurisdiction,* is amended to read as follows:

§ 1613.2 Local board of jurisdiction.

The local board having jurisdiction over the place of residence entered in item 2 of the Registration Card (SSS Form 1) at the time of initial registration shall always have jurisdiction over the registrant, unless otherwise directed by the Director of Selective Service.

Sections 1613.3 and 1613.4 are added to read as follows:

§ 1613.3 Evidence of registration.

The local board shall issue to each registrant written evidence of his registration in the manner prescribed by the Director of Selective Service.

§ 1613.4 Issuing duplicate evidence of registration.

Duplicate evidence of registration will be issued to a registrant by the local board with which he is registered upon its receipt of his written request therefor.

PART 1617—REGISTRATION CARD

The title of Part 1617 is amended to read as set forth above.

§ 1617.11 [Revoked]

Section 1617.11 *Issuing duplicate Registration Certificate,* is revoked.

BYRON V. PEPITONE,
Acting Director.

NOVEMBER 28, 1972.

[FR Doc.72-20794 Filed 12-1-72;8:52 am]

REGISTRANTS' CLASSIFICATION PROCEDURES

Whereas, on October 28, 1972, the Director of Selective Service published a notice of proposed amendments to Selective Service Regulations, 37 F.R. 23118 of October 28, 1972; and

Whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. sections 451 et seq.) in that more than 30 days have elapsed subsequent to such publication during which period comments from the public have been received and considered; and I certify that I have requested the views of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.) and Executive Order 11623 of October 12, 1971, the Selective Service Regulations, constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, the revocation of §§ 1621.9 and 1621.10 to be effective 11:59 p.m., e.s.t., on December 2, 1972, and the other amendments to be effective 11:59 p.m., e.s.t., on December 30, 1972, as follows:

PART 1621—PREPARATION FOR CLASSIFICATION

§ 1621.9 [Revoked]

Section 1621.9 *Furnishing Registration Questionnaire (SSS Form 100)*, is revoked.

§ 1621.10 [Revoked]

Section 1621.10 *Time allowed to return questionnaire*, is revoked.

Section 1621.11 *Special form for conscientious objector*, is amended to read as follows:

§ 1621.11 Special form for conscientious objector.

A registrant who claims to be a conscientious objector shall be given the opportunity to offer information in substantiation of his claim on a Special Form for Conscientious Objector (SSS Form 150). The local board, upon request, shall furnish to any registrant a copy of Special Form for Conscientious Objector (SSS Form 150).

Section 1621.12 *Claims for or information relating to deferment or exemption*, is amended to read as follows:

§ 1621.12 Claims for or information relating to deferment or exemption.

The registrant shall be entitled to present all relevant written information which he believes to be necessary to assist the local board in determining his proper classification. Such information should be included in or attached to a Current Information Questionnaire (SSS Form 127) and may include any document, affidavits, and depositions. The affidavits and depositions shall be as concise and brief as possible.

§ 1621.13 [Revoked]

Section 1621.13 *Inadequate questionnaire*, is revoked.

PART 1623—CLASSIFICATION PROCEDURE

Section 1623.7 is amended to read as follows:

§ 1623.7 Issuing a duplicate notice of classification.

A duplicate notice of classification will be issued to a registrant by the local board which mailed the original notice of classification to him upon his written request therefor.

Paragraphs (a) and (b) of § 1623.9 *Registrants transferred for classification*, are amended to read as follows:

§ 1623.9 Registrants transferred for classification.

(a) Before the local board of origin has undertaken the classification of a registrant after his administrative classification into Class 1–H, he may be transferred to another local board for classification under procedures prescribed by the Director if he is so far from his local board as to make complying with notices an extreme hardship.

(b) A registrant may be transferred to another local board for classification at any time under procedures prescribed by the Director (1) when the local board cannot act on his case because of disqualification under provisions of section 1604.55 of this chapter, or (2) when a majority of the members of the local board, or a majority of the members of every panel thereof if the board has separate panels, withdraw from consideration of the registrant's classification because of any conflicting interest, bias, or other reason.

* * * * *

PART 1624—PERSONAL APPEARANCE BEFORE LOCAL BOARD

Section 1624.2 *Request for personal appearance*, is amended to read as follows:

§ 1624.2 Request for personal appearance.

A registrant, other than one who has filed a request in accord with § 1624.1 (b), who desires a personal appearance before his local board, must file a written request therefor within 15 days after the local board has mailed a notice of classification to him. Such 15-day period may be extended by the local board when it is satisfied that the registrant's failure to request a personal appearance within such period was due to some cause beyond his control.

Section 1624.5 *Procedure when registrant fails to appear*, is amended to read as follows:

§ 1624.5 Procedure when registrant fails to appear.

Whenever the registrant for whom a personal appearance has been scheduled fails to appear in accord with such schedule, the local board shall consider any explanation of such failure that has been filed within 5 days (or extension thereof granted by the local board) after such failure in accordance with § 1624.3. Should the local board determine that the registrant's failure to appear for his personal appearance was without good cause, or if within 5 days (or extension thereof granted by the local board) after such failure to appear the registrant offers no explanation of such failure, the registrant will be deemed to have had his personal appearance and the local board (a) will take such action with respect to the classification of a registrant who has requested a personal appearance following his classification as is appropriate in light of the provisions concerning reopening of classification in section 1625.2 of this chapter, or (b) if such registrant requested a personal appearance in advance of his classification in accordance with § 1624.1(b), the local board shall classify the registrant. The local board will notify the registrant in writing of the action taken.

Section 1624.6 *Procedure of local board following personal appearance*, is amended to read as follows:

§ 1624.6 Procedure of local board following personal appearance.

After the registrant has appeared before the local board, it shall again classify the registrant and, in the event that the local board classifies the registrant in a class other than that which he requested, it shall record its reasons therefor in his file. Only those members of the local board before whom the registrant appeared shall classify him. The local board shall mail to the registrant notice of his classification together with the reasons the local board classified him in a class other than that which he requested.

PART 1626—APPEAL TO APPEAL BOARD

Section 1626.2 *Time limit within which registrant may appeal*, is amended to read as follows:

§ 1626.2 Time limit within which registrant may appeal.

The registrant must file his appeal and his request for a personal appearance before the appeal board, if such personal appearance is desired, within 15 days after the date the local board mails to the registrant notice of his classification or notice pursuant to § 1624.5 of this chapter. At any time prior to the date the local board mails to the registrant an order to report for induction or for alternate service, the local board will permit him to appeal even though the period for taking an appeal has elapsed, if it is satisfied that his failure to appeal within such period was due to some cause beyond his control. If the local board grants an extension of time to appeal to the registrant, he may within such extended period also request a personal appearance before the appeal board.

Paragraph (i) of § 1626.4 *Review by appeal board* is amended to read as follows:

§ 1626.4 Review by appeal board.

* * * * *

(i) In the event that the appeal board classifies the registrant in a class other than that which he requested, it shall record its reasons therefor in his file.

Section 1626.5 *Procedure of local board when advised of decision of appeal board*, is amended to read as follows:

§ 1626.5 Procedure of local board when advised of decision of appeal board.

When the local board receives notice of the decision of a case by the appeal board, it shall mail a notice of classification to the registrant and inform him in writing of the vote of the appeal board and the reasons the appeal board classified him in a class other than that which he requested.

PART 1627—APPEAL TO THE PRESIDENT

Section 1627.1 *Persons who may appeal to the President*, is amended to read as follows:

§ 1627.1 Persons who may appeal to the President.

(a) The Director of Selective Service or the State Director of Selective Service of the State in which the local board or appeal board which classified the registrant is located may appeal to the President from any determination of an appeal board at any time prior to the induction of the registrant or his reporting for alternate service in lieu of induction.

(b) When a registrant has been classified by the appeal board and one or more members of the appeal board dissented from that classification, he may appeal to the President within 15 days after the local board has mailed a notice thereof to him. The local board may permit any registrant who is entitled to appeal to the President under this section to do so at any time prior to the date the local board issues to him an order to report for induction or for alternate service, even though the period of taking such an appeal has elapsed, if it is satisfied that his failure to appeal within such period was due to some cause beyond his control.

Paragraph (h) of § 1627.4 *Procedures of the National Selective Service Appeal Board,* is amended to read as follows:

§ 1627.4 Procedures of the National Selective Service Appeal Board.

* * * * *

(h) In the event that the National Board classifies the registrant in a class other than that which he requested it shall record its reasons therefor in his file.

Section 1627.6 *Procedure of local board after file is returned,* is amended to read as follows:

§ 1627.6 Procedure of local board after file is returned.

When the file of the registrant is received by the local board it shall notify the registrant in writing of the classification given him by the President. Upon the receipt by the local board of a written request by the registrant mailed within 30 days after the mailing of such notice it shall furnish to such registrant a copy of the reasons the National Board classified him in a class other than that which he requested.

PART 1641—DUTY OF REGISTRANTS

Section 1641.6 is amended to read as follows:

§ 1641.6 Duty to have unaltered documents in personal possession.

(a) It is the duty of every registrant until his liability for training and service has terminated to have in his personal possession except while he is on active duty (other than active duty for training or for the sole purpose of undergoing a physical examination) in the Armed Forces (1) his registration certificate (SSS Form 2) and notice of classification (SSS Form 110) showing his current classification or (2) his status card (SSS Form 7) most recently issued by the local board.

(b) The failure of any person to have his registration certificate (SSS Form 2) or status card (SSS Form 7) in his personal possession as required in paragraph (a) of this section shall be prima facie evidence of his failure to register.

(c) When a registrant is inducted into the Armed Forces, or enters upon active duty in the Armed Forces, other than active duty for training only or active duty for the sole purpose of undergoing a physical examination, he shall surrender his documents listed in paragraph (a) of this section to the commanding officer of the Armed Forces examining and entrance station or to the responsible officer at the place to which he reports for active duty. Such officer shall return the documents to the local board that issued them.

Section 1641.7 *Duty of registrant separated from active duty in Armed Forces,* is amended to read as follows:

§ 1641.7 Duty of registrant separated from active duty in Armed Forces.

Every registrant who is separated from active duty in the Armed Forces prior to birth, who has not discharged his current military obligation under the Military Selective Service Act, and who the 26th anniversary of the date of his does not have a registration certificate (SSS Form 2) or status card (SSS Form 7) shall, within 10 days after the date of his separation, request in writing his local board to return his registration certificate (SSS Form 2) or status card (SSS Form 7), if available, or to issue to him a duplicate thereof.

§ 1641.9 [Revoked]

Section 1641.9 *Duty to have Notice of Classification (SSS Form 110) in personal possession,* is revoked.

PART 1655—REGISTRATION OF U.S. CITIZENS OUTSIDE OF THE UNITED STATES AND REGISTRATION OF SUCH REGISTRANTS

Paragraph (b) of § 1655.5 *District of Columbia Local Board No. 100 (Foreign),* is amended to read as follows:

§ 1655.5 District of Columbia Local Board No. 100 (Foreign).

* * * * *

(b) District of Columbia Local Board No. 100 (Foreign) shall have jurisdiction for all purposes under selective service law over any person who at the time of his registration under the provisions of the regulations in this part does not designate for entry in item 2 of his registration card (SSS Form 1) an address of a place within the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone.

BYRON V. PEPITONE,
Acting Director.

NOVEMBER 28, 1972.

[FR Doc.72-20793 Filed 12-1-72;8:52 am]

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER E—PESTICIDES PROGRAMS

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

Interim Tolerances

Six comments were received in response to the notice published in the FEDERAL REGISTER of September 13, 1972 (37 F.R. 18565), proposing establishment of interim tolerances for 13 pesticides chemicals in or on various raw agricultural commodities under provisions of Section 408 of the Federal Food, Drug, and Cosmetic Act. No requests were received for referral of the proposal to an advisory committee pursuant to section 408(e) of the act.

Five of the comments were not in regard to the proposed interim tolerances but referred to the fact that additional interim tolerances were not included. In response to a letter from Dr. C. C. Compton at Rutgers University the parenthetical statement for zineb on potatoes has been changed to (to be used only for seed piece treatment). In response to a comment from Rohm and Haas Co., Independence Mall West, Philadelphia, Pa. 19105, a similar proposed parenthetical statement for the coordination product of zinc ion and maneb on potatoes has been deleted because the pesticide is registered for use on potatoes without such a limitation.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (b), (e), 68 Stat. 511, 514; 21 U.S.C. 346a (b), (e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038), § 180.319 is amended by alphabetically inserting the following items in the table and by revising the items "2,4-D * * *", "2-Methyl - 4 - chlorophenoxyacetic acid * * *", and "sodium arsenite * * *," as follows:

§ 180.319 Interim tolerances.

* * * * *

Substance	Use	Tolerance in parts per million	Raw agricultural commodity
Ammoniates of [ethylenebis(dithiocarbamato)] zinc and ethylenebis[dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides.	Fungicide	0.5 (Calculated as zinc ethylenebisdithiocarbamate).	Peanuts, sugar beets, sweet corn (kernels plus cob with husk removed).
* * *	* * *	* * *	* * *
Carbaryl (1-napthyl N-methylcarbamate).	Insecticide	0.5	Potatoes.
Chlordane	do	0.2	Parsnips.
		0.1	Asparagus, mustard greens, pumpkins, spinach, and Swiss chard.
		0.03	Bananas.
* * *	* * *	* * *	* * *
Coordination product of zinc ion and maneb.	Fungicide	1 (Calculated as zinc ethylenebisdithiocarbamate).	Potatoes.
Copper arsenate	Insecticide, fungicide.	0.5 (Calculated as As_2O_3.)	Pears.
2,4-D (2,4-dichlorophenoxyacetic acid).	Herbicide	300	Grasses (pasture and rangeland) and grass hay.
		20	Corn fodder and forage, sorghum fodder and forage.
		1	Alfalfa, blueberries, clover.
		0.5	Fresh corn including sweet corn (kernels plus cob with husk removed), corn grain, cranberries, grapes.
		0.1	Potatoes, rice, rice straw, sorghum, sugarcane.
* * *	* * *	* * *	* * *
Heptachlor	Insecticide	0.1	Peppers.
		0.02	Tomatoes.
		0.01	Blackberries, blueberries, boysenberries, dewberries, and raspberries.
Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane).	do	0.05	Milk.
2-methyl-4-chlorophenoxyacetic acid.	Herbicide	300	Grasses (pasture and rangeland) and grass hay.
		75	Alfalfa and clover (fresh).
		20	Forage of barley, oats, rye, wheat.
		2	Straw of barley, oats, rye, wheat.
		0.2	Grain of barley, oats, rye, wheat.
		0.1	Flaxseed, rice.
* * *	* * *	* * *	* * *
Pentachloronitrobenzene	Fungicide	1	Peanuts.
		0.1	Bananas, beans, broccoli brussels sprouts, cabb, cauliflower, garlic, page, potatoes, tomatoes.eppers,
* * *	* * *	* * *	* * *
Sodium arsenite	Fungicide, insecticide.	[1] 2.7	Kidney and liver of and horses (externcattle animal uses only).al
		[1] 0.7	Meat, fat, and meals products of cattt byhorses (externa eand uses only). [animal
		[1] 0.05	Grapes.
Streptomycin	Fungicide	0.25	Celery, peppers, potatoes, tomatoes.
* * *	* * *	* * *	* * *
Zineb (zinc ethylenebisdithiocarbamate).	do	0.5	Potatoes (to be used only for eed piece treatment).

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Environmental Protection Agency, Room 3902A, Fourth and M Streets SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (12–2–72).

(Sec. 408 (b), (e), 68 Stat. 511, 514; 21 U.S.C. 346a (b), (e))

Dated: November 22, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72–20622 Filed 12–1–72;8:45 am]

Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Subpart H—Special Procedural Rules Applicable to Proceedings Conducted Pursuant to Enforcement of Executive Order 11246, as Amended by Executive Order 11375, and Rules, Regulations and Orders Issued Thereunder

EQUAL EMPLOYMENT OPPORTUNITY

In Part 4 of Title 43, Code of Federal Regulations, the authority citation for Subpart H is amended by adding at the end a new citation, as follows: "as amended, 37 F.R. 20536 (September 30, 1972)."

Dated: November 24, 1972.

CHARLES G. EMLEY,
Deputy Assistant Secretary of the Interior.

[FR Doc.72–20712 Filed 12–1–72;8:47 am]

Title 46—SHIPPING

Chapter IV—Federal Maritime Commission

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[General Order 29; Docket No. 72–43]

PART 549—REGULATIONS GOVERNING LEVEL OF MILITARY RATES

Common carriers by water in the foreign commerce of the United States are required by section 18(b)(1) of the Shipping Act, 1916, to file with the Federal Maritime Commission all their rates and charges "for transportation to and from U.S. ports and foreign ports between points on their own routes and on any through route which has been established." Section 18(b)(5) of the Act directs the Commission to "disapprove" any such rate or charge which it finds to be "so unreasonably high or low as to be detrimental to the commerce of the United States."

By notice of proposed rule making published in the FEDERAL REGISTER on August 22, 1972 (37 F.R. 16890), the Commission instituted this proceeding for the purpose of establishing standards by which it may determine the level below which rates quoted pursuant to the Military Sealift Procurement System for the transportation of military cargo by

common carriers subject to its jurisdiction become "detrimental to the commerce of the United States" within the meaning of section 18(b)(5) of the Shipping Act, 1916.

As the Commission explained in the preamble of its notice of proposed rule making, the establishment of such standards in specific and generally recognized accounting terms, is not only in response to a recommendation contained in the Sealift Procurement and National Security Study (SPANS), the purpose of which was to identify the proper and best military sealift procurement program for the future, but is also in furtherance of the Commission's own statutory responsibility of asuring that rates in the foreign commerce of the United States do not fall so low as to be detrimental to that commerce and that no shipper or class of cargo is prejudiced by the imposition of unfair burdens.

The Commission has for some time been seriously concerned with the drastic downward trend of rates bid to the Military Sealift Command by U.S.-flag operators, and, as a result thereof, has instituted a number of investigations involving the question of the lawfulness of these military rates under pertinent provisions of the Shipping Act, 1916, including section 18(b)(5). Although in the past on those occasions that the Commission has addressed itself to unreasonably low rates, within the meaning of section 18(b)(5), it has done so on a case-by-case basis, the Commission remains of the opinion expressed in its notice of proposed rule making that the "movement of military cargo and rates applicable thereto are sufficiently significant to warrant this kind of prospective rule making determination."

Clearly, military rates which fall so low as to seriously impair the maintenance of a financially sound, operationally efficient and adequately equipped American merchant fleet must be deemed to be detrimental to the commerce of the United States. This being the case, the Commission is fully justified in seeking to remedy a deteriorating rate situation through the institution of a rule making proceeding rather than relying on the ever-time-consuming process of ad hoc investigations.

The recently released SPANS Study, in which the Commission participated, along with other governmental agencies, as well as industry representatives, has also acknowledged the adverse impact of noncompensatory military rates on the commerce of the United States in terms of the viability of the American merchant marine and recognized the Commission's responsibility to regulate prospectively in this area. Specifically included among its "Recommendations" was the suggestion that the Commission, in order to insure that the commerce of the United States continues to be served by a viable merchant fleet, "take action against rates which are detrimental to commerce in accordance with the provisions of the Shipping Act of 1916, * * * and establish the definition of 'detrimental to commerce,' in specific accounting terms."

In its notice instituting this proceeding, the Commission requested that any interested persons submitting comments address such comments "to which of the following criteria should be adopted for determination of the level of rates below which rates will be considered to be detrimental to the commerce of the United States":

1. *Cash Flow Operating Cost*—All direct costs and a proper share of indirect (overhead, etc.) costs applicable to military cargo, but excluding vessel, container, chassis, and barge interest and depreciation;
2. *Cash Flow Cost*—Cash flow operating cost but including vessel, container, chassis, and barge interest;
3. *Fully Distributed Cost*—Cash flow operating cost but including vessel, container, chassis, and barge depreciation;
4. *Reasonable Profit*—Fully distributed cost plus a reasonable return based on assets used in the movement of military cargo; or
5. Any other criteria as may be proposed in specific and clearly defined accounting terms.

Ten comments were submitted in response to the Commission's notice of proposed rule making, nine of which recommended one of the particular cost accounting criteria mentioned above.[1] One party, the Department of Transportation (DOT), proposed that the minimum rate for the carriage of military cargo should be the marginal costs of carrying that cargo. The Military Sealift Command (MSC) and Sea-Land Service, Inc. (Sea-Land) recommend that "cash flow operating cost" be the cost standard. States Marine International, Inc., and Isthmian Lines, Inc., endorsed the adoption of the "fully distributed cost" criterion while five parties—i.e., Seafarers International Union, American Export Lines, American Institute of Merchant Shipping (AIMS), Maritime Administration (MA), and Waterman Steamship Corp.—favor a standard which would not only recover all costs but would also provide for an element of profit.

Answers to these comments have been filed by the Commission's Hearing Counsel, who believe that military rates should at least recover "fully distributed costs." Replies to Hearing Counsel have been submitted by AIMS, MA, MSC, and Sealand.

The Commission has carefully considered the position of all the parties, and the rules and regulations promulgated herein have been drafted with these parties' comments and arguments in mind. Comments and arguments not specifically discussed or reflected herein have been nevertheless considered and found not relevant, material, or justified.

Considerable time and effort has been consumed by the Commission in arriving at what we believe is a fair and reasonable minimum rate criterion. Having fully evaluated every possible alternative minimum rate criterion in the light of section 18(b)(5) of the Act, it is the opinion of this Commission that any rate awarded by MSC for the carriage of Department of Defense cargoes must, at a minimum, recover "fully distributed costs"—i.e., all direct and indirect costs, plus depreciation and interest. Requiring that rates quoted for the carriage of military cargoes recoup all of a carrier's cost applicable to the transportation of such cargoes is not only consistent with the mandates of section 18(b)(5) but will also insure that the objectives of the SPANS Study are realized.

U.S.-flag operators should not be required to do business with the Federal Government at a loss. Nor should commercial cargoes be required to subsidize U.S.-flag carriers' ability to transport military cargo. By requiring the U.S. Government to provide its fair share of costs for the carriage of its cargoes, we believe those situations can be avoided.

Unless rates for the carriage of military cargo are pegged at a level that will insure the carrier's recovery of all of its cost of moving that cargo, one of two equally undesirable situations will occur—either the revenues generated will be insufficient to continue adequate service in that trade or the burden of providing the additional revenues required by the carrier for transporting that cargo will fall on the shippers of commercial cargo, thereby exerting an upward pressure on commercial rates. Both these contingencies, we believe, result in a situation which is detrimental to the commerce of the United States.

On the other hand, we are rejecting as a standard any minimum rate criteria which would include an element for return on equity capital, i.e., profit, because, as hearing counsel have succinctly pointed out, such a standard would place the U.S. Government in the position of guaranteeing a return to investors and would thereby, most probably, encourage carriers to place too great a reliance on military cargo vis-a-vis commercial cargo for their revenues.

However, since the standard we are promulgating herein merely establishes a minimum or a so-called floor, any carrier is free to include an element of profit in the rate it quotes to the military. The ceiling which is then placed on such rates, aside from any jurisdiction this Commission might have, is governed, assuming there exist comparable commercial rates, by the 1904 Cargo Preference Act (10 U.S.C. 263), which provides in pertinent part:

> Charges made for the transportation of those [military] supplies by those vessels may not be higher than the charges made for transporting the goods for private persons.

To the extent it was possible, certain procedures have been established governing cost measurement and cost allocation, relating these to the minimum rate standard prescribed herein. A section-by-section discussion of these rules and their most important feature is, we believe, appropriate.

[1] One carrier advised that because of its minimal participation in the carriage of military cargo, it did not care to offer any recommendation at the present time.

Section 549.1, *Scope and Purpose*, sets forth the general applicability of the Commission's rules and the statutory basis therefor.

Section 549.2, *Definitions*, sets forth the meaning given several pertinent terms used throughout the rules. It will be noted that the word "proper" as it related to "share of indirect costs" has been deleted from the definition of "fully distributed costs" contained in paragraph (g) of § 549.2 as finally adopted.

The purpose of this deletion was to avoid any confusion or misconception regarding the meaning of the term "proper share of indirect costs." In formulating its military rates, under the standard adopted, a carrier must not only take into account all direct costs but also a proportional share of indirect costs assignable to its movement of military cargo on the basis of productivity or utilization. Therefore, where a carrier, for example, operates a facility which is used jointly with another service, expense considered common to both areas shall be allocated to the military service on a basis which accurately reflects the relative use each service makes of the common facility.

Section 549.3 *Minimum rate criterion*, establishes the minimum rate criterion, i.e., "fully distributed costs", which will govern the formulation of military rates and advises that any such rate which fails to meet the standard prescribed will be disapproved and stricken from the carrier's tariff.

It is our understanding that if a carrier quotes a rate which is ultimately disapproved and stricken from the tariff pursuant to a validly and properly issued Commission order, which is not stayed or reversed on appeal, or modified or rescinded by the Commission, MSC will consider such carrier as not having received an award for that commodity and route index. The right of that carrier to rebid on that commodity and route index will be handled by MSC under its procurement rules.

Section 549.4 *Certification*, provides that any carrier receiving an award from MSC must certify that its accepted rate meets the standards specified herein and, further, details the form of the certification.

Since the regulations promulgated herein will not become effective until after November 13, 1972, the initial bidding date for RFP 700, second cycle, we would expect that, at least for that RFP cycle, MSC would permit a carrier, which is unable to provide the necessary certification required by § 549.4 because its initial bid may not meet Commission prescribed standards, to submit a new, albeit higher, bid by the close of bidding period on December 11, 1972, so that such carrier may provide the Commission with the proper certification when and if an award is made.

Section 549.5 *General principles*, provides general instructions and establishes guidelines governing the cost accounting procedures and allocation methods which will be applied by a carrier in formulating its rate.

As indicated in paragraph (g) of § 549.5, we have rejected, at least for the present time, the adoption of a uniform, tradewide rate floor based on an averaging of costs for all carriers serving a particular trade route on the grounds that such approach would unduly penalize the low cost carriers while at the same time unreasonably imposing on the U.S. Government the greater costs of the less efficient carriers. In implementing the minimum rate standard adopted here, individual rate floors will be established for each carrier in each trade based on that carrier's actual costs.

In order, however, to give all U.S.-flag lines an opportunity to participate in the carriage of military cargo, we recommend that MSC and the Department of Defense seriously consider the establishment of a cargo allocation system in line with the one specifically proposed by AIMS in its comments. Such a system, based as it is upon descending percentages governed by the carrier's bid position, would avoid a concentration of military tonnage with the low cost carriers, thereby assuring the overall economic well-being of the American merchant fleet.

While we are well aware that the AIMS proposal of a percentage allocation system of military cargo is, as MSC have reminded us, beyond our jurisdiction, and understand that MSC have already prepared a study indicating the infeasibility of such a system, we nevertheless feel constrained to suggest that the merits of the proposal are sufficient to recommend it to their reconsideration.

Nor are we convinced that such a system would necessarily subvert the letter and spirit of the Armed Service Procurement Act, or its implementing regulations, especially if the allocation were on a declining percentage with the low rated carrier getting the predominant share of the available tonnage. In any event, all that is required by the Armed Services Procurement Regulation (32 CFR 1.300) is that procurements be on a competitive basis "to the maximum practicable extent." The present practicalities would, we feel, now dictate a reappraisal of the existing competitive procurement system as it relates to the allocation of cargo.

Paragraph (b) of § 549.5 provides that, for upcoming RFP 700, second cycle, utilization for container cargo will be actual utilization based on each carrier's relevant data. For subsequent RFP cycles, however, a tradewide round voyage utilization factor, to be computed by dividing the total number of loaded containers in 20-foot equivalents on each MSC trade route by the total number of 20-foot equivalent container slots offered in that trade, will be employed. This factor, which will be arrived at using data and information obtained from the relevant carriers, will be announced sufficiently in advance of each RFP cycle bidding date.

Section 549.6 *Vessel expense*, sets forth the allocation and other accounting principles which are to govern the computation of vessel expense as an element of cost.

Under paragraph (b) of § 549.6, operating subsidy is to be specifically excluded as an element of vessel expense. Subsidy is awarded in order to permit U.S.-flag carriers to compete more effectively with foreign flag lines for commercial cargo. Equalization of costs with foreign operators is not applicable to the carriage of military cargo. Moreover, to allow ODS to act as a reduction of vessel expense would, we believe, distort costs and unduly advantage the subsidized lines.

Section 549.7 *Cargo and equipment expense*, relates to the allocation of container overhead in terms of "container payload days" and defines that term.

Finally, § 549.8 *Administrative and general expenses*, provides for the allocation of A. & G. expenses and, further, identifies those items of overhead which are disallowed.

The bid computation procedures promulgated herein do not contemplate that the cost data and other information supporting the particular rate quoted be submitted to the Commission as a matter of routine reporting. It is expected, however, that carriers will have available the relevant data and information for furnishing to the Commission upon request. A carrier will as a matter of course be given the opportunity to justify a suspect rate prior to its rejection by the Commission.

Any carrier submitting a bid to MSC in response to an RFP shall therefore develop its expenses in accordance with the principles and procedures set forth herein and shall be expected to make any supporting data available to the Commission's staff for review. Likewise, whenever expenses are allocated, the carrier shall be expected to have available and identify the basis relied upon for each allocation in order to insure that compliance with the minimum rate standard can be reliably determined.

The rules and regulations promulgated herein, while possibly not providing comprehensive answers to all the various detailed accounting and allocation problems that may arise during the course of implementing the prescribed minimum rate standard do, we believe, provide a workable procedure for developing costs on a short term basis.

In this regard, it must be remembered that the cost review procedures established here are intended to be employed on an interim basis only. In response to a SPANS study recommendation that the Maritime Administration and the Commission develop a standardized industry cost accounting system to be utilized by the Commission in connection with its review of military rates, a long-term implementation program has recently been initiated.

The objective of this joint MA/FMC effort is to prescribe not only a uniform industry cost accounting but a uniform cost information reporting system as well. A number of steps have already been taken toward the implementation

of this program. Full implementation of the program is expected to take at least 18 months.

What we are faced with here, however, is a steadily deteriorating situation as regards the level of military rates. The need for some type of remedial action is now. The short-term implementation program which is reflected in the procedures promulgated in this proceeding is an attempt to provide some element of protection from the noncompensatory trend of military rates. Understandably, the precision and comprehensiveness that a long-term solution can effect cannot be achieved in the short term. The success of the interim procedures will depend then in no small measure on the cooperation of the affected carriers.

Therefore, pursuant to sections 18(b)(5) and 43 of the Shipping Act, 1916 (46 U.S.C. 817 and 841(a)), Title 46 CFR is hereby amended by the addition of a new Part 549 as follows:

Sec.
549.1 Scope and purpose.
549.2 Definitions.
549.3 Minimum rate criterion.
549.4 Certification.
549.5 General principles.
549.6 Vessel expense.
549.7 Cargo expense.
549.8 Administrative and general expense.

AUTHORITY: The provisions of this Part 549 issued under sections 18(b)(5) and 43, Shipping Act, 1916; 46 U.S.C. 817 and 841(a).

§ 549.1 Scope and purpose.

Common carriers by water in the foreign commerce of the United States are required by section 18(b)(1) of the Shipping Act, 1916, to file with the Federal Maritime Commission all their rates and charges "for transportation to and from U.S. ports and foreign ports between points on their own routes and on any through route which has been established." Section 18(b)(5) of the Act directs the Commission to "disapprove" any such rate or charge which it finds to be "so unreasonably high or low as to be detrimental to the commerce of the United States." The purpose of this part is to establish the level below which rates quoted for the transportation of U.S. Department of Defense cargoes pursuant to the military Sealift procurement system and filed[2] with the Commission pursuant to section 18(b)(1) of the Act will be deemed to be "so low" as to be "detrimental to the commerce of the United States" within the meaning of section 18(b)(5) of the Act and to establish rules and regulations governing the accounting and allocation procedures which are to be utilized by U.S.-flag carriers in arriving at military cargo rate quotations.

§ 549.2 Definitions.

The following definitions of terms used in this Part 549 shall apply unless the context indicates otherwise.

(a) The term "Commission" refers to the Federal Maritime Commission.

(b) The term "Act" means the Shipping Act, 1916, as amended.

(c) The term "MSC" refers to the Military Sealift Command.

(d) The term "RFP" refers to a request for proposal which is issued by MSC.

(e) The term "carrier" refers to a common carrier by water in the foreign commerce of the United States, as defined in section 1 of the Act.

(f) The term "military cargo rate" means any rate which is awarded by MSC to a carrier pursuant to an RFP and which must be filed with the Commission in accordance with section 18(b)(1) of the Act and Commission General Order 13, as amended (46 CFR 536).

(g) The term "fully distributed costs" includes all direct costs and that share of indirect costs (overhead, etc.) applicable to the transportation of military cargo and also includes vessel, container, chassis, and barge interest and depreciation.

§ 549.3 Minimum rate criterion.

All military cargo rates must, at a minimum, cover the offering carrier's fully distributed costs, as defined in § 549.2(g). Failure of a military cargo rate to recover such costs will result in that rate being disapproved by the Commission, as being detrimental to the commerce of the United States within the meaning of section 18(b)(5) of the Act, and stricken from the carrier's tariff.

§ 549.4 Certification.

(a) Any carrier receiving an award from MSC pursuant to an RFP must certify, in the form set forth below, that its military cargo rate meets the minimum rate criterion and other standards established in this part.

CERTIFICATION

I, the undersigned _____ of
(Type or print name and title of official submitting bid for carrier-offeror)
_____ certify that the rate of
(Full name of carrier)
_____ quoted to, and accepted by,
(Indicate rate)
the Military Sealift Command pursuant to RFP _____ as contained in the Container (shipping) Agreement and Rate Guide applicabel to this RFP cycle meets the criteria and standards of Commission General Order 29 (46 CFR 549).
(Indicate RFP numbers and cycle)

Signature_____

Date_____, 19__

(b) The certification, required by paragraph (a) of this section, must be submitted, properly completed and executed by the responsible official submitting the bid for the carrier-offeror, to the Commission by the end of two (2) working days after the award of bids by MSC and notification of such award to the carrier.

§ 549.5 General principles.

(a) *Cost experience period.* (1) For the purposes of this part, the actual cost experience utilized should be for the 12-month period ending with the close of the previous RFP cycle (e.g., for RFP 700, second cycle, rates, the relevant cost experience period would be July 1, 1971 to June 30, 1972).

(2) Any adjustments or changes to reported cost data must be based upon actual cost changes experienced by the carrier on the trade route after the close of the previous RFP cycle and prior to the bid submission date. Detailed actual cost data supporting such adjustments or changes must be available to the Commission.

(b) *Utilization factor.* (1) At least 30 days prior to the bidding date for any future RFP cycle, except for RFP 700, Second Cycle, the Commission will establish a uniform capacity utilization factor for each MSC trade route to be employed by all carriers in that trade in arriving at their cargo unit costs.

(2) For the purpose of tendering bids in response to RFP 700, Second Cycle, only, each carrier's cargo unit costs will be determined on the basis of the actual number of cargo units carried. Determination of each carrier's actual vessel utilization, based on the particular cargo unit employed will be arrived at as follows:

(i) *Container vessel.* Total number of loaded containers handled divided by total container capacity expressed in 20-foot equivalents.

(ii) *Breakbulk vessel.* Total number of measurement tons stowed divided by vessel designed bale-cubic capacity.

(iii) *Combination vessel.* Container utilization and breakbulk utilization, each computed separately as above.

(3) All utilization will be round voyage utilization and will be based upon reported utilization of vessel on clearance at last continental U.S. port (including Vancouver, British Columbia, Canada) outbound, and arrival at first continental U.S. port inbound. The maximum capacity both below and on deck should be 100 percent.

(4) Where no data on the actual number of cargo units carried is available, i.e., when a carrier is entering a bid for a route not presently being served by it, cargo carryings shall be based upon 75-percent utilization.

(c) *Cost projections.* Where a carrier is entering a bid for a new route, cost projections should be based on the best available data and support for all underlying computations must be kept available to the Commission. Any guidelines established by the Commission will be followed in making such projections.

(d) *Strike effects.* (1) For short-term strikes, i.e., strikes which interfere with carrier operations for 7 days or less, no adjustments to actual cost experience will be made.

(2) For long term strikes, i.e., strikes which interfere with carrier operations for 8 days or more, strike associated

[2] Section 536.14 of this chapter (G.O. 13) sets forth the regulations which govern the submission to the Commission of quotations or tender of rates or charges for the transportation of military cargo.

costs should be specifically identified and deleted from actual cost experience for the relevant period.

(3) Military cargo voyages which may continue during a long-term strike, as defined in subparagraph (2) of this paragraph, will be identified, and both costs and carryings of these voyages will be reported. Any overhead attributable to such voyages should be applied at the rate determined to be applicable during normal operating periods.

(e) *Depreciation and residual value.* (1) All depreciation will be based upon straight-line methods. Standard methods and lives for depreciation of vessels, barges, and containers, and residual values for such vessels and other assets will be as follows:

(i) *New vessels.* Twenty-five-year depreciation life with residual value of 2½ percent of shipyard cost.

(ii) *Purchase vessels.* Continuation of 25-year depreciation life from new vessel date with residual value of 2½ percent of shipyard cost.

(iii) *Rebuilt or converted vessels.* Fifteen-year depreciation life or continuation of original depreciation schedule, whichever is longer, with residual value of 2½ percent of shipyard cost.

(iv) *Barges.* Twenty-year depreciation life with no residual value.

(v) *Containers, chassis, and bogies.* Fifteen-year (8-year for reefer containers) depreciation life with no residual value.

(2) No equivalent of depreciation will be allowed in form of replacement allowance for old (fully depreciated) vessels.

(f) *Tonnage basis for container cargo.* (1) For cost allocation purposes, the outside measure of the container should be used as the basis of tonnage for container cargo.

(2) For the purpose of converting the cost factor to a rate evaluation, the cost assigned to the container should be divided by the inside cubic capacity of the container.

§ 549.6 Vessel expense.

(a) *Allocation.* (1) Carriers shall allocate vessel expense on a unit-mile basis. For the purposes of submitting bids in response to RFP 700, Second Cycle, the unit for breakbulk cargo shall be "revenue ton miles," as defined in Part 512 of this chapter.

(2) Where combination vessels, i.e., vessels that carry both container and breakbulk cargoes, are employed on a route, allocation shall be on a unit-mile basis for each category of cargo carried. Allocation of vessel time in port costs for such vessels shall be on a ratio of container loading time to breakbulk loading time based on productivity.

(3) Where more than one vessel type is employed on a single trade route, vessel costs should be accumulated by bid categories of cargo handled and unit cost should be computed by dividing all vessel costs by the total stowed measurement tons actually carried,[3] or for containers, the number of loaded containers in 20-foot equivalents. Cost information by vessel type with supporting details must be made available to the Commission.

(4) Changes in vessels (introduction of new vessels or removal of old vessels) occurring after the close of the previous RFP cycle through the bid submission date should, as provided in § 549.5(a)(2), be taken into consideration in reporting cost. Proposed vessel changes that may occur after the bidding date should not, consistent with § 549.5(a)(2), be so considered.

(5) Periodic costs, e.g., vessel surveys, will be allocated using the accrual method.

(b) *Operating subsidy excluded.* In computing costs, vessel expense should be the amount recorded as expense in the carrier's ledgers. Any recovery as a result of operating differential subsidy awarded by the Maritime Administration of the Department of Commerce should not act as a reduction of that expense.

(c) *Leasehold asset.* The reported expense of any leasehold asset should be the recorded rent or lease expense: *Provided, however,* That, if the lease agreement is with a related company, the recorded expense should be adjusted for intercompany profits or losses. A related company's profit or loss should be based upon the same depreciation concepts provided for the carrier's own assets in § 549.5(e).

§ 549.7 Cargo and equipment expense.

Container overhead or indirect and shoreside container costs should be allocated to military containers on the basis of the carrier's military container payload days compared to its total container payload days. Container payload days is the period beginning with a container's assignment to a particular cargo and ending with its release from that cargo.

§ 549.8 Administrative and general expenses.

(a) *Allocation.* Administrative and General (A&G) overhead expense including interest should be allocated on a Vessel Operating Expense basis, as in Part 512 of this Chapter (G.O. 11).

(b) *Allowability.* Overhead which should be excluded from the A&G pool includes:

(1) Any overhead disallowable under section XV of the Armed Services Procurement Regulations (e.g., bad debts, certain advertising expenses, etc.).

(2) Any overhead which is directly attributable to nonmilitary cargo.

(3) Any overhead attributable to subsidy costs, to the extent it can be identified.

Effective date. Because of the time element involved, and in order to assure that carriers tendering bids to MSC in response to RFP 700, Second Cycle, do so on the basis of the criteria and standards established herein, the Commission is of the opinion that good cause exists for the rules and regulations above provided to become effective on less than 30 days' notice. Accordingly, these rules and regulations shall become effective upon publication in the FEDERAL REGISTER (12-2-72).

By the Commission.[4]

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.72-20742 Filed 12-1-72;8:49 am]

[3] For RFP 700, Second Cycle, use "revenue tons" in lieu of "stowed measurement tons" for breakbulk cargo, in accordance with paragraph (a) of this section.

[4] A concurring and dissenting opinion by Vice Chairman George H. Hearn and a concurrence by Commissioner James V. Day are filed as part of the original document.

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Office of Oil and Gas

[32A CFR Ch. X]

[Oil Import Reg. 1 (Rev. 5)]

CRUDE AND UNFINISHED OILS BASED UPON ESTIMATED INPUTS

Proposed Allocations and Change in Allocation Method

Consideration is being given to amending section 25 of the oil import regulation to remove some of the provisions of the current regulation which tend to discourage refinery and petrochemical plant expansion and construction in the United States. It is believed that these proposed changes will enhance equity among refiners by treating each new or expanded refinery as a separate entity for the first 24 months of its operation. Also, the proposed regulation would remove the volumetric limits (11 million barrels for refiners and 4 million barrels for petrochemical plants) on the quantity of input that any company may claim as the basis for an allocation based upon estimated inputs. The proposal makes provisions for refinery capacity or petrochemical plants coming on-stream after September 30 of the allocation period for which the allocation is requested. The requirement that a plant be in operation at least 60 days before an import license is issued is removed and, in its place, provision is made for an on-the-spot evaluation by the Office of Oil and Gas approximately 60 days before startup. Appropriate changes would also be made in the section relating to Canadian imports—Districts I–IV.

To implement these changes, it is proposed to substitute a new section 25 as set forth below; however, final action upon the proposed amendment is subject to the concurrence of the Director, Office of Emergency Preparedness.

This proposal is designed to encourage refinery expansion in the United States by reducing the disincentives resulting from the current provisions of section 25. Advice as to how this proposal to amend section 25 may be further revised to better achieve this objective earnestly solicited.

Interested persons are invited to submit written comments on the proposed new section 25 within twenty (2) days after publication of this notice in the FEDERAL REGISTER to the Director, Office of Oil and Gas, Department of the Interior, Washington, D.C. 20240. Each person who submits comments is asked to provide fifteen (15) copies.

GENE P. MORRELL,
Director, Office of Oil and Gas.

NOVEMBER 29, 1972.

Section 25 of Oil Import Regulation 1 (Revision 5), as amended, would be amended to read in its entirety:

Sec. 25 Allocations of crude and unfinished oils—Districts I–IV, District V—new, expanded, or reactivated refinery capacity and petrochemical plants—based upon estimated inputs.

(a) (1) The Director may make allocations of imports of crude oil and unfinished oils with respect to new, expanded, or reactivated refinery capacity and petrochemical plants as provided in this section.

(2) A person seeking such an allocation must file an application in the form prescribed by the Director. The application shall disclose in detail such information as the Director may require, including—

(i) The nature of the facility,

(ii) The location of the facility,

(iii) The products and the quantity of each product to be produced,

(iv) The capital outlay involved,

(v) The expected average barrels per day of qualified feedstocks inputs of such facility,

(vi) The identification of the feedstocks, and the source thereof,

(vii) The date that the facility went on-stream or is scheduled to go, on-stream,

(viii) Whether the application is for a new facility, an expansion, or a reactivation, and

(ix) Whether this facility will replace an existing facility which is to be or has been shut down.

(b) (1) If the reactivated refinery capacity is scheduled to come on-stream during the allocation period for which the allocation is requested and if the applicant has no other refinery capacity, the allocation shall be computed according to the schedule in paragraph (b) of section 10 or 11 (as the case may be) on the basis of the quantity of inputs (divided by 365), which it is estimated will be made to such capacity during the allocation period. In the event the facility comes on-stream after September 30 of an allocation year the Director may, if requested by the applicant, extend the expiration date of the license to 120 days after the startup date set forth in the application. An applicant who receives an allocation for a particular allocation period pursuant to this subparagraph (1) may be eligible for an allocation pursuant to subparagraph (2) of this paragraph for the next succeeding allocation period.

(2) If the reactivated refinery capacity has come on-stream during the allocation period immediately preceding the allocation period for which the allocation is requested and if the applicant has no other refinery capacity, the allocation shall be computed according to the schedule in paragraph (b) of section 10 or 11 (as the case may be) on the basis of the sum (divided by 365) of (i) the refinery inputs actually made to the reactivated refinery capacity during those months of the allocation period immediately preceding the allocation period for which the allocation is requested and (ii) the inputs which it is estimated will be made to such capacity during the number of months which, when combined with the months in subdivision (i) of this subparagraph, will constitute a period of 12 months.

An applicant to whom an allocation is made under this subparagraph (2) shall not receive an allocation under paragraph (b) of section 10 or 11.

(3) If the applicant has other refinery capacity, inputs for reactivated refinery capacity estimated as provided in subparagraph (1) or (2) of this paragraph shall be added to the inputs of the applicant's other capacity for the purpose of computing an allocation under section 10 or 11.

(c) (1) Each increment of new or expanded refinery capacity will be treated as a separate entity under this paragraph (c) for a total of 24 months. The inputs to such capacity will not be added to other refinery inputs for purposes of computing the allocation.

(2) If the new or expanded refinery capacity is scheduled to come on-stream during the allocation period for which the allocation is requested, the allocation shall be computed according to the schedule in paragraph (b) of section 10 or paragraph (b) of section 11 (as the case may be) on the basis of inputs (divided by 365), which it is estimated will be made to such capacity during that allocation period. In the event the new or expanded refinery capacity comes on-stream after September 30 of the allocation period for which the allocation is requested, the Director may, if requested by the applicant, extend the expiration date of the license to 120 days after the startup date set forth in the application. An applicant who receives an allocation for a particular allocation period pursuant to this subparagraph (1) may be eligible for an allocation pursuant to subparagraphs (3) and (4) of this paragraph for the succeeding allocation period.

(3) If the new or expanded refinery capacity has come onstream during the allocation period immediately preceding the allocation period for which the allocation is requested, the allocation shall be computed according to the schedule in paragraph (b) of section 10 or paragraph (b) of section 11 (as the case may be) on the basis of the sum (divided by 365) of (i) the refinery inputs actually made to the new or expanded refinery capacity during the first 9 months of the allocation period immediately preceding

the allocation period for which the allocation is requested and (ii) the inputs which it is estimated will be made to such capacity during the next number of months which, when combined with the months in subdivision (i), of this subparagraph, will constitute a period of 12 months.

(4) If the new or expanded refinery capacity has not been onstream for a period of 24 months after earning an allocation under subparagraph (3) of this paragraph (c), an allocation will be made for the next allocation year based on actual inputs (divided by 365) for the year ending September 30 of the previous allocation year. In computing the allocation, the Director will determine the number of days which when added to the actual operating period in the 2 previous allocation years will constitute a period of 24 months. The facility will, for this number of days and in lieu of an allocation under section 10 or 11, earn an allocation expressed in average barrels per year according to the schedule in paragraph (b) of section 10 or paragraph (b) of section 11 pursuant to paragraph (1) of this paragraph (c). For the remainder of the allocation period the inputs will be added to the inputs of the applicant's other refinery capacity for the purpose of computing an allocation under section 10 or 11.

(d) Allocations with respect to new, expanded, or reactivated petrochemical plants shall be computed under section 9 of the regulation on the basis of estimated petrochemical plant inputs or a combination of actual and estimated inputs as provided for with respect to refinery capacity in paragraph (b) of this section 25.

(e) (1) If an allocation based in whole or in part on estimated inputs is made to an applicant pursuant to this section, the actual inputs submitted by the applicant as a basis for allocations in the next succeeding allocation perior or periods for which the applicant applies for an allocation or allocations under this regulation shall be adjusted upward or downward to compensate for the difference between the estimated inputs and the actual inputs made during the period for which inputs were estimated.

(2) If the estimated inputs upon which an allocation is based exceed the actual inputs made by more than 5 percent of the estimated inputs, then, in addition to the adjustment downward provided by subparagraph (1) of this paragraph, the applicant shall be penalized for the overestimate as provided in this subparagraph (2). As a penalty, the actual inputs submitted by the applicant as a basis for allocation for the next succeeding period or periods for which the applicant applies for an allocation or allocations under this regulation shall be further reduced by the number of barrels by which the estimated inputs exceeded the actual inputs by more than 5 percent. However, to the extent that an applicant demonstrates to the satisfaction of the Director that the excess of estimated inputs over actual inputs was attributable to acts of God, fires, government action, or explosion, the Director may waive the penalty or reduce the number of barrels of excess for which the penalty will be imposed. Persons applying for and receiving allocations under this section whose new, expanded, or reactivated refinery or petrochemical plant fails to come onstream within the allocation period may be denied any allocation for the next succeeding period. The Director may elect not to apply this penalty in those cases where the applicant demonstrates to the satisfaction of the Director that a substantial effort was made to complete and to start up such facility and that the person's failure was attributable to acts of God, fires, government action, or explosion.

(3) (i) Any person who has been granted an allocation for a new, reactivated, or expanded refinery or petrochemical plant in Districts I–IV may avoid the penalty prescribed in subparagraph (2) of this paragraph by returning on or before September 30 of the period for which the allocation was granted such a petrochemical plant or refinery license for a downward adjustment, or, in lieu of returning such license, returning for downward adjustment a refinery or petrochemical plant license issued to the person under section 9(a) or 10.

(ii) Any person who has been granted an allocation for a new expanded, or reactivated refinery, or petrochemical plant in District V may avoid the penalty prescribed in subparagraph (2) of this paragraph by returning on or before September 30 of the allocation period for which the allocation and license were granted such a petrochemical plant or refinery license for a downward adjustment, or, in lieu of returning such license, returning for downward adjustment a petrochemical plant or refinery license issued in District V to the person under sections 9(b) or 11.

(iii) A request by an applicant who has received an allocation and license under this section for a downward adjustment shall be made in writing to the Director on or before September 30 of the allocation period for which the allocation and license were granted.

(4) Further adjustments will be made in addition to those described in subparagraphs (3) (i) and (ii) of this paragraph. If the person has any other like refinery or petrochemical plant capacity, and reductions are made in the inputs for this other capacity during the allocation periods as a result of the new, expanded, or reactivated facility; in such a case, in determining inputs for the next allocation period, the input credit for the new facility application for this or other sections of the regulation will be lowered by the amount that inputs were reduced in the applicant's other existing facilities in the year ending September 30 of the prior allocation period.

(5) The Director shall not issue a license under an allocation made pursuant to this section until (i) an on-the-spot evaluation of the new, expanded, or reactivated refinery capacity or petrochemical plant has been conducted by compliance representatives of the Office of Oil and Gas and (ii) a written determination has been made by the Director that the facility is a bona fide petrochemical plant or refining capacity as certified in the application, and that construction or reactivation has so far progressed that, in the Director's judgment, the plant will within 60 days from the date of such determination be ready for startup and trials.

(f) No allocations made under this section may be sold, assigned, or otherwise transferred.

(g) (1) As used in this section 25, "expanded refinery capacity" or "expanded petrochemical plant" includes expansion of existing facilities by the addition of equipment, such as, but not limited to, stills, towers, pumps, and chemical conversion units, or such additions to or modification of existing refinery capacity or petrochemical plant capacity as have resulted in an increased processing capability of not less than 15 percent in such refinery capacity or petrochemical plant over the refinery capacity or petrochemical plant capacity existing during the preceding 12 months.

(2) As used in this section 25, "reactivated refinery capacity" and "reactivated petrochemical plants" means the restoration to operation of refinery capacity or of a petrochemical plant which had been shut down for not less than 12 months immediately preceding its reactivation.

[FR Doc.72-20846 Filed 11-30-72;2:22 pm]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 959]

ONIONS GROWN IN SOUTH TEXAS

Proposed Limitation of Shipments Regulation

Consideration is being given to the issuance of a limitation of shipments regulation, hereinafter set forth, which was recommended by the South Texas Onion Committee, established pursuant to Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR Part 959), regulating the handling of onions grown in designated counties in South Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

All persons who desire to submit written data, views, or arguments in connection with this proposal should file the same in quadruplicate with the Hearing Clerk, Room 112–A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 30 days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)).

The recommendations of the committee reflect its appraisal of the expected volume and composition of the 1973 early

spring crop of South Texas onions and of the marketing prospects for the shipping season which is expected to begin on or about March 12.

The grade and size requirements proposed herein are recommended to prevent culls and poor quality onions, as well as undesirable sizes, from being distributed in fresh market channels. This should provide consumers with desirable onions at reasonable prices and at the same time result in higher returns to producers for the better grades and preferred sizes and enhance the reputation of South Texas onions.

The proposed container requirement should prevent the use of off-size or deceptive containers which could adversely affect the reputation and returns of South Texas onions. However, it would not preclude the use of containers customarily packed for the retail trade.

The proposals with respect to special purpose shipments are recommended to allow the use of containers which have been the subject of experimental shipments during past seasons, and should encourage exports by allowing the use of containers required for such purposes.

The proposed prohibition on packaging and loading onions on Sunday is recommended to provide more orderly marketing by tailoring shipments from the production area more closely to the ability of receiving markets to accept marketings at reasonable prices.

The proposal is as follows:

§ 959.313 Limitation of shipments.

During the period beginning March 12, 1973, through May 13, 1973, no handler may package or load onions on Sundays, or handle any lot of onions grown in the production area, except red onions, unless such onions meet the grade requirements of paragraph (a) of this section, one of the applicable size requirements of paragraph (b) of this section, the container requirements of paragraph (c) of this section, and the inspection requirements of paragraph (d) of this section, or unless such onions are handled in accordance with the provisions of paragraphs (e) or (f) of this section.

(a) *Grade requirements.* Not to exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Application of tolerances in U.S. Grade Standards shall apply to in-grade lots.

(b) *Size requirements.* (1) "Small"—1 to 2¼ inches in diameter, and limited to whites only:

(2) "Repacker"—1¾ to 3 inches in diameter, with 60 percent or more 2 inches in diameter or larger;

(3) "Medium"—2 to 3½ inches in diameter; or

(4) "Jumbo"—3 inches or larger in diameter.

(c) *Container requirements.* (1) 25-pound bags, with not to exceed in any lot an average net weight of 27½ pounds per bag, and with outside dimensions not larger than 29 inches by 31 inches; or

(2) Fifty-pound bags, with not to exceed in any lot an average net weight of 55 pounds per bag, and with outside dimensions not larger than 33 inches by 38½ inches.

(3) These container requirements shall not be applicable to onions sold to Federal agencies.

(d) *Inspection.* (1) No handler may handle any onions regulated hereunder (except pursuant to paragraphs (e) or (f)(3) of this section) unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of onions for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or by documentary evidence on forms furnished by the committee identifying truck lots to which a valid inspection certificate is applicable and a copy of such inspection certificate or committee document, upon request, is surrendered to authorities designated by the committee.

(3) For purposes of operation under this part each inspection certificate or committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

(e) *Minimum quantity exemption.* Any handler may handle, other than for resale, up to, but not to exceed 100 pounds of onions per day without regard to the requirements of this section, but this exemption shall not apply to any shipment or any portion thereof of over 100 pounds of onions.

(f) *Special purpose shipments and culls.* (1) Onions may be handled in containers customarily packed for the retail trade and in other designated special purpose containers as follows:

(i) Each handler desiring to make such shipments shall first apply to the committee for and obtain a certificate of privilege to make such shipments.

(ii) After obtaining an approved certificate of privilege, each handler may handle onions packed in 2, 3, or 5-pound containers customarily packed for the retail trade, 20-kilogram bags, or 50-pound cartons, if they meet the grade, size, and inspection requirements of paragraphs (a), (b), and (d) of this section and if they are handled in accordance with the reporting requirements established in subparagraph (2) of this paragraph on such shipments: *Provided,* That shipments of 2, 3, and 5-pound containers shall not exceed 10 percent of a handler's total weekly onion shipments, and provided further that shipments of 50-pound cartons shall not exceed 10 percent of a handler's total weekly onion shipments of all onions allowed to be marketed under this section.

(iii) The average gross weight per lot of onions packed in master containers shall not exceed 115 percent of the designated net contents.

(iv) The average net weight per lot of 50-pound cartons shall not exceed 55 pounds.

(v) The average net weight per lot of 20-kilogram bags shall not exceed 22 kilograms, and with outside dimensions of such bags not greater than 32 inches by 36 inches.

(vi) 20-kilogram bags shall be conspicuously labeled with the words "For Export Only" and shipments shall be only to points outside of the 48 contiguous States of the United States, the District of Columbia, Canada, or Mexico.

(2) *Reporting requirements for shipments in designated special purpose containers.* Each handler who handles such shipments of onions in containers customarily packed for the retail trade and in other designated special purpose containers, shall report thereon to the committee, the inspection certificate numbers, the grade and size of onions packed, and the size of the containers in which such onions were handled. Such reports, in accordance with § 959.80, shall be furnished to the committee in such manner, on such forms and at such times as it may prescribe. Also, each handler of such shipments of onions shall maintain records of such marketings, pursuant to § 959.80(c). Such records shall be subject to review and audit by the committee to verify reports thereon.

(3) *Onions failing to meet requirements.* Onions failing to meet the grade, size, and container requirements of this section, and not exempted under paragraph (e) of this section, may be handled only pursuant to § 959.126. Culls may be handled pursuant to § 959.126(a)(1). Shipments for relief or charity may be handled without regard to inspection and assessment requirements.

(g) *Definitions.* The term "U.S. No. 1" shall have the same meaning as set forth in the U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions (§§ 51.3195–51.3209 of this title), or in the U.S. Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) (§§ 51.2830–51.2854 of this title), whichever is applicable to the particular variety.

All terms used in this section shall have the same meaning as when used in Marketing Agreement No. 143, as amended, and this part.

Dated: November 28, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-20724 Filed 12-1-72;8:46 am]

[7 CFR Part 1121]

[Docket No. AO-364-A5]

MILK IN THE SOUTH TEXAS MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the South Texas marketing area.

The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Washington, D.C., on December 13, 1971, pursuant to notice thereof issued on December 3, 1971 (36 F.R. 23222).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on November 7, 1972 (37 F.R. 24033), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

The material issues on the record of the hearing relate to:

1. Advancing the date for announcing the Class I price; and
2. Taking emergency action on Issue 1.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Advance pricing.* The South Texas order should provide that the Class I price for the month be announced by the fifth day of the preceding month, and that such price be based on the Minnesota-Wisconsin price (basic formula price) for the second preceding month. Presently, the order requires that the Class I price be announced by the fifth day of the current month, and that it be based on the Minnesota-Wisconsin price for the preceding month.

This manner of computing and announcing the Class I price was incorporated in each of the other 61 orders included in this hearing. In the January 24, 1972, decision for these orders, the following findings and conclusions were set forth:

"The Milk Industry Foundation (MIF), whose membership includes handlers under the 62 orders, proposed the earlier determination and announcement of Class I prices adopted herein. MIF claims that because handlers are unable to adjust their resale prices at the same time as, or within a reasonable period of, the change in their raw material cost, they are forced to absorb Class I price increases for extended periods before they can make necessary adjustments in their resale prices. The need for advance pricing is particularly urgent now, according to MIF, because of the requirements to which handlers are subject under the Economic Stabilization Act. Proponents claim handlers would be required to substantiate resale price increases resulting from Class I price changes in accordance with steps prescribed pursuant to that Act. This procedure, it is argued, will extend even further the period of time between a Class I price change and the corresponding adjustment in resale prices.

"A handler who operates regulated plants under a number of orders testified in support of the MIF proposal. The witness emphasized particularly that advance pricing is needed by handlers to enable them to change resale prices at the same time the Class I price increases. He stated that handlers are now at a disadvantage in not knowing the Class I price for the month before the fifth of the month and, therefore, are unable to institute resale price changes before the greater part of the month to which the Class I price applies is over.

"National Milk Producers Federation (NMPF), which represents producer associations under the 62 orders, supported the MIF proposal. A number of producer association members of NMPF maintain milk processing and distribution operations. According to the NMPF witness, such associations have the same interest in advance Class I pricing as do proprietary handlers. The witness further stated that its other producer association members, however, fully support the proposal. He took the position that using the Minnesota-Wisconsin price for a month earlier than at present (in computing the Class I price) would not result in producers receiving any less money for their milk than they do now. He reasoned that the increases and decreases from month to month in the Class I price (due to changes in the Minnesota-Wisconsin price) would be fully reflected in returns to producers as they now are, except for a delay of 1 month.

"The spokesman for the cooperative representing producers under five orders in the Northeast stated that the cooperative had not had sufficient time to study the proposal and its effect on its members, and therefore, urged that no action be taken on it. He questioned particularly whether the principal basis of proponents for requesting advance pricing is a valid one. In this connection, he cited an earlier decision of the Secretary in which it was found that there is no basis for assuming that there is a direct relationship between changes in Class I prices and changes in prices charged to stores and to consumers.

"The rapidly changing structure of the milk distribution industry throughout the United States makes it desirable that handlers be notified at a reasonable period in advance of changes in the price they must pay for Class I milk. An increasing proportion of the milk distribution throughout the country is by large firms, including cooperative associations as well as proprietary handlers. The centralized control of these large distributors requires a longer period of time between the date a Class I price change is announced and the time when the change may be made in their resale prices.

"According to an industry witness, it is mechanically impossible to place in effect a price increase in less than 2 to 4 weeks after learning of Class I price changes. This problem is compounded by the adoption of machine accounting by both handlers and retailers. Computer programs must be changed by both parties, a new price list developed and circulated by handlers, and new pricing schedules issued to retailers by both chain and cooperative buying groups.

"The major portion of the distribution of the principal handlers in the order markets is to large volume buyers such as supermarket chains and institutions (e.g., hospitals, schools). The prices at which sales are made to these are primarily on a contractual basis, many by advance bidding. Announcing Class I prices before the month to which they apply will facilitate the resale pricing of milk sold to large volume outlets.

"Replacing the Minnesota-Wisconsin price for the month immediately preceding with that for the second preceding month for computing Class I prices need not have, as testified by producers, any significant effect on producer returns since the proposed change only involves advance setting of price and not a change in the basis of pricing Class I milk."

These findings and conclusions concerning the marketing conditions in the areas regulated by the 61 orders are equally applicable to the South Texas market. Accordingly, the manner of computing and announcing the Class I price that was adopted in the January 24, 1972, decision for the 61 orders likewise should be adopted for the South Texas order.

To maintain pricing continuity for the first month in which these changes are effective, it is necessary to specify in the order that the market administrator shall announce by the fifth day of such month the Class I price for that month as well as the Class I price for the following month. As under the new pricing arrangement, the Class I price announced for this first month should be computed by using the Minnesota-Wisconsin price for the second preceding month. Using the earlier Minnesota-Wisconsin price will result in the South Texas Class I price being coordinated with the Class I prices under other Federal orders in this first month.

No change should be made in the method of computing the Class I butterfat differential. This differential, which is announced for the current month by the fifth day of such month, is based on the average of the wholesale selling prices of 92-score butter at Chicago for the preceding month.

Proponents advocating the use of the Minnesota-Wisconsin price for the second preceding month in computing the Class I price proposed at the hearing that

the Class I butterfat differential be announced by the fifth day of the preceding month and be based on the Chicago butter prices for the second preceding month. The hearing notice contained no proposal, however, for advancing the Class I butterfat differential announcements. Those proposing it urged its adoption as an appropriate corollary change.

This proposal was not adopted for the other 61 orders included in this hearing. The following findings and conclusions on this issue were set forth in the 61-market decision:

"The Class I butterfat differential changes infrequently. This is because the Chicago butter price quotations, which are strongly influenced by the prices paid for butter by the Government under the price support program, do not vary significantly from month to month. Consequently, there is no compelling need to advance the Class I butterfat differential announcement in connection with the adoption of advance Class I pricing. Moreover, proposals to revise the butterfat differential provisions in 40 of the 62 orders were considered at hearings which began in Clayton, Mo., July 14, 1970 (35 F.R. 10694), for seven orders and in Atlanta, Ga., on October 18, 1971 (36 F.R. 19604), for 33 orders. Action on the record of these hearings has not been completed. It would be inappropriate, therefore, to amend any butterfat differential provision in these orders without full consideration of the evidence on the still open records of the hearings previously held."

There is no basis on the record of this hearing for taking a different action with respect to the Class I butterfat differential under the South Texas order than was taken for the other orders that were under consideration.

The uniform provisions concerning the announcement of class prices, butterfat differentials, and uniform prices that were adopted for the 61 other orders included in this hearing should be incorporated in the South Texas order. For Class I, the price announced by the fifth day of the month would be that for the following month, while the announced butterfat differential would be that for the current month. The Class II price and butterfat differential announced by that date would be for the preceding month, as at present. The announcement date for the uniform price under this and other orders was not under consideration and is unchanged by this decision. Under the uniform provisions for price announcements the market administrator will continue to have an obligation to notify handlers and other interested parties of all price announcements.

Similarly, the uniform basic formula price provisions that were adopted for the 61 orders should be adopted for the South Texas order. As provided herein, the basic formula price would be "the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33."

As noted in the decision for the other 61 orders, no purpose is served by the variations among orders in the language used to define the basic formula price. The South Texas order, therefore, should be made uniform in this respect with the other orders. This change will not affect the level of the basic formula price now existing under the South Texas order.

In the 61-market decision, it was stated that the Class I price under all orders "is determined, directly or indirectly, by adding a differential to the basic formula price. In most orders the Class I differential is a stated amount 'plus 20 cents.' The 'plus 20 cents,' which was instituted in these orders by amendment for specified periods prior to January 1, 1969, has been effective without a termination date since then. There is, therefore, no apparent need to continue listing the 'plus 20 cents' separately from the stated Class I differential. In the amended order language here adopted, the Class I differential for each order is stated as one amount, which includes the plus 20 cents heretofore listed separately." For these same reasons, a comparable change should be made in the manner of stating the Class I price differential in the South Texas order.

2. *Emergency action.* Proponents requested that the recommended decision on proposed amendments to the 62 orders under consideration be omitted to facilitate prompt effectuation of the advance pricing provisions. This request, which was denied for the 61 orders dealt with in the earlier decision, likewise is denied for the South Texas order.

A primary reason advanced by proponents for emergency action is the time-consuming procedures required for making price changes under the Economic Stabilization Program (Phase II). This is not a problem distinguishable on the record from the problems faced by participants in many other industries with respect to the pricing of their goods. Also, there is uncertainty at present of the extent to which the various categories of milk handlers are affected by that program. It cannot be concluded, therefore, that the requirements of the Economic Stabilization Act per se warrant the emergency action requested.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

No exceptions were filed in this proceeding with respect to the South Texas market.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a marketing agreement regulating the handling of milk, and an order amending the order regulating the handling of milk in the South Texas marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the Federal Register. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

October 1972 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as

hereby proposed to be amended, regulating the handling of milk in the South Texas marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on November 28, 1972.

PHILIP C. OLSSON,
Deputy Assistant Secretary.

ORDER[1] AMENDING THE ORDER, REGULATING THE HANDLING OF MILK IN THE SOUTH TEXAS MARKETING AREA

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the South Texas marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the South Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on November 7, 1972, and published in the FEDERAL REGISTER on November 11, 1972 (37 F.R. 24038) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the South Texas marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. In § 1121.22, paragraph (i) is revised as follows:

§ 1121.22 Additional duties of the market administrator.

* * * * *

(i) Publicly announce on or before:

(1) The fifth day of each month:

(i) The Class I price for the following month, and for the first month for which this paragraph is effective, the Class I price for the current month;

(ii) The Class I butterfat differential for the current month; and

(iii) The Class II price and Class II butterfat differential, both for the preceding month; and

(2) The 12th day of each month, the uniform price and the producer butterfat differential, both for the preceding month;

* * * * *

2. Section 1121.50 is revised as follows:

§ 1121.50 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

3. In § 1121.51, paragraph (a) is revised as follows:

§ 1121.51 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.68.

* * * * *

[FR Doc.72-20723 Filed 12-1-72;8:46 am]

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 580]

[Docket No. 72-31; Notice 1]

ODOMETER DISCLOSURE REQUIREMENTS

Notice of Proposed Rule Making

This notice, issued under the authority of the Motor Vehicle Information and Cost Savings Act (Public Law 92-513), proposes to adopt a new Part 580 in Title 49, Code of Federal Regulations, that would require any person who transfers ownership of a motor vehicle to give the transferee certain written disclosures with respect to the vehicle's odometer reading at the time of transfer of ownership.

Title IV of the Act is intended to prohibit tampering with motor vehicle odometers and to establish certain safeguards for purchasers. Among other safeguards, the Act in section 408(a) directs the Secretary of Transportation to prescribe rules:

> Requiring any transferor to give the following written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle:
>
> (1) Disclosure of the cumulative mileage registered on the odometer.
>
> (2) Disclosure that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled.

The rules are to prescribe the manner in which such information is to be disclosed and retained.

In order to carry out fully the intent of Congress, disclosure of the odometer mileage must be made each time a new or used vehicle is sold in the United States. In order to maximize the likelihood that both parties in each of these transactions are aware of the need for disclosure, it is necessary to provide for a disclosure statement that is closely linked with the documents that are required for transfer of ownership.

Rather than establish a Federal form for odometer disclosure or create some other document that does not presently occur in commercial transactions, it has been tentatively decided to make the certificate of title the principal medium for transmission of odometer information and to require transferors to make their disclosure on the face of the title document.

Use of the certificate of title has several advantages. In jurisdictions requiring

titling of motor vehicles, transfer of ownership is accomplished by completing an assignment form on the title certificate. The certificate of title is thus the document that the transferee is most likely to see. If space is provided on the certificate for odometer disclosure, both parties will be aware of the need for disclosure. Furthermore, the title is the document which accompanies the vehicle as it moves through the channels of commerce after sale or trade-in. Retention of the odometer information on the title itself appears to be the best available method of conveying accurate odometer information to the person who ultimately purchases the vehicle for his own use.

There are, however, some administrative difficulties in the use of the title document for odometer disclosure. The odometer laws in effect in a few States provide that a space is to be set aside on the certificate for odometer information. Adjustments to this effect in the title certificate in other States having title laws would be an important means of promoting compliance with the disclosure requirements. It appears that the form of the title document is in most cases a matter within the discretion of the State motor vehicle administrator, so that legislative action would not be necessary. The Act confers no authority on the Secretary to prescribe changes in the title certificate, but in the interests of uniformity a proposed form of disclosure for inclusion on the certificate is published in this notice. Comments are invited from the States on the practicability of changes in the title certificate.

Requiring the transferor to make disclosure on the title document may also have an effect on the manner in which the title passes from transferor to transferee. Under the law of some States, the title of a vehicle subject to a lien is retained by the lienor until the lien is satisfied. If the vehicle is sold before the lien is paid off, the seller may execute a power of attorney to the buyer (usually a dealer) authorizing him, upon satisfaction of the lien, to make subsequent assignments of ownership in the vehicle. In such a case the seller would not have the certificate of title in his possession. The proposed rules would have the effect of requiring the seller to gain access to the certificate for the purpose of executing the disclosure form. There may be other circumstances in which the execution of a disclosure on the title would require changes in current practices. Comments are also invited on this point.

The trend toward the certificate of title as the document for transfer of vehicle ownership has not yet resulted in title laws in all jurisdictions, and in several jurisdictions the laws are of such recent vintage that a majority of vehicles are not covered by certificates of title. In title jurisdictions, moreover, a new vehicle that is held by a dealer is not generally required to have a title. A significant number of vehicles are therefore not covered by titles and would not be affected by a disclosure rule requiring disclosure on the title. To cover this situation, this notice proposes to require a transferor of a motor vehicle for which no certificate of title is in effect to write the required odometer information on the document assigning ownership of the vehicle.

In States that supply forms for assignment of ownership, space for odometer information could be provided on the assignment document. However, the assignment would not be as useful as the certificate of title for purposes of retaining a record of the odometer mileage and communicating it to subsequent purchasers. It may be that there are better means of supplying such information in nontitle situations, and comments are requested on this point.

It is proposed that the rule be effective 6 months after issuance in the FEDERAL REGISTER.

In consideration of the foregoing it is proposed that a new Part 580 in Title 49, Code of Federal Regulations, be issued to read as set forth below. Comments are invited on the issues mentioned in the preceding discussion and on any other subjects relevant to the proposal. Comments should identify the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

Section 408(a) provides that the disclosure rules are to be issued within 90 days after enactment. In order to obtain the fullest possible evaluation of the comments to the proposed rule in the time remaining before the expiration of the 90-day period on January 18, 1973, comments are requested at the earliest date consistent with thoroughness, and, in any event, not later than January 11, 1973.

This notice is issued under the authority of section 408(a) of the Motor Vehicle Information and Cost Savings Act, Public Law 92-513 and the delegation of authority at 49 CFR 1.51.

Issued on November 29, 1972.

CHARLES H. HARTMAN,
Acting Administrator.

PART 580—ODOMETER DISCLOSURE REQUIREMENTS

§ 580.1 Scope.

This part prescribes rules requiring the transferor of a motor vehicle to make written disclosure to the transferee concerning the odometer mileage and its accuracy, as directed by section 408(a) of the Motor Vehicle Information and Cost Savings Act, Public Law 92-513.

§ 580.2 Purpose.

The purpose of this part is to provide each purchaser of a motor vehicle with odometer information to assist him in determining the vehicle's condition and value.

§ 580.3 Definitions.

All terms defined in sections 2 and 402 of the Act are used in their statutory meaning. Other terms used in this part are defined as follows: "Transferor" means any person who transfers his ownership in a motor vehicle by sale, gift, or any other means.

"Transferee" means any person to whom the ownership in a motor vehicle is transferred by purchase, gift, or any other means.

§ 580.4 Disclosure of odometer mileage.

(a) Each transferor of a motor vehicle shall furnish to the transferee at the time of transfer a written statement signed by the transferor, containing the following information:

(1) The odometer reading at the time of transfer;

(2) The transferor's current address; and

(3) The date of the transfer.

(b) In addition to the items listed in paragraph (a) of this section, if the transferor knows that the odometer reading differs from the number of miles the vehicle has actually traveled, and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the actual vehicle mileage is unknown.

(c) If a certificate of title is in effect for a motor vehicle, the disclosure statement required by paragraphs (a) and (b) of this section shall be written in ink on the certificate of title.

(d) If no certificate of title is in effect for a motor vehicle, the disclosure statement required by paragraphs (a) and (b) of this section shall be written in ink in the document transferring ownership to the transferee.

§ 580.5 Recommended form for disclosure.

In the interest of uniformity it is recommended that the following be incorporated into certificates of title and other documents used to transfer ownership in motor vehicles:

ODOMETER DISCLOSURE

Federal regulations require disclosure of the following information upon transfer of ownership. Failure to disclose accurate information may result in civil liability pursuant to § 409(a) of the Motor Vehicle Information and Cost Savings Act of 1972, Public Law 92-513.

Odometer reading _____

Check here if the odometer reading shown above is known to differ from the actual mileage because of factors other than odometer calibration error.

Date of transfer _____
Transferor's present address _____
_____
_____
Transferor's signature _____

[FR Doc.72-20786 Filed 12-1-72;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 19642; FCC 72-1037]

CERTIFICATION OR TYPE ACCEPTANCE

Proposed Filing and Grant Fees Requirements

In the matter of amendment of Part 1 of the Commission's rules to require simultaneous payment of the filing and grant fee with an application for certification or type acceptance, Docket No. 19642.

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

2. A schedule of application fees for a variety of authorizations became effective on March 17, 1964.[1] On July 1, 1970,[2] this schedule was revised and extended to include applications for equipment authorization. On March 24, 1971,[3] in response to a petition for reconsideration, the fee schedule with some minor changes was reaffirmed. The schedule of fees has subsequently been expanded as provisions for new Part 15 devices which require certification are incorporated in our rules. The fee required under this schedule is divided into two parts—a filing fee that must accompany the application, and a grant fee that must be paid within 45 days of the date of the grant.

3. Certification and type acceptance are equipment authorizations which we grant after review of test data submitted to the Commission. A grant of the latter kind of authorization is based upon appropriate testing by the manufacturer in terms of the current technical standards of the service in which the equipment will be operated under license and attaches to all units subsequently manufactured by the same person which are substantially identical to the ones tested and approved. Certification is used for other types of radiation devices such as TV receivers, operated under Parts 15 and 18 of our rules. A grant of this kind is based upon appropriate testing by the manufacturer in terms of the applicable technical standards and he is permitted to certificate the devices tested, and all others subsequently manufactured which are substantially identical, after notification to and acceptance by the Commission of the proposed certificate.

4. We have found that as the applicants for equipment authorizations gain familiarity with our rules and the presentation of information required by the Commission little difficulty is experienced in preparing an acceptable application. In cases where sufficient information and measurements data is not included with the application, grant of equipment authorization is deferred pending the receipt of the additional information required to complete the application; the Commission denies few of these applications. We estimate that greater than 95 percent of the applications received for equipment authorizations are granted by the Commission. The high percentage of authorizations which are granted is a result of the applicant's desire to pursue his application for certification or type acceptance until a grant is issued. This grant permits him to legally market (ship, sell, lease, import, etc.) the device he has developed or purchased. Some applicants for certification, recognizing the high probability that a grant will be made, have found it advantageous to submit the required filing and grant fee simultaneously. Such simultaneous filing is advantageous to the Commission since it decreases by one-half the number of transactions to be handled by the fee section. It also reduces application handling for processing groups, since it is not necessary to determine that fees are paid within the prescribed time. Thus simultaneous filing reduces substantially the administrative burden on the Commission. This is true, of course, provided the number of grants which are denied is small—a situation that exists in the case of applications for type acceptance and certification.

5. We are therefore proposing to make mandatory the simultaneous payment of filing and grant fees prescribed in Part 1 of the rules for equipment which is required by the Commission to be certified or type accepted. While we believe most of the procedures herein proposed to be self-explanatory, it may be helpful to discuss certain portions of the proposed rules.

Combined Fees for Certification and Type Acceptance

6. The present rules provide for the separate payment of filing and grant fees for certain equipment authorizations. The proposed rules require the combined payment of the filing and grant fees as set forth below. This will permit the Commission and applicants for these equipment authorizations to take full advantage of the economies possible through payment of a single combined fee. To provide an orderly transition period for the industry to adjust to this new procedure, simultaneous payment of fees will become mandatory on July 1, 1973.[4] Applications filed on or after that date will not be processed prior to the receipt of both the filing and grant fees. Should the Commission deem it necessary to deny a grant for certification or type acceptance, the grant fee will be refunded in full. The rules proposed herein will permit the withdrawal of a request for equipment authorization and remittance of the grant fee in full prior to the date such grant is made.

7. Authority for the adoption of the amendments herein proposed is contained in section 4(i) (47 U.S.C. sec. 154(i)) of the Communications Act, title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. sec. 483(a)), and Budget Bureau Circular A-25 and supplements thereto.

8. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before January 8, 1973, and reply comments on or before January 18, 1973. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision on the rules of general applicability which are proposed herein, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice. No extensions of time will be granted for filing either comments or reply comments.

9. In accordance with the provisions of § 1.419 of the Commission's rules and regulations, an original and 14 copies of all comments or other documents filed in this proceeding shall be furnished the Commission. Responses will be available for public inspection during the regular business hours in the Commission's public reference room at its headquarters in Washington, D.C.

Adopted: November 22, 1972.

Released: November 29, 1972.

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

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

1. Section 1.1102 is amended by adding a note immediately after paragraph (b), revising paragraphs (d) and (g) and adding a new (j) to read as follows:

§ 1.1102 Payment of fees.

* * * * *

(b) * * *

NOTE: Combined fees. See paragraph (j) of this section concerning simultaneous payment of filing and grant fees with applications for type acceptance or certification of equipment.

* * * * *

(d) Where a separate grant fee payment is prescribed in the various services, the fee will be payable within 45 days after grant by the Commission. In the broadcast services, the grant fee, based on a percentage of the consideration, in assignment and transfer cases must be transmitted by the new licensee immediately following consummation of the transfer or assignment. All grants, approvals, and authorizations issued by the Commission are made subject to payment and receipt of the applicable fee

[1] Docket No. 14507, report and order adopted May 6, 1963, FCC 63-414, 28 F.R. 4658; Docket No. 14507, memorandum opinion and order adopted Sept. 25, 1963, FCC 63-856, 28 F.R. 10911.

[2] Docket No. 18802, report and order adopted July 1, 1970 (35 F.R. 10988, 23 FCC 2d 880).

[3] Docket No. 18802, memorandum opinion and order adopted Mar. 24, 1971 (35 F.R. 6056, 28 FCC 2d 139).

[4] Or such earlier date as the Commission may determine to be practicable.

within the required period. Failure to make payment of the applicable fee to the Commission by the required date shall result in the grant, authorization, or approval becoming null and void and ineffective after that date.

* * * * *

(g) Applications and attached fees should be addressed to: Federal Communications Commission, Washington, D.C. 20554, or to the appropriate FCC field office and should not be marked for the attention of any individual bureau or office. Fee payments should be in the form of a check or money order payable to the Federal Communications Commission. The Commission will not be responsible for cash sent through the mails. All fees collected will be paid into the U.S. Treasury as miscellaneous receipts in accordance with the provisions of title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483A).

* * * * *

(j) Combined filing and grant fees with applications for certification and type acceptance of equipment: Each application for certification or type acceptance of equipment shall be accompanied by a combined payment covering the filing and grant fees for such application. Payment of filing and grant fees separately is permissible until July 1, 1973,[1] however, applicants are encouraged to submit fees simultaneously prior to this date. On or after July 1, 1973, applications will not be processed prior to payment of the combined filing and grant fee.

2. Section 1.1103 is amended by adding a new paragraph (c) to read as follows:

§ 1.1103 Return or refund of fees.

* * * * *

(c) Grant fees received as part of a combined fee payment pursuant to § 1.1102(j) will be refunded in the following instances:

(1) When an application for certification or type acceptance is dismissed or denied by the Commission.

(2) When a request for withdrawal of the application is received prior to the date of grant of certification or type acceptance.

(3) When the failure of an applicant for certification or type acceptance to reply to a request for additional information results in a dismissal of the application.

[FR Doc.72-20683 Filed 12-1-72;8:50 am]

FEDERAL POWER COMMISSION

[18 CFR Part 1]

[Docket No. R-460]

FORMER EMPLOYEES

Disqualification From Certain Proceedings

NOVEMBER 29, 1972.

Revision of § 1.4(c) of the Federal Power Commission's rules of practice and procedure dealing with appearances and practice before the Commission of former employees, to conform said section with 18 U.S.C. 207, regarding the disqualification of former officers and employees in matters connected with former duties or official responsibilities, Docket No. R-460.

Pursuant to 5 U.S.C. 553 and sections 308 and 309 of the Federal Power Act (49 Stat. 858-859; 16 U.S.C. 825g and 825h) and sections 15 and 16 of the Natural Gas Act (52 Stat. 829-830; 15 U.S.C. 717n, 717o), the Commission gives notice it proposes to revise § 1.4(c) of its rules of practice and procedure.

The basic prohibition against former employees practicing before the Federal Power Commission is fundamentally the same in both 18 CFR 1.4(c) and in the Criminal Code, 18 U.S.C. 207. However, 18 CFR 1.4(c) authorizes a discretionary exception which is too sweeping in light of the provision of 18 U.S.C. 207. The Code additionally prohibits a former employee from practicing, within 1 year after employment has ceased, in regards to matters before the Commission which were under the official responsibility of the former employee. The only exception to the statutory prohibitions is for certain former employees with outstanding scientific or technological qualifications and only when such exception would be in the national interest. The revision of 18 CFR 1.4(c), as herein proposed, would conform it to its statutory counterpart.

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than January 15, 1973, data, views, comments or suggestions in writing concerning all or part of the revision of 18 CFR 1.4(c) concerning the practice of former employees before the Federal Power Commission. Written submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Washington, D.C. 20426, during regular business hours. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name, title, mailing address, and telephone number of the person to whom communications concerning the proposal should be addressed, and whether the person filing them requests a conference at the Federal Power Commission to discuss the proposed revision. The Commission will consider all such written submittals before acting on the matters herein proposed. The staff, in its discretion, may grant or deny requests for conference.

The proposed revisions to § 1.4(c) of the Commission's rules of practice and procedure would be issued under authority granted the Federal Power Commission by the Federal Power Act as amended, particularly sections 308 and 309 (49 Stat. 858-859; 16 U.S.C. 825g and 825h) and by the Natural Gas Act, as amended, particularly sections 15 and 16 (52 Stat. 829-830; 15 U.S.C. 717n, 717o).

Section 1.4(c) of the rules of practice and procedure in Part 1, Subchapter A, Chapter 1, Title 18 of the Code of Federal Regulations is proposed to be revised as follows:

§ 1.4 Appearances and practice before the Commission.

* * * * *

(c) *Appearances of former employees.* (1) No person having served as a member, officer, expert, Administrative Law Judge, attorney, accountant, engineer, or other employee of the Federal Power Commission may practice before or act as attorney, expert witness, or representative in connection with any proceeding or matter before the Commission which such person has handled, investigated, advised, or participated in the consideration of, while in the service of the Commission.

(2) No person having been so employed may, within 1 year after his employment has ceased, practice before or act as attorney, expert witness, or representative in connection with any proceeding or matter before the Commission which was under the official responsibility of such person, as defined in 18 U.S.C. 202, while in the service of the Commission.

(3) Nothing in subparagraphs (1) and (2) of this paragraph shall prevent a former member, officer, expert, administrative law judge, attorney, accountant, engineer, or other employee of the Federal Power Commission with outstanding scientific or technological qualifications from practicing before, or acting as, an attorney or representative in connection with a particular matter in a scientific or technological field if the Chairman of the Commission shall make a certification in writing, published in the FEDERAL REGISTER, that the national interest would be served by such action or representation.

* * * * *

The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20771 Filed 12-1-72;8:48 am]

[18 CFR Parts 101, 104, 141, 201, 204, 260]

UNIFORM SYSTEM OF ACCOUNTS AND CERTAIN FORMS

Notice Denying Requests for Postponement of Conference

NOVEMBER 29, 1972.

Accounting for premium, discount and expense if issue, gains and losses on refunding and reacquisition of long-term debt, and interperiod allocation of income taxes, Docket No. R-424; amendments to the uniform systems of Accounts for Class A, B, C and public utilities and licenses and natural gas companies; deferred income taxes, Docket No. R-446.

On November 13, 1972, and November 24, 1972, the Public Service Commission of Wisconsin, and the Chairman of the

[1] Or such earlier date as the Commission may deem to be practicable.

NARUC Subcommittee of Staff Experts on Accounting, respectively, filed requests for a postponement of the conference in the above-designated matters until sometime in January 1973. The conference is scheduled for December 5, 1972, by notice issued November 10, 1972 (37 F.R. 24198, Nov. 15, 1972).[1]

Upon consideration, notice is hereby given that the requests for a postponement of the conference in the above-designated matters are denied.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20772 Filed 12-1-72;8:48 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 216]

MARINE MAMMALS

Taking and Importing

The Marine Mammal Protection Act of 1972, 86 Stat. 1027, Public Law 92-522, was signed on October 21, 1972, and has an effective date of December 21, 1972. The Act, in section 112, authorizes the promulgation of such regulations as are necessary and appropriate to carry out the purposes and policies of title I thereof.

The regulations proposed in this notice are those which are deemed to be of immediate importance and therefore should be in effect on the effective date of the Act. Other regulations authorized under the Act will be proposed as appropriate.

Written comments, views, or objections on these proposed regulations may be made to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, until the close of business on December 15, 1972. This period is shorter than the 30-day period customarily allowed due to the fact that the Act becomes effective on December 21, 1972, and it is in the public interest that certain regulations be effective on the same date. It is anticipated that interim regulations will be promulgated on December 21, 1972, effective as of such date. However, written comments, views, and objections may be made with respect to such regulations to the Director of the National Marine Fisheries Service during the additional 60-day period ending at the close of business on February 21, 1972. Final regulations on the matters covered by the interim regulations will be published as soon thereafter as practicable.

It is hereby proposed to revise the heading of Subchapter C of Title 50 of the Code of Federal Regulations to read "Marine Mammals," and to add a new Part 216 to such Title 50, reading as follows:

[1] Notice of proposed rule making in Docket No. R-424 was published at 36 F.R. 16069, Aug. 19, 1971, and in Docket No. R-446 at 37 F.R. 13805, July 14, 1972.

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart A—General

Sec.
216.1 Purpose and objectives.
216.2 Definitions.
216.3 Other laws and regulations.

Subpart B—Moratorium and Prohibitions

216.4 Moratorium.
216.5 Prohibitions.

Subpart C—Exceptions

216.6 Scope and purpose.
216.7 Exceptions not requiring prior Secretarial action—actions permitted by international treaty, convention and related statutes.
216.8 Same—takings and related acts by state or local government officials or employees.
216.9 Same—takings and related acts by certain natives.
216.10 Same—taking and related acts incidental to commercial fishing operations.
216.11 Same—exempted marine mammals and marine mammal products.
216.12 Exceptions requiring prior Secretarial approval—scientific research permits and public display permits.
216.13 Same—economic hardship exemption.
216.14 Same—waivers of the moratorium [Reserved].
216.15 Same—procedures for issuance of permits and modification, suspension or revocation thereof.
216.16 Same—possession of permit.

Subpart D—Penalties and Procedures for Their Assessment [Reserved]

AUTHORITY: The provisions of this Part 216 are issued under the authority of title I of the Marine Mammal Protection Act of 1972, 86 Stat. 1027, Public Law No. 92-522. This part applies solely to marine mammals and marine mammal products which are, or consist of, members of the Order Cetacea and members, other than walruses, of the Order Pinnipedia, which are morphologically adapted to the marine environment. For regulations under the aforesaid Act with respect to other marine mammals and marine mammal products, see 50 CFR Part 18.

Subpart A—General

§ 216.1 Purpose and objectives.

The following regulations implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, Public Law No. 92-522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals and marine mammal products.

§ 216.2 Definitions.

Except as otherwise set forth in this section, the definitions in the Act shall apply for purposes of this part.

(a) "Act" shall mean the Marine Mammal Protection Act of 1972, Public Law 92-522, 86 Stat. 1027.

(b) "Authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices, or other improved methods of production utilizing modern implements, such as sewing machines. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as cooperatives, is permitted so long as no large scale mass production industry results.

(c) "Commercial fishing operation" shall mean the lawful harvesting of fish from the marine environment for profit as part of an on-going business enterprise. Such term shall not include sport fishing activities whether or not carried out by charter boat or otherwise, and whether or not the fish so caught are subsequently sold.

(d) "Endangered species" shall mean a species or subspecies of marine mammal listed as threatened with extinction pursuant to the Endangered Species Conservation Act of 1969.

(e) "Incidental catch" shall mean the taking of a marine mammal because it is directly interfering with commercial fishing operations or as a consequence of the steps necessary to secure the fish in connection with commercial fishing operations.

(f) "'Indian, Aleut, or Eskimo" shall mean a citizen of the United States who is one-fourth degree or more American or Alaskan Indian (including Tsimshian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any such person either or both of whose adoptive parents do not fall within such definition. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States residing in the State of Alaska who is regarded as being an Indian, Aleut or Eskimo by the native village or town in Alaska of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as being an Indian, Aleut, or Eskimo by any native village or native town in such State. Any citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Indian, Aleut, or Eskimo for purposes of this part.

(g) "Marine environment" shall include estuarine and brackish waters.

(h) "Marine mammal" shall mean those members of the order Cetacea and those members, other than walruses, of the order Pinnipedia, which are morphologically adapted to the marine environment, and includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(i) "Native" shall mean any Indian, Aleut, or Eskimo as defined in paragraph (f) of this section, and "Alaskan native" shall mean any such person who is a resident of the State of Alaska.

(j) "Native village or town" shall mean any tribe, band, clan, group, village, community, or association of Alaskan natives in Alaska which the Alaska Native Claims Settlement Act or the Secretary of the Interior finds eligible for land conveyances under subsection 14(a) of that Act.

(k) "Pregnant" as to any marine mammal, shall mean near term. A marine mammal shall be presumed to be pregnant and near term, unless proven otherwise, if, at the time with respect to which such condition is sought to be established, such mammal would customarily have been pregnant and near term by reason of the season of the year, the location of the animal in the migratory pattern, or other relevant circumstances.

(l) "Products from fish" shall include the primary processed products of fish, such as fish meal, fish protein derivatives, or processed fish oil.

(m) "Secretary" shall mean the Secretary of Commerce or his authorized representative.

(n) "Subsistence purposes" shall mean, with respect to any marine mammal, the direct consumption by Alaskan natives of all usable portions of such mammal for food, clothing, shelter, heating, transportation, and the other necessities of life.

(o) "Take" shall mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal, including, without limitation, any of the following: The restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the operation of an aircraft or vessel, or the doing of any other acts, which results in the harassment of a marine mammal.

(p) "Wasteful manner" shall mean the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal, or which is likely to result in the killing or injuring of marine mammals beyond those needed for subsistence purposes or for the making of authentic native articles of handicrafts and clothing.

§ 216.3 Other laws and regulations.

(a) *Federal.* Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable wildlife and fisheries, health, quarantine, agriculture, or customs statutes or regulations.

(b) *State laws or regulations.* (1) Section 109 of the Act provides that on or after December 21, 1972, no State may adopt certain laws or regulations, or enforce certain existing laws or regulations, relating to marine mammals, except as otherwise therein and herein provided, unless such laws or regulations have been previously reviewed by the Secretary and determined by him to be consistent with the provisions of the Act and any rule or regulation promulgated thereunder, including, without limitation, the regulations, if any, promulgated under section 103 of the Act. In no event, however, will the Secretary approve any State laws or regulations which:

(i) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act, unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Secretary has waived the moratorium on such taking or importation under section 101(a)(3) of the Act; or

(ii) Purport to authorize a State to issue permits for scientific research or for public display (except that a State may, under authority of a general scientific research permit granted by the Secretary to it, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit); or

(iii) Purport to authorize the State to grant exemptions from the Act on the grounds of economic hardship under section 101(c) thereof.

(2) Any State may obtain a review and determination of its existing laws and regulations from the Secretary by submitting a written request to that effect to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, accompanied by the following documents, unless otherwise permitted by the Secretary:

(i) A complete set of the laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(ii) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

(iii) A description of the organization, staffing, and funding for the administration and enforcement of the laws and regulations to be reviewed;

(iv) A description, where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(v) Such other materials and information as the Secretary may request or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(3) In making a determination with respect to any State laws and regulations, the Secretary shall take into account:

(i) The extent to which such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(ii) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks of marine mammals; and

(iii) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(4) To assist States in preparing laws and regulations relating to marine mammals, the Secretary will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Secretary. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, and certified by the appropriate State official. In addition, they shall be accompanied to the extent available with the same materials required under subparagraph (2) of this paragraph, unless otherwise provided by the Secretary.

(5) All determinations by the Secretary (other than as a result of preliminary reviews of proposed laws and regulations) shall be final and binding on the parties.

(6) The implementation and enforcement of all State laws and regulations previously approved by the Secretary pursuant to this section shall be subject to continuous monitoring and review by the Secretary pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions, or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Secretary before their adoption.

(7) Notwithstanding the foregoing, nothing herein shall prevent (i) the taking of a marine mammal by a State or local government official pursuant to § 216.8, or (ii) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

Subpart B—Moratorium and Prohibitions

§ 216.4 Moratorium.

Except as otherwise provided in the Act or the regulations in this part, on or after December 21, 1972, there shall be a moratorium consisting of a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products.

§ 216.5 Prohibitions.

(a) During the continuance of the moratorium, except as otherwise provided in the Act or these regulations, the Act prohibits:

(1) Any person, vessel, or conveyance subject to the jurisdiction of the United States from taking any marine mammal on the high seas;

(2) Any person, vessel, or conveyance from taking any marine mammal in waters or on lands under the jurisdiction of the United States;

(3) Any person from using any port, harbor, or other place under the jurisdiction of the United States for any purpose in any way connected with the taking or importation of marine mammals or marine mammal products; or

(4) Any person subject to the jurisdiction of the United States from possessing any marine mammal taken in violation of the Act or these regulations, or from transporting, selling, or offering for sale any such marine mammal or any marine mammal product made from any such mammal.

(b) Regardless of whether the moratorium is continuing, except as otherwise provided by these regulations and the Act, the Act prohibits the importation into the United States of:

(1) Any marine mammal if such mammal was:

(i) Pregnant at the time of taking;

(ii) Nursing at the time of taking, or less than 8 months old, whichever occurs later;

(iii) Taken from a species or population stock designated as depleted by the Secretary or which has been listed as endangered under the Endangered Species Conservation Act of 1969;

(iv) Taken in a manner found to be inhumane by the Secretary;

(v) Taken in violation of the Act; or

(vi) Taken in another country in violation of the laws of that country;

(2) Any marine mammal product if:

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under the Act or the regulations in this part, or

(ii) The sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(c) In addition, the Act at all times prohibits any person from violating the provisions of any permit or regulation issued thereunder, including, without limitation, the use by any person in a commercial fishery of any means or methods of fishing in contravention of regulations issued by the Secretary for that fishery to achieve the purposes of the Act.

Subpart C—Exceptions

§ 216.6 Scope and purpose.

Notwithstanding the moratorium and prohibitions set forth in Subpart B of this part and the Act, marine mammals may be taken, marine mammals and marine mammal products may be imported into the United States, places subject to the jurisdiction of the United States may be used for such taking and importation, and it shall be lawful to possess, transport, sell, or offer for sale any marine mammal, or transport, sell, or offer for sale any marine mammal product, as and to the extent provided in the regulations in this subpart and the applicable provisions of the Act.

§ 216.7 Exceptions not requiring prior Secretarial action—actions permitted by international treaty, convention, and related statutes.

The Act and the regulations in this part shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same, relating to the taking, or importation, of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in Subpart B of this part and the provisions of the Act shall not apply to activities carried out pursant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151–1187, as, in each case, from time to time amended.

§ 216.8 Same—Takings and related acts by State or local government officials or employees.

(a) A State or local government official or employee may take a marine mammal in the course of his duties as an official or employee, and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat.

In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat.

(b) Each taking permitted under this section shall be reported in writing to the Secretary not more than 30 calendar days after its occurrence. Unless otherwise permitted by the Secretary, the report shall contain a description of:

(1) The animal involved;

(2) the circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including, in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Secretary may require.

The aforesaid reports shall be mailed to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235.

§ 216.9 Same—Takings and related acts by certain natives.

(a) Any marine mammal may be taken by any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean in the States of Alaska, Washington, Oregon, or California, and no permit shall be required, if the taking is:

(1) By Alaskan Natives for subsistence purposes of Alaskan Natives, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

In addition, any such Indian, Aleut, or Eskimo, and direct and indirect transferees of such native may, incidental to such taking and disposition, possess and transport such marine mammal or a marine mammal product made therefrom, and use any port, harbor, or other place under the jurisdiction of the United States. No marine mammal taken pursuant to subparagraph (2) of this paragraph may be sold except when transformed into authentic native articles of handicraft and clothing, provided that edible portions of such marine mammal may be sold in Alaskan Native villages and towns or for native consumption so long as, in each case, no interstate commerce is involved.

(b) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species or stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine mammals by any Indian, Aleut, or Eskimo and, during the existence of such regulations, all takings of such marine mammals by such persons shall conform to such regulations.

§ 216.10 Same—taking and related acts incidental to commercial fishing operations.

(a) Until October 21, 1974, marine mammals may be taken incidental to the course of commercial fishing operations, and no permit shall be required, so long as the taking constitutes an incidental catch. In addition, such mammals may, incidental to such taking, be possessed and transported, but not sold or offered for sale, by the persons involved in such commercial fishing operations and such persons may use any port, harbor, or other place under the jurisdiction of the United States.

(b) In furtherance of the Secretary's research and development program under section 109 of the act, the following

regulations shall apply: Any duly authorized agents of the Secretary may from time to time, after timely oral or written notice to the vessel owner or charterer, board and/or accompany commercial fishing vessels documented under the laws of the United States, whenever the Secretary determines that there is space available, on regular fishing trips, for the purpose of conducting research or observation operations. Such research and observation operations shall be carried out in such manner as to minimize interference with commercial fishing operations. No master, charterer, operator or owner of such vessel shall impair or in any way interfere with the research or observations being carried out. The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such agents on board such vessels. Notwithstanding the foregoing, the provisions of this paragraph (b) shall, until further notice published in the FEDERAL REGISTER, apply only to commercial fishing operations for tuna and tuna-like fishes and to salmon.

§ 216.11 Same—Exempted marine mammals and marine mammal products.

(a) The provisions of the Act and these regulations shall not apply—

(1) To any marine mammal taken before December 21, 1972, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) Subsection (b) (3) of section 102 of the Act shall not apply to marine mammals or marine mammal products imported into the United States before the date on which the Secretary publishes notices in the FEDERAL REGISTER of his proposed rule making with respect to the designation of the species or stock concerned as depleted or endangered; and subsection (c) (1) (B) and subsection (c) (2) (B) of section 102 of the Act shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(c) In order to assist processors, acquariums, zoos, and any other persons holding stocks or inventories of marine mammals or marine mammal products to prove their rights of exclusion from the provisions o the Act and these regulations pursuant to paragraph (a) of this section, there is hereby authorized a voluntary registration program. Any such person may register his inventories or stocks of marine mammals or marine mammal products which consist solely of marine mammals taken prior to December 21, 1972, with the Secretary by sending a complete listing of all such inventories or stocks to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, postmarked no later than midnight, January 8, 1973. In order to be eligible for registration, such stocks or inventories must be physically located within the jurisdiction of the United States, and the listing with respect thereto must contain the following information:

(1) In the case of living marine mammals, a breakdown showing each species or subspecies of animal, and within each such category, the number of animals involved, their age, sex, and location, and any distinctive brands or markings.

(2) As to nonliving marine mammals and marine mammal products, a listing per geographic location of each such marine mammal or marine mammal product segregated by species and subspecies, together with a description, by class, of the product or article involved. In addition, such description shall indicate which of the items listed constitute raw materials, work in process, or finished goods, and shall indicate any identifying marks or brands thereon.

Each such list shall be prepared and certified by an independent certified public accountant or independent attorney, and shall also be signed and attested by the person owning such inventory. In addition, no listing shall be accepted by the Secretary unless it contains the following certification:

I hereby certify that the information shown herein is complete, true, and correct and lists no marine mammals or marine mammal products consisting of marine mammals taken after midnight on December 20, 1972. This information is submitted for the purpose of obtaining the benefit of the provisions of the Marine Mammal Protection Act of 1972, and I understand that any false statement contained herein may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties under the Marine Mammal Protection Act of 1972.

There shall be a conclusive presumption that no marine mammal or marine mammal product shown on a listing furnished to the Secretary pursuant to this section was taken, or consists of a marine mammal which was taken, as the case may be, after December 21, 1972; *Provided, however,* That the Secretary may at his discretion refuse to accept all or any portion of any such list if he has reason to believe that such list is false, or if such list is insufficient to clearly identify the marine mammal or marine mammal products referred to therein. In the event that the Secretary shall determine to reject any list in whole or in part, he shall, as soon as practicable, notify the person submitting such list, in writing, of his decision indicating his reason for such rejection.

§ 216.12 Exceptions requiring prior secretarial action—scientific research permits and public display permits.

(a) Marine mammals may be taken and marine mammals and marine mammal products may be imported for the purposes of scientific research and for public display if such taking and/or importation is done pursuant to a valid permit issued by the Secretary in accordance with the following regulations. Incidental to such taking or importation, the permittee, or persons acting as agents for or dealing with the permittee, may possess and transport such marine mammal or marine mammal product, and use any port, harbor, or other place under the jurisdiction of the United States. Any person desiring to obtain a scientific research or display permit may make application therefor to the Secretary. Such application shall be in writing, addressed to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, and shall contain, unless otherwise permitted by the Secretary, the following information:

(1) The name and address of the applicant;

(2) A description of the marine mammal or the marine mammal product to be taken or imported, including the species or subspecies involved; the population stock, when known; the number of specimens or products (or the weight thereof, where appropriate); and the anticipated age, size, sex, and condition (i.e., whether pregnant or nursing) of the animals involved;

(3) A complete description of the location, date, and manner of the importation or taking;

(4) If the marine mammal is to be taken and transported alive, or held for public display, a complete description of the manner of transportation, care, and maintenance, including the type, size, and construction of the container or artificial environment; arrangements for feeding and sanitation; a statement of the applicant's qualifications and previous experience in caring for and handling captive marine mammals and a like statement as to qualifications of any common carrier or agent to be employed by the applicant to transport the animal; and a written certification of a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangemens for transporting and maintaining the animal and that in his opinion they are adequate to provide for the well-being of the animal;

(5) If the application is for a scientific research permit, a detailed description of the scientific research project or program in which the marine mammal of 1969, or has been designated by the including a copy of the research proposal relating to such program or project and the names and addresses of the sponsor or cooperating institutions and the scientists involved;

(6) If the application is for a scientific research permit, and if the marine mammal proposed to be taken or imported is listed as an endangered species pursuant to the Endangered Species Act of 1969, or has been designated by the Secretary as depleted, a detailed justification of the need for such a marine mammal, including a discussion of possible alternatives, whether or not under the control of the applicant;

(7) If the application is for a public display permit, a detailed description of the proposed use to which the marine

mammal or marine mammal product is to be put, including the manner, location, and times of display, whether such display is for profit, an estimate of the numbers and types of persons who it is anticipated will benefit from such display, and whether and to what extent the display is connected with educational or scientific programs. There shall also be included a complete description of the enterprise seeking the display permit and its educational, scientific, medical, or governmental connections, if any;

(8) Such other information as the Secretary may request.

(9) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (86 Stat. 1072) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(10) Such application shall be signed by the applicant.

The sufficiency of the application shall be determined by the Secretary.

(b) Upon receipt of an application for a scientific research permit or a public display permit, the Secretary shall forward the same to the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals for their review and recommendations. If the Commission or the Committee, as the case may be, does not respond negatively within 30 days from the receipt of such application, they shall be presumed to have recommended the issuance of a permit. The Secretary may also consult with any other person, institution or agency concerning the application.

(c) Permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 216.15.

(d) Permits applied for under this section shall contain such terms and conditions as the Secretary may deem appropriate, including

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the permit is valid;

(4) The methods of transportation, care and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the marine mammal, its progeny or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

§ 216.13 Same—economic hardship exemption.

(a) During a period not exceeding 1 year from the date of enactment of the Act (i.e., not beyond midnight October 20, 1973), in the discretion of the Secretary, marine mammals may be taken and marine mammal products may be imported by any person who has obtained from the Secretary an exemption for such taking or importation by reason of a showing that he will suffer undue economic hardship if such taking or importation is prohibited.

(1) Incidental to such taking or importation, the recipient of such exemption, and persons acting as agents for or dealing with such person, may possess and transport such marine mammal or marine mammal product, use any port, harbor, or other place under the jurisdiction of the United States and, to the extent specified in such exemption, sell or offer for sale such marine mammal or marine mammal product. Any person desiring to obtain an economic hardship exemption may make application to the Secretary. Such application shall be in writing, addressed to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, and shall contain, unless otherwise permitted by the Secretary, the following information:

(i) The information required by § 216.12(a) (1), (2), (3), (4), (8), (9), and (10);

(ii) A full statement of the facts, circumstances, and reasons why failure to grant an exemption under this section would lead to undue economic hardship, together with all supporting documents, including certified copies of all relevant corporate minutes and resolutions, contracts and agreements, financial commitments, and current and historical financial data. In particular, copies of all contracts, agreements, or other arrangements entered into prior to the enactment of the Act necessitating the taking or importation of marine mammals or marine mammal products and documents showing the dollar amount of anticipated loss or economic hardship should be enclosed.

(iii) If the exemption sought relates to scientific research, a detailed description of the scientific research project or program in which the marine mammal or marine mammal product is to be used, including a copy of the research proposal relating to such program or project and the names and addresses of the sponsoring or cooperating institutions and the scientists involved;

(iv) If the exemption sought relates to scientific research, and if the marine mammal proposed to be taken or imported is listed as an endangered species pursuant to the Endangered Species Act of 1969, or has been designated by the Secretary as depleted, a detailed justification of the need for such a marine mammal, including a discussion of possible alternatives, whether or not under the control of the applicant;

(v) If the exemption sought relates to public display, a detailed description of the proposed use to which the marine mammal or marine mammal product is to be put, including the manner, location, and times of display, whether such display is for profit, an estimate of the numbers and types of persons who it is anticipated will benefit from such display, and whether and to what extent the display is connected with educational or scientific programs. There shall also be included a complete description of the enterprise seeking the display permit and its educational, scientific, medical, or governmental connections, if any.

(a) The sufficiency of the application shall be determined by the Secretary.

(b) In determining whether to issue an economic hardship exemption, the Secretary shall consider, among other criteria, the following:

(1) The effect of granting the exemption on the species or populations stock in question and the marine ecosystem;

(2) The degree of economic hardship to be anticipated should the exemption not be granted;

(3) The economic and legal alternatives available to the applicant;

(4) The likelihood of the anticipated economic hardship; and

(5) Such of the criteria relative to the issuance of scientific research permits and/or public display permits as may be applicable to the application.

(c) Exemptions issued under this section shall contain such terms and conditions as the Secretary may deem appropriate, including—

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the exemption is valid;

(4) The methods of transportation, care, and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the exemption;

(6) The transferability or assignability of the exemption;

(7) The sale or other disposition of the marine mammal, its progeny, or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such exemption, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Failure to observe any of the terms and conditions of the exemption shall be cause for the revocation, suspension, or modification of the exemption by the Secretary in his sole discretion and may

subject the exemption holder to the penalties of the Act.

(e) In no event shall an exemption be granted pursuant to this section which continues in effect beyond midnight of October 20, 1973.

(f) The decision of the Secretary regarding the granting or denial of an exemption, or the revocation, modification or suspension thereof, shall be final and binding. Upon taking any such action, the Secretary shall notify the applicant or the exemption holder, as the case may be, in writing as soon as practicable of such action. The Secretary may, at his discretion, hold hearings on any applicant's request for an exemption under this section.

§ 216.14 Same—Waivers of the Moratorium. [Reserved]

§ 216.15 Same—Procedures for Issuance of Permits and Modification, Suspension or Revocation Thereof.

(a) Whenever application for a permit is received by the Secretary which the Secretary deems sufficient, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Such notice shall set forth a summary of the information contained in such application. Any interested party may, within 30 days after the date of publication of such notice, submit to the Secretary his written data or views with respect to the taking or importation proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Secretary determines that a hearing would otherwise be advisable, the Secretary may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section, the Secretary shall issue or deny issuance of the permit. Notice of the decision of the Secretary shall be published in the FEDERAL REGISTER within 10 days after the date of such issuance or denial. Such notice shall include the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension, or revocation by the Secretary in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken along with a summary of the reasons therefor; and

(2) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Secretary within 10 days after receipt of the aforesaid notice by the permittee.

The time and place for the hearing, if requested by the permittee, shall be determined by the Secretary and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of hearing specified. The Secretary may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and other parties participating may submit all relevant material, data, views, comments, arguments, and exhibits at the hearing. A summary record shall be kept of any such hearing.

(e) The Secretary shall make a decision regarding the proposed modification, suspension or revocation as soon as practicable after the close of the hearing, or if no hearing is held, as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the modification, suspension, or revocation shall be published in the FEDERAL REGISTER within 10 days from the date of the Secretary's decision. In no event shall the proposed action take effect until notice of the Secretary's decision is published in the FEDERAL REGISTER.

§ 216.16 Same—Possession of permit.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking or importation;

(2) The period of any transit of such person or agent which is incident to such taking or importation; and

(3) Any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

Subpart D—Penalties and Procedures for Their Assessment [Reserved]

Dated: November 30, 1972.

ROBERT M. WHITE,
Administrator, National Oceanic and Atmospheric Administration.

[FR Doc.72-20892 Filed 12-1-72;11:50 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 170]

FINANCIAL ASSISTANCE FOR CONSTRUCTION OF HIGHER EDUCATION FACILITIES

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth below (made pursuant to sections 701–782, 86 Stat. 288–296, 20 U.S.C. 711–746) prescribe certain policies and requirements for obtaining financial assistance for construction of eligible projects under Title VII of the Higher Education Act of 1965 (previously the Higher Education Facilities Act of 1963). Interested persons who wish to submit comments, suggestions, or objections pertaining thereto may present their views in writing to the U.S. Commissioner of Education, Department of Health, Education, and Welfare, 400 Maryland Avenue SW., Washington, DC 20202, within 30 days from the date of publication in the FEDERAL REGISTER. Comments received in response to the notice are available for public inspection at the Office of the Director, Division of Academic Facilities, Bureau of Higher Education, Room 4674, GSA Regional Office Building, Seventh and D Streets SW., Washington, DC 20202.

Dated: October 11, 1972.

S. P. MARLAND, JR.,
Commissioner of Education.

Approved: November 27, 1972.

ELLIOT L. RICHARDSON,
Secretary.

PART 170—FINANCIAL ASSISTANCE FOR CONSTRUCTION OF HIGHER EDUCATION FACILITIES

Subpart A—General Provisions

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AUTHORITY: The provisions of this Part 170 issued under secs. 711–782, 86 Stat. 288–296; 20 U.S.C. 711–746.

Subpart A—General Provisions

§ 170.1 Definitions.

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

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

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

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

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

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

(20 U.S.C. 751(a)(1))

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

(20 U.S.C. 751(a) (1) and (2))

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

(20 U.S.C. 751(f))

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

(20 U.S.C. 716)

(f) "Commissioner" means the U.S. Commissioner of Education or his designee.

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

(20 U.S.C. 711(a))

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

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

(2) "Initial equipment" means all items of equipment other than built-in equipment, which are necessary and appropriate for the initial functioning of a particular academic facility for its specific purpose. No equipment shall be considered as initial equipment unless it has been acquired or contracted for prior to the date on which the facility is first used for education of students.

(20 U.S.C. 751(b)(2))

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

(1) For purposes of determining State allotments, the number of full-time students enrolled in programs which consist wholly or principally of work normally creditable towards a bachelor's or higher degree plus one-third of the number of part-time students enrolled in such programs, plus 40 percent of the number of students enrolled in programs which are not chiefly transferable towards a bachelor's or higher degree plus 28 percent of the remaining number of

such students. Student enrollment figures for each fiscal year for the purposes of this computation shall be those contained in the most recent Office of Education survey containing data on opening fall enrollments in higher education.

(20 U.S.C. 713, 714)

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

(20 U.S.C. 716)

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

(20 U.S.C. 1141)

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

(20 U.S.C. 751(b)(1))

(l) "Secretary" means the Secretary of Health, Education, and Welfare or his designee.

(m) "State commission" means the State agency designated or established in each State which is broadly representative of the public and of institutions of higher education in that State. For the purposes of this subsection "broadly representative of the public" means that the membership of the Commission includes adequate representation both on the basis of sex and on the basis of the significant racial, ethnic, and economic groups in the State.

(20 U.S.C. 715(a))

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

(20 U.S.C. 715(a))

§ 170.2 Requirement for compliance with labor standards and equal employment opportunity requirements in all construction contracts.

All construction contracts pursuant to this part shall:

(a) Provide that all laborers and mechanics employed by contractors or subcontractors in the performance of work on construction assisted by such grant or loan will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

(20 U.S.C. 1232b)

(b) Include all applicable provisions for equal opportunity in employment, pursuant to Executive Order 11246, as amended by 11375 on all construction covered by the application, and comply with other requirements, imposed by or pursuant to that Executive order.

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

(a) All contracting for new construction, and all orders for the acquisition and installation of built-in equipment not covered by general construction contracts, shall be on a fixed price basis. Such contracts shall be awarded on the basis of open competitive bidding and contract awards shall be made to the lowest qualified bidder whose bid is responsive to the bid invitation.

(b) Except where the Commissioner specifically approves alternative contracting procedures due to special problems or conditions, all contracting for rehabilitation, renovation, remodeling, conversion, or improvement of existing structures shall be undertaken in accordance with the provisions of paragraph (a) of this section.

(c) Owner-furnished material or equipment may be procured in accordance with the procedures set out in § 170.4.

(d) The concurrence of the Commissioner must be obtained both before advertising for or soliciting bids and before awarding any contract covered under this section. Such concurrence will be given only after Federal assistance has been approved for the facility by an appropriate Federal agency.

(20 U.S.C. 718(a)(5))

§ 170.4 Requirement for economical methods of purchase of initial equipment.

All initial equipment, the cost of which is charged to a project covered by a grant or loan application under the Act, shall be procured in accordance with one of the following methods: (a) Open competitive bidding, either through public advertising or the solicitation of three or more bids, with contract award to be made to the lowest qualified bidder whose bid is responsive to the bid invitation; (b) procurement under existing contracts entered into by competitive means; (c) methods prescribed by State or local laws. An alternative to the methods cited above may be approved by the Commissioner if, in advance of procurement, the applicant satisfactorily demonstrates that such method is consistent with sound business practice.

(20 U.S.C. 718(b)(5))

§ 170.5 Fiscal control and fund accounting procedures.

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

(20 U.S.C. 715(a)(6))

(b) "Institutions, cooperative graduate center boards, and higher education building agencies." Applicants and, where applicable, their building agencies, shall maintain adequate and separate accounting and fiscal records and accounts of all funds provided from any source to pay the cost of construction (including necessary site acquisition and equipment) covered by the grant or loan application.

(20 U.S.C. 718(b)(7))

§ 170.6 Federal audits and retention of records.

(a) Federal Audits: The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the State commissions, institutions, cooperative graduate center boards, and higher education building agencies, which are pertinent to the program.

(20 U.S.C. 1232C)

(b) State commissions:

(1) Accounts and documents supporting expenditures of Federal funds by State commissions shall be maintained for a period of 3 years following the year in which the expenditures were made. The records shall be retained beyond the 3-year period if audit findings have not been resolved.

(2) Where the State commission purchases nonexpendable equipment items with Federal funds, inventories and other records supporting accountability for such items shall be maintained for a period of 3 years following final disposition of the equipment.

(3) State commissions shall establish a complete case file on each title VII–A application received; inform applicants of official actions and determinations by letter or similar type of correspondence, and shall retain records regarding each case for at least 2 years after final action with respect to any such application. In

addition, each State commission shall maintain a full record of all hearings on appeals pursuant to section 704(a)(5) of the Act, and all proceedings by which it establishes relative priorities and recommended Federal shares for eligible projects considered as of each specified closing data and shall retain such records for at least 3 years.

(20 U.S.C. 715(a)(6))

(c) "Institutions, cooperative graduate center boards, and higher education building agencies." All accounting records relating to approved projects, including bank deposit slips, contract payrolls, canceled checks and other supporting documents, purchase orders and contract awards (or microfilm copies thereof), shall be retained intact by the applicant and where applicable, by the applicant's building agency, for audit or inspection by authorized representatives of the Federal Government for a period of 3 years after completion of the project.

(20 U.S.C. 1232c)

§ 170.7 Determination of costs eligible for Federal participation.

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

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

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

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

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

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

(20 U.S.C. 751 (b) and (c))

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

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

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

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

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

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

In no event will an exception be made by the Commissioner pursuant to this paragraph unless the applicant produces evidence that the provisions of §§ 170.2, 170.3, and 170.4 have been met and has satisfied the Commissioner that the reasons for the applicant not having timely filed an application or secured the Commissioner's concurernce as provided for in subparagraph (b) of this paragraph were not due to any unwillingness on the part of the applicant to meet such conditions.

(20 U.S.C. 746)

§ 170.8 Compliance with other federally assisted construction requirements.

The Commissioner shall not approve any application for a grant or loan under the Act except upon assurance that:

(a) The construction will be undertaken in an economical manner and will not be elaborate or extravagant design or materials;

(20 U.S.C. 718(b)(5))

(b) The design will comply with all applicable State and local building codes, ordinances and regulations; or where the project is not subject to the provisions of State and local building codes or there is an absence of such building codes, the design will comply with the provisions of national codes which are recognized as a basis for minimum requirements in the geographical area of the project;

(c) Project facilities will conform with Executive Order 11296, "Unified National Program for Managing Flood Losses," 31 F.R. 10663, August 11, 1966;

(d) Project facilities will conform with Executive Order 11288, "Prevention, Control and Abatement of Water Pollution," 31 F.R. 9261, July 7, 1966;

(e) The project facilities, to the extent appropriate, will be accessible to and usable by handicapped persons;

(20 U.S.C. 751(a)(1))

(f) The applicant (public institutions or public building agencies only) will comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646 and 45 CFR 15 in order to assist persons and businesses displaced as a result of the construction of project facilities; and

(g) Each application shall contain an assessment of the effect of the project on the environment, which assessment will be evaluated by the Department of Health, Education, and Welfare to determine whether or not the potential environmental impact of the project warrants an "Environmental Impact Statement" as provided for under the National Environmental Policy Act of 1969 (Public Law 91–190).

§ 170.9 Urgency of need for projects of public institutions.

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

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

(20 U.S.C. 716, 731, 741, 746, 761 and Shannon vs. HUD, 436 F 2d 809)

Subpart B—Grants for Construction of Academic Facilities

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

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

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

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

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

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

(20 U.S.C. 713)

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

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

(20 U.S.C. 1141)

§ 170.13 Conditions for grant approval.

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

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

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

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

(4) The application contains or is supported by: (i) Satisfactory assurances that the applicant has the necessary legal authority to finance, construct, and maintain the proposed facilities, and to apply for and receive the proposed grant; and (ii) satisfactory evidence that the applicant has or will have a fee simple or such other estate or interest in the facilities and site, including access thereto, sufficient in the opinion of the Commissioner to assure undisturbed use and possession for the purpose of the construction and operation of the facilities for not less than 50 years from the date of the application.

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

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

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

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

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

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

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

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

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

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

(20 U.S.C. 718)

§ 170.14 Submission and processing of title VII–A applications.

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

(b) *Submission of project applications.* Applications for grants under title VII–A of the Act shall be submitted on forms supplied by the Commissioner, and shall contain such assurances as are required pursuant to the Act and the regulations in this part. Applications shall be submitted directly to the appropriate State commission, together with any supplemental information which may be required by the State commission. The State commission shall officially record the date of receipt of each application. Applications must be initially submitted in advance of inviting bids for construction. The application may be considered at only those closing dates which occur no later than 12 months after construction has started.

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

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

703 of the Act) and assigned relative priorities and recommended Federal shares in accordance with the provisions of the State plan.

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

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

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

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

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

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

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

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

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

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

(20 U.S.C. 719)

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

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

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

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

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

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

(4) A standard (at least 5 percent of total weight) designed to favor projects

submitted by institutions or branch campuses that are committed to the enrollment of a substantial number of students from low income families.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20 U.S.C. 717(a))

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

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

(b) Standards and methods for determining the Federal share pursuant to paragraph (a) of this section: (1) Must be objective and simple to apply; (2) may involve the use only of data which are to be submitted on the application form prescribed by the Commissioner, required by the State commission to be submitted on supplemental State forms to accompany the application, or contained in reports or publications readily available to the State commission and the institutions of higher education in the State; (3) must be such as will enable an applicant to calculate in advance (on the assumption that sufficient funds will be available to cover all applications) the minimum Federal share of the estimated eligible project development cost which the State commission will certify to the Commissioner if it recommends the project for a Federal grant; and (4) must be consistent with criteria published by the Commissioner with respect to the determination of relative priorities among projects and be promotive of the purposes of the Act.

(20 U.S.C. 717(b))

§ 170.17 State plans.

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

(b) All proposed amendments to the State plan shall be submitted to the Commissioner for his approval in such form and in accordance with such instructions as are established for that purpose. Such amendments shall apply uniformly to all applications to be considered together as of any closing date, and, unless otherwise provided in the State plan, shall become effective immediately upon approval by the Commissioner, except that in no event shall any amendment which affects the standards and methods for determining priorities or Federal share or any amendment providing for an additional closing date or for the change in an existing closing

date become effective sooner than 60 days after the date the proposal to make such amendment is received by the Commissioner and 30 days after the date of the Commissioner's approval of the amendments as a part of the State plan: *Provided, however,* That amendments which are required by amendments of the Act or of these regulations or are designed to implement promptly amendments of the Act or of these regulations may be effective immediately upon their approval by the Commissioner.

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

(20 U.S.C. 715)

§ 170.18 Adjustments in amount of Federal share.

Adjustments in the amount of Federal participation with respect to all Title VII A grants shall be subject to the following provisions:

(a) In any case where the costs eligible for Federal participation, as determined at the time of final settlement, exceed those provided for in the grant award the Federal share entitlement of the applicant shall be limited to that provided by the grant award.

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

(c) The Commissioner may from time to time, after award of the grant and prior to final settlement, adjust the grant amount to take into account any reductions of eligible project development cost which occur or are identified subsequent to the award of the grant.

(20 U.S.C. 719)

§ 170.19 Payment of grant funds on approved projects.

The Commissioner shall provide for payment of grant funds for approved projects pursuant to such methods as he determines will best make the funds available as needed and eliminate unnecessary expense to the Federal Government.

(20 U.S.C. 1232d)

Subpart C—Grants for Construction of Graduate Academic Facilities

§ 170.41 Eligibility for grants.

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

(20 U.S.C. 732(a))

§ 170.42 Submission of applications.

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

(20 U.S.C. 732 (a) and (c)(1))

§ 170.43 Facilities Panel.

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

(20 U.S.C. 732(c)(1))

§ 170.44 Criteria for evaluating applications.

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

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

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

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

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

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

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

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

(20 U.S.C. 732(c)(2))

§ 170.45 Special terms and conditions.

Before approving a Title VII B grant the Comissioner will require:

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

(b) Satisfactory evidence that the applicant has the necessary legal authority to finance, construct, and maintain the proposed facilities, and to apply for and receive the proposed grant.

(20 U.S.C. 732(a))

Subpart D—Loans for Construction of Academic Facilities

§ 170.51 Eligibility for loans.

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

(20 U.S.C. 742(c))

§ 170.52 Submission of applications.

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

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

(20 U.S.C. 741)

§ 170.53 Special terms and conditions.

Before approving a loan the Commissioner will require:

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

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

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

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

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

(20 U.S.C. 744(b) (1))

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

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

(20 U.S.C. 743(a) (1))

§ 170.55 Forms of evidence of indebtedness.

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

(20 U.S.C. 743(b))

§ 170.56 Security for loans.

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

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

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

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

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

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

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

(20 U.S.C. 743(b))

§ 170.57 Length and maturity of loans.

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

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

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

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

(20 U.S.C. 743(b))

§ 170.58 Bond counsel opinion.

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

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

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

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

(20 U.S.C. 744(b) (6))

§ 170.59 Determination of priorities for loan approvals.

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

(20 U.S.C. 744(b))

§ 170.60 Loan agreement.

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

(20 U.S.C. 744(b))

§ 170.61 Loan closing.

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

(20 U.S.C. 744(b))

§ 170.62 Interim financing.

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

(20 U.S.C. 744(b))

§ 170.63 Construction fund.

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

(20 U.S.C. 744(b))

§ 170.64 Investment of idle construction funds.

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

(20 U.S.C. 744(b))

§ 170.65 Disposal of balance remaining in the construction fund.

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

(20 U.S.C. 744(b))

Subpart E—Annual Interest Grants for Construction of Academic Facilities

§ 170.71 Eligibility for annual interest grants.

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

(20 U.S.C. 746(a))

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

(20 U.S.C. 746(e)(2))

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

(20 U.S.C. 744(b)(1))

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

(20 U.S.C. 744(b)(1))

§ 170.72 Amount of annual interest grants.

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

(20 U.S.C. 746(b))

§ 170.73 Submission of applications.

Each applicant desiring to receive annual interest grants shall submit an application for such grant assistance, in the manner and containing the information specified by the Commissioner. Applications shall be submitted directly to the appropriate Regional Office of the Department of Health, Education, and Welfare together with all required State agency comments. Applications must be submitted in advance of inviting bids for construction.

(20 U.S.C. 746)

§ 170.74 Condition for approval of annual interest grants.

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

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

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

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

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

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

(20 U.S.C. 746)

§ 170.75 Limits governing extent of Federal assistance.

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

(20 U.S.C. 746)

§ 170.76 Approval of financing plans.

(a) Except as provided in paragraph (b) of this section, in order to be acceptable a financing plan submitted pursuant to § 170.73 must:

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

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

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

(b) Financing plans may also be acceptable where the term of the loan is longer than 30 years or the annual installments of interest and principal are

not substantially level, if the Commissioner finds that unusual circumstances warrant such exceptions: *Provided, however,* That in no event shall the term of the loan exceed 40 years.

(20 U.S.C. 746)

§ 170.77 Evidence of lowest possible cost of loan.

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

(20 U.S.C. 746(e) (2))

§ 170.78 Annual interest grant agreement.

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

(20 U.S.C. 746(b))

§ 170.79 Payment of annual interest grants.

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

(20 U.S.C. 746)

§ 170.80 Reduction of grant where refinancing produces lower cost.

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

(20 U.S.C. 746(c) (2))

§ 170.81 Conversion of direct loans to annual interest grants.

Applicants who have already secured approval of a direct loan under this part or who have applications on file with the Office of Education which have not yet been approved will be given an opportunity to convert such loans or applications for such loans to annual interest grants or applications for annual interest grants under the provisions of this subpart.

(20 U.S.C. 746)

§ 170.82 Priority considerations; closing dates.

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

(20 U.S.C. 746)

§ 170.83 Preceding provisions not exhaustive of authority of Government.

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

(20 U.S.C. 746)

[FR Doc.72-20746 Filed 12-1-72;8:47 am]

[45 CFR Part 185]

EMERGENCY SCHOOL AID

Minority Group Isolation; Grants or Contracts

Pursuant to the authority contained in the Emergency School Aid Act (title VII of the Education Amendments of 1972, 86 Stat. 354, 20 U.S.C. 1601), the Assistant Secretary for Education, with the approval of the Secretary of Health, Education, and Welfare, hereby proposes to amend Title 45 of the Code of Federal Regulations by adding a new Part 185 as set forth below.

The new Part 185 sets out a proposed regulation governing grants to or contracts with local educational agencies and other public or nonprofit private agencies, institutions, or organizations under the Emergency School Aid Act for the purposes of (1) meeting the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools; (2) eliminating, reducing, or preventing minority group isolation in elementary or secondary schools with substantial portions of minority group students; and (3) aiding schoolchildren in overcoming the educational disadvantages of minority group isolation.

The Assistant Secretary will make awards of assistance, on the basis of criteria set forth in this notice, to support activities by local educational agencies and other public or nonprofit private agencies, institutions, or organizations which promise to make substantial progress in achieving the above-stated purposes. Local educational agencies may apply for assistance under Subpart B of the proposed regulation for activities in relation to a plan for desegregation or for the elimination, reduction, or prevention of minority group isolation in their elementary and secondary schools, or for establishment of one or more integrated schools with substantial proportions of children from educationally advantaged backgrounds. Other public or nonprofit private agencies, institutions, or organizations may apply for assistance under Subpart G of the proposed regulation for activities in support of the development or implementation of such plans.

In addition, local educational agencies with minority group enrollments constituting either 50 percent of their total enrollment or 15,000 children, if operating under a plan for desegregation or for the elimination, reduction, or prevention

of minority group isolation, may apply for assistance under Subpart C of the proposed regulation for unusually promising pilot projects designed to overcome the adverse educational effects of minority group isolation in minority group isolated schools.

All applicants must establish broadly representative advisory committees composed of parents, teachers, students, and representatives of community organizations, and must consult with such committees in the planning and implementation at any proposed program, project, or activity. Before submitting applications for assistance under Subparts B and C, local educational agencies must also hold at least one public hearing to explain and receive recommendations concerning such applications. In addition, local educational agencies which receive assistance under Subparts B and C must establish student advisory committees at secondary schools affected by the approved program, project, or activity.

Educational agencies applying for assistance are covered by civil-rights-related eligibility conditions concerning transfer of property or services to discriminatory nonpublic schools, discrimination against minority group faculty and staff, separation of minority and nonminority group children within schools, and discrimination against children. Local educational agencies must also provide in their applications for the participation, on an equitable basis, of children, teachers, and other educational staff enrolled in or employed by the appropriate nonpublic, nonprofit elementary and secondary schools. These requirements are detailed in subpart E of the proposed regulation.

Proposed subparts of the regulation concerning metropolitan area projects, bilingual projects, educational television, evaluation, and special projects will be published at a later date.

Federal financial assistance provided pursuant to the Emergency School Aid Act is subject to the regulation in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare and approved by the President, to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulation to Dr. Herman R. Goldberg, Associate Commissioner, Equal Educational Opportunity, Room 2029, 400 Maryland Avenue SW., Washington, DC 20202, within 20 days from the date of publication of this notice in the FEDERAL REGISTER. Comments received in response to this notice will be available for public inspection at Room 2029, 400 Maryland Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday.

Dated: November 21, 1972.

S. P. MARLAND, Jr.,
Assistant Secretary for Education.

Approved: November 29, 1972.

ELLIOT L. RICHARDSON,
Secretary.

PART 185—EMERGENCY SCHOOL AID ACT

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Appendix A—Grant Terms and Conditions

AUTHORITY: Except as specifically noted below, the provisions of this Part 185 are issued under Title VII of Public Law 92-318, 86 Stat. 354-371 (20 U.S.C. 1601-1619).

Subpart A—Purpose

§ 185.01 Purpose.

Programs, projects, or activities assisted under the Act shall be for the purpose of achieving one or more of the following objectives:

(a) Meeting the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools;

(b) Eliminating, reducing, or preventing minority group isolation in elementary and secondary schools with substantial proportions of minority group students;

(c) Aiding school children in overcoming the educational disadvantages of minority group isolation.

(Public Law 92-318, section 702(b))

§ 185.02 Definitions.

Except as otherwise specified, the following definitions shall apply to the terms used in this part:

(a) The term "Assistant Secretary" means the Assistant Secretary of Health, Education, and Welfare for Education.

(Public Law 92-318, section 720(1))

(b) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(Public Law 92-318, section 720(3))

(c) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the provision of educational services, such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and other related material.

(Public Law 92-318, section 720(4))

(d) The term "institution of higher education" means an educational institution in any State which:

(1) Admits as regular students only individuals having a certificate of graduation for a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's degree; or provides not less than a 2-year program which is acceptable for full credit toward such a degree, or offers a 2-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semi-professional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association listed by the Commissioner of Education for the purposes of this paragraph.

(Public Law 92-318, section 720(5))

(e) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a federally recognized Indian reservation, or such combination of school districts, or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies; and includes any other public institution

or agency having administrative control and direction of a public elementary or secondary school and where responsibility for the control and direction of the activities in such schools which are to be assisted under the Act is vested in an agency subordinate to such a board or other authority, the Assistant Secretary may consider such subordinate agency as a local educational agency for purposes of the Act.

(Public Law 92-318, section 720(8))

(f) (1) The term "minority group" refers to (i) persons who are Negro, American Indian, Spanish-surnamed American, Portuguese, Oriental, Alaskan natives, and Hawaiian natives, and (ii) (except for purposes of section 705 of the Act), as determined by the Assistant Secretary, persons who are from environments in which a dominant language is other than English and who, as a result of language barriers and cultural differences, do not have an equal educational opportunity.

(2) The term "Spanish-surnamed American" includes persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry.

(Public Law 92-318, section 720(9))

(g) The terms "minority group isolated school" and "minority group isolation" in reference to a school mean a school and condition, respectively, in which minority group children constitute more than 50 percent of the enrollment of a school.

(Public Law 92-318, section 720(10))

(h) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(Public Law 92-318, section 720(12))

(i) The term "State" means one of the 50 States or the District of Columbia. For purposes of section 708(a) of the Act, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands shall be deemed to be States.

(Public Law 92-318, section 720(14))

(j) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law for such purpose.

(Public Law 92-318, section 720(15))

(k) The term "desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" does not mean the assignment of students to public schools in order to overcome racial imbalance.

(42 U.S.C. 2000c(b))

(l) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(m) The term "nonprofit" as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(Public Law 92-318, section 720(11))

(n) The term "the Act" means the Emergency School Aid Act (title VII of Public Law 92-318).

§ 185.03 General terms and conditions.

Grants awarded pursuant to this part shall be subject to the general terms and conditions attached as Appendix A to this part.

(Public Law 92-318, title VII)

§§ 185.04–185.10 [Reserved]

Subpart B—Basic Grants

§ 185.11 Eligibility for assistance.

(a) *Plans pursuant to court or agency order.* (1) A local educational agency may apply for assistance under this subpart if it is implementing a plan which has been undertaken pursuant to a final order issued by a court of the United States, or a court of any State, or any other State agency or official of competent jurisdiction, and which requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency, or otherwise requires the elimination or reduction of minority group isolation in such schools. For purposes of this subparagraph, a State agency or official of competent jurisdiction means any State agency or official authorized pursuant to State law to issue such an order.

(2) A local educational agency may apply for assistance under this subpart if it is implementing a plan which has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 for the desegregation of minority group segregated children or faculty in such schools.

(Public Law 92-318, section 706(a)(1)(A))

(b) *Nonrequired plans.* (1) A local educational agency may apply for assistance under this subpart if, without having been required to do so, it has adopted and is implementing, or will, if assistance is made available to it under this subpart, adopt and implement, a plan for the complete elimination of minority group isolation in all the minority group isolated schools of such agency. The term "complete elimination of minority group isolation," for purposes of this subparagraph, refers to a condition in which no school operated by a local educational agency has or will have (upon implementation of such plan) a minority group enrollment of more than 50 percent, where (prior to the implementation of such plan) minority group children attended one or more schools operated by such agency in which they constituted more than 50 percent of the enrollment.

(2) A local educational agency may apply for assistance under this subpart if it has adopted and is implementing, or will, if assistance is made available to it under this subpart, adopt and implement, a plan to eliminate or reduce minority group isolation in one or more of the minority group isolated schools of such agency, or to reduce the total number of minority group children who are in minority group isolated schools of such agency.

(i) Elimination of minority group isolation, for purposes of this subparagraph, refers to a change in the enrollment of one or more schools operated by a local educational agency (pursuant to such plan) whereby the proportion of minority group children attending such school or schools is reduced from a proportion greater than 50 percent to a proportion of 50 percent or less.

(ii) Reduction of minority group isolation, for purposes of this subparagraph, refers to the reduction, but not below 50 percent (pursuant to each plan), of the proportion of minority group children attending one or more schools operated by a local educational agency at which school or schools such children constitute more than 50 percent of the enrollment.

(3) A local educational agency may apply for assistance under this subpart if it has adopted and is implementing, or will, if assistance is made available to it under this subpart, adopt and implement, a plan to prevent minority group isolation reasonably likely to occur (in the absence of assistance under this subpart) in any school operated by such agency in which school at least 20 percent, but not more than 50 percent, of the enrollment consists of minority group children.

(4) A local educational agency may apply for assistance under this subpart if, without having been required to do so, it has adopted and is implementing, or will, if assistance is made available to it under this subpart, adopt and implement, a plan to enroll and educate in the schools of such agency children who would not otherwise be eligible for enrollment because of nonresidence in the school district of such agency, where such enrollment would make a significant contribution toward reducing minority group isolation in one or more of the school districts to which such plan relates. Such a plan shall not be deemed to make a significant contribution toward reducing minority group isolation unless such plan involves the enrollment by a local educational agency of at least 25 children who would not otherwise be eligible for enrollment because of nonresidence in the school district of such agency. Reducing minority group isolation in one or more school districts, for purposes of this subparagraph, refers to actions undertaken by a local educational

agency (pursuant to such plan) which has any of the effects described in subparagraphs (1), (2)(i), or (2)(ii) of this paragraph.

(5) A local educational agency shall be deemed to have adopted and implemented a plan described in this paragraph without having been required to do so, if such plan has not been undertaken pursuant to a final order issued by a court of the United States, or a court of any State, or any other State agency or official of competent jurisdiction, or has not been required and approved by the Secretary under title VI of the Civil Rights Act of 1964, notwithstanding the fact that such plan may be required by, or such local educational agency may be acting pursuant to, the Constitution and laws of the United States or of any State.

(Public Law 92-318, sections 706(a)(1) (B), (C), and (D), 720(10))

(c) *Implementation of a plan.* (1) For purposes of determining eligibility for assistance under this subpart, a local educational agency shall be deemed to be implementing a plan if it is operating its school system in accordance with the requirements of such plan. The eligibility of a local educational agency for consideration under the Act shall not be affected by the date on which its plan was adopted, or ordered to be adopted, or by the fact that the steps to be taken under the plan have been completed.

(2) Where the eligibility of a local educational agency is based on a plan described in paragraph (b) of this section, such agency shall provide assurances and information satisfactory to the Assistant Secretary that such plan has been adopted and implemented, or will be adopted and implemented if assistance is made available to it under this subpart, including:

(i) A copy of a school board resolution or other evidence of final official action adopting and implementing such plan, or adopting and agreeing to implement such plan upon the award of assistance under the Act; and

(ii) In the case of a plan to be implemented upon the award of assistance under the Act, evidence that notice of the contents of such plan and of the intent to implement it upon the award of such assistance has been published in a newspaper of general circulation serving the school district of such agency no later than 20 days prior to submission by such agency of an application for such assistance.

(3) An application of a local educational agency for assistance under this subpart shall be accompanied by (i) a complete copy of the plan, including all relevant legal documents, which such agency has adopted and is implementing (or will adopt and implement if such assistance is made available) and upon which such agency bases its application for such assistance; (ii) a summary of the present requirements for such plan; and (iii) a concise statement showing the relationship between such plan and the program, project, or activity for which such assistance is sought.

(Public Law, 92-318, sections 706(a)(1) (B), (C), and (D), 707)

(d) *Integrated schools projects.* (1) A local educational agency in the schools of which more than 50 percent of the number of children enrolled are minority group children, which agency has applied for and will receive assistance under Subpart C of this part, may apply for assistance under this subpart, in an amount not to exceed the sum to be awarded under Subpart C of this part, for the establishment or maintenance of one or more integrated schools.

(2) (i) For purposes of this paragraph, an integrated school must have an enrollment in which (*a*) at least 40 percent of the children are from families whose income is higher than the median family income for the school district served by the local educational agency (or the appropriate governmental unit for which such information is available), or (*b*) at least 50 percent of the children currently score at or above the 60th percentile on a recognized standard reading achievement test when compared with students of comparable age or grade level in the schools of such agency as a whole, and in which the number of nonminority group children constitutes that proportion of the enrollment which will achieve stability (in no event more than 65 percent of such enrollment, nor less than the proportion of nonminority children in attendance at all the schools operated by such agency).

(ii) For purposes of this paragraph, an integrated school must have a faculty in which (*a*) the percentage of minority group teachers, supervisors, and administrators, taken together, is within 10 percent of the percentage of minority group members residing in the school district served by the local educational agency (or the appropriate governmental unit for which such information is available), or (*b*) where the percentage of minority group teachers, supervisors, and administrators, taken together, has increased by 10 percent or more over the 3 fiscal years immediately preceding the year or years for which assistance is sought under this paragraph, the percentage of such personnel is within 10 percent of the percentage which exists in the faculty of such agency as a whole.

(Public Law 92-318, sections 706(a)(3), 720(7))

§ 185.12 Authorized activities.

(a) The following activities are authorized to be carried out with financial assistance made available under this subpart when such activities would not otherwise be funded and are designed to carry out the purposes described in § 185.01. Such activities shall be directly related to, and necessary to, the implementation of a plan or project described in § 185.11:

(1) Remedial services, beyond those provided under the regular school program conducted by the local educational agency, including student to student tutoring, to meet the special needs of children (including gifted and talented children) in schools which are affected by a plan or project described in § 185.11, when such services are deemed necessary to the success of such plan or project;

(2) The provision of additional professional or other staff members (including staff members specially trained in problems incident to desegregation or the elimination, reduction, or prevention of minority group isolation) and the training and retraining of staff for such schools;

(3) Recruiting, hiring, and training of teacher aides;

(4) Inservice teacher training designed to enhance the success of schools assisted under the Act through contracts with institutions of higher education, or other institutions, agencies, and organizations individually determined by the Assistant Secretary to have special competence for such purpose;

(5) Comprehensive guidance, counseling, and other personal services for children in schools affected by a plan or project described in § 185.11;

(6) The development and use of new curricula and instructional methods, practices, and techniques (and the acquisition of instructional materials relating thereto) to support a program of instruction for children from all racial, ethnic, and economic backgrounds, including instruction in the language and cultural heritage of minority groups;

(7) Educational programs using shared facilities for career education and other specialized activities;

(8) Innovative interracial educational programs or projects involving the joint participation of minority group children and other children attending different schools, including extracurricular activities and cooperative exchanges or other arrangements between schools within the same or different school districts;

(9) Community activities, including public information efforts in support of a plan, program, project, or activity described in the Act;

(10) Administrative and auxiliary services to facilitate the success of the program, project, or activity assisted under this subpart;

(11) Planning programs, projects, or activities assisted under this subpart, the evaluation of such programs, projects, or activities, and dissemination of information with respect to such programs, projects, or activities;

(12) Repair or minor remodeling, or alteration of existing school facilities (including the acquisition, installation, modernization, or replacement of instructional equipment) and the lease or purchase of mobile classroom units or other mobile education facilities.

(Public Law 92-318, sections 702(b), 707(a))

(b) The activities authorized under paragraphs (a) (10) and (11) of this section shall be assisted only as part of,

and in conjunction with, a comprehensive educational program, project, or activity designed to carry out the purposes described in § 185.01.

(Public Law 92-318, sections 702(b), 707(a))

(c) Applications by local educational agencies for assistance under this subpart shall include an assurance that in the case of a proposed program or project which includes activities authorized under paragraph (a)(3) of this section, preference in recruiting and hiring teacher aides shall be given to parents of children attending schools assisted under the Act.

(Public Law 92-318, section 707(a)(3))

(d) The term "repair or minor remodeling or alteration," for purposes of paragraph (a)(12) of this section, means the making over or remaking, in a previously complete building or facility, of space used or to be used for activities otherwise authorized by this section, where such making over or remaking is necessary for effective use of such space for such purpose and where no other space is available for such use. The term does not include building construction, structural alterations to buildings, building maintenance, or general or large-scale renovation of existing buildings or facilities. In no case may more than 10 percent of the amount made available to the applicant under this subpart be used for activities authorized under paragraph (a)(12) of this section.

(Public Law 92-318, section 707(a)(12))

§ 185.13 Applications.

An applicant desiring to receive assistance under this subpart for any fiscal year shall submit to the Assistant Secretary an application therefor for that fiscal year, which application shall set forth a program, project, or activity under which, and such policies and procedures as will assure that, the applicant will use the funds received under this subpart only for the activities set forth in § 185.12. Such application, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the applicant and by the Assistant Secretary. Such application shall contain the following:

(a) *Additional cost.* An assurance that funds paid to the applicant under such application will be used solely to pay the additional cost to the applicant in carrying out the program, project, or activity described in the application, and that the funds requested in the application represent the additional cost to the applicant arising out of activities authorized under the Act, above that of the activities normaly carried out by such appicant.

(1) In determining whether a cost of an activity for which assistance is sought under the Act is an additional cost, for purposes of this paragraph, the Assistant Secretary shall take into account only the actual, incremental cost of such activity. Incremental costs, for purposes of this paragraph, are those costs which can be identified specifically with a particular cost objective related solely to the activity to be assisted, and are not those costs incurred for a common or joint purpose benefiting any cost objective or objectives not so related to such activity.

(2) The cost of an activity which was supported by an applicant with funds from other sources during the fiscal year preceding the fiscal year or years for which assistance is sought under the Act, and for which funds available from such other sources for the fiscal year or years for which such assistance is sought have not been reduced except by the action of such applicant, shall not be considered as an additional cost to such applicant.

(Public Law 92-318, sections 706(c), 710(a)(4))

(b) *Administration by applicant.* An assurance that the program for which assistance is sought will be administered by the applicant, and that any funds received by the applicant under the Act, and any property derived therefrom, will remain under the administration and control of the applicant;

(Public Law 92-318, section 710(a)(5))

(c) *Unavailability of non-Federal funds.* An assurance that the applicant is not reasonably able to provide, out of non-Federal sources, the assistance for which application is made;

(Public Law 92-318, section 710(a)(6))

(d) *Evaluation.* An assurance that the applicant will cooperate with the Assistant Secretary or any State educational agency, institution of higher education, or private organization, institution, or agency, including a committee established pursuant to § 185.41(a), in the evaluation by the Assistant Secretary or such agencies, institutions, or organizations of specific plans, programs, projects, or activities assisted under the Act. Such evaluations may require the establishment or maintenance of control groups or schools, and may include a reasonable number of interviews with, or questionnaires, achievement tests, and other evaluation instruments administered to, administrators, principals, teachers, students, program or project staff, and community members at reasonable times and places. Such evaluations may also require the applicant to provide reasonable assistance in the organization and administration of the evaluation, including recordkeeping. Where determined to be appropriate by the Assistant Secretary, participation by the applicant in an evaluation conducted pursuant to this paragraph shall be considered fulfillment of the requirements for local evaluation under paragraph (k)(1) of this section.

(Public Law 92-318, sections 710(a)(15), 713)

(e) *Compliance with plan.* An assurance that the applicant will carry out, and comply with, all provisions, terms, and conditions of any plan, program, project, or activity upon which a determination of its eligibility for assistance under the Act is based;

(Public Law 92-318, section 710(a)(9))

(f) *Religious activity.* An assurance that Federal funds made available under the Act will not be used in connection with any sectarian activity or religious worship, or in connection with any part of a school or department of Divinity. The term "school or department of Divinity" means an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(g) *Supplementing of non-Federal funds.* (1) An assurance that funds made available to the applicant under the Act will be so used (i) as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of funds under the Act, be available from non-Federal sources for the purposes of the program for which assistance is sought, and for promoting the integration of the schools of the applicant, and for the education of children participating in the proposed program, project, or activity, and (ii) in no case, as to supplant such funds from non-Federal sources; and (2) an itemization of all funds from non-Federal sources used for purposes of the Act or for promoting integration anywhere in the school system, for the fiscal year or years for which assistance is sought and for the 2 fiscal years immediately preceding the first year for which assistance is sought;

(Public Law 92-318, sec. 710(a)(10)(A))

(h) *Coordination.* An assurance that funds made available under any other law of the United States will be used in coordination with funds made available under the Act, to the extent consistent with such other law; and a statement of procedures employed by the applicant to coordinate its proposed program, project, or activity under the Act with projects conducted pursuant to Titles I, III, and VII of the Elementary and Secondary Education Act of 1965 and Title IV of the Civil Rights Act of 1964. Coordination, with respect to the assurance required by this paragraph, includes the following policies or procedures:

(1) Taking all practicable steps to obtain Federal assistance under any other law of the United States for which the applicant is eligible;

(2) Applying funds made available under the Act in such manner as not to duplicate or counteract the effects of funds made available under such other laws; and

(3) When practicable, applying funds made available under the Act so as to increase the impact or effectiveness of funds made available under such other laws, or to provide the same or similar benefits to children in need of, but not able to participate in, programs conducted under such other laws.

(Public Law 92-318, secs. 710(a)(8), 710(a)(10)(B); Senate Rept. No. 92-798, p. 217)

(i) *Maintenance of effort.* (1) An assurance (i) that the applicant has not reduced its fiscal effort for the provision of free public education for children in attendance at its schools for the fiscal year or years for which assistance is sought under the Act to less than that of the second preceding fiscal year, and (ii) that the current expenditure per pupil which such agency makes from revenues derived from its local sources for the fiscal year or years for which assistance under the Act will be made available to the applicant is not less than such expenditure per pupil which such agency made from such revenues for (*a*) the fiscal year preceding the fiscal year during which the agency began implementation of the plan with respect to which assistance is sought under the Act, or (*b*) the third fiscal year preceding the first fiscal year for which assistance will be made available under the Act, whichever is later; and (2) a statement of total local revenues available for expenditure and the tax rate applied by the responsible governmental unit for the fiscal year for which assistance is sought and for the second preceding fiscal year, and of the current expenditure per pupil from revenues derived from local sources for (i) the first fiscal year for which assistance is sought, (ii) the fiscal year preceding the fiscal year during which the agency began implementation of its plan, and (iii) the third fiscal year preceding the first fiscal year for which assistance is sought. The term "current expenditure per pupil," for purposes of this paragraph, means the expenditure for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities (but not including expenditures for community services, capital outlay and debt service, or any expenditure made from funds granted under any Federal program of assistance other than aid to Federally impacted areas under Public Law 81-874), divided by the number of children in average daily attendance to whom the agency provided free public education during the year for which the computation is made. This paragraph shall not be construed to disqualify an agency whose fiscal effort or current expenditure per pupil has been reduced solely as part of a comprehensive State plan to reorganize public educational financing (without regard to funds made available or to be made available under the Act), where the effect of such plan is to maintain or increase the combined State and local fiscal effort or expenditure per pupil.

(Public Law 92-318, sections 710(a)(13), 710(a), 720(2))

(j) *State agency review.* An assurance that the appropriate State educational agency has been given at least 15 days to offer recommendations to the applicant; and a statement indicating the State official or agency to whom the proposed program, project, or activity has been submitted for such recommendations, and the date of such submission. No application for assistance shall be approved less than 10 days after a copy of said application has been submitted by the Assistant Secretary to the appropriate State educational agency for comment, unless the Assistant Secretary has received comments from such agency upon such application prior to expiration of the 10-day period.

(Public Law 92-318, section 710(a)(14))

(k) *Reports and information.* An assurance that the applicant will submit such reports containing such information in such form as the Secretary or the Assistant Secretary may require in order to carry out their functions under the Act, and that the applicant will keep such records and afford such access thereto as will be necessary to assure the correctness of such reports and to verify them.

(1) In the case of reports relating to performance and evaluation of the approved program, project, or activity, such reports shall provide objective measurement of the change in educational achievement and other changes effected with assistance provided under the Act, including:

(i) Specific evidence of progress toward achievement of the goals stated in the applicant's project application;

(ii) Specific evidence as to the impact of assistance provided under the Act upon related programs and upon the community served by the applicant; and

(iii) Specific information, such as standardized achievement test data, relating to educational achievement of children in the schools of the aplicant, and to the effect of assistance provided under the Act upon the educational performance of such children.

(2) Copies of the reports and records referred to in this paragraph shall be made available to interested members of the public at no charge or at a charge not to exceed the cost to the applicant of making such copies available, and such reports and records shall be available for inspection by interested members of the public at reasonable times and places.

(3) Reports and records required to be kept and to be made available to the Assistant Secretary under this paragraph shall include information as to the matters set out in §§ 185.43 and 185.44, including but not limited to:

(i) Records relating to transfers of property or services as required under §§ 185.43(a) and 185.44(c);

(ii) Records relating to recruitment, hiring, promotion, payment, demotion, dismissal, and assignment of instructional, administrative, or other personnel for the periods covered by §§ 185.43(b) and 185.44(d);

(iii) Records relating to assignment of children to or within classes and to any ability grouping practiced by the applicant, as such grouping is defined in § 185.43(c); and

(iv) Records relating to the practices or procedures referred to in § 185.43(d), including specific information as to disciplinary sanctions (corporal punishment, suspension, expulsion, and the like) imposed upon minority and nonminority group children in every school operated by the applicant.

(Public Law 92-318, sections 706(d), 710(a)(15), 710(a)(16); 20 U.S.C. 1232(c))

(l) *Compliance with eligibility requirements.* (1)(i) An assurance that the applicant has not engaged prior to the date of its application for assistance under the Act, and will not engage subsequent to such date, in any transfer of property or services to a discriminatory nonpublic school (including such schools or school systems to whose students, faculty, or other educational staff services will be provided under § 185.42) in violation of § 185.43(a) (or that if such a violation has occurred, application for a waiver of ineligibility has been made to the Secretary); and (ii) a list of names and addresses of all nonpublic schools or school systems (or any person or organization controlling, operating, or intending to establish such a school or school system) to which the applicant has transferred (directly or indirectly, by gift, lease, loan, sale, or any other means) any real or personal property or made available any services since June 23, 1972.

(2)(i) An assurance that the applicant has not had or maintained in effect prior to the date of its application for assistance under the Act, and will not have or maintain in effect subsequent to such date, any practice, policy, or procedure with respect to minority group personnel in violation of § 185.43(b) (or that if such a violation has occurred, application for a waiver of ineligibility has been made to the Secretary); and (ii) a statement of the number of principals, full-time classroom teachers, and athletics head coaches, by race, for the academic year immediately preceding (*a*) the year in which the applicant first implemented any portion of a plan for desegregation or reduction of minority group isolation in its schools pursunt to an order of a Federal or State court or administrative agency, or (*b*) the year in which the applicant first implemented any portion of a plan described in subpart B of this part, whichever is earlier, and of the number of athletics head coaches, by race, as of the date of its application;

(3)(i) An assurance that the applicant has not had or maintained in effect prior to the date of its application for assistance under the Act, and will not have or maintain in effect subsequent to such date, any procedure for assignment of children to classes in violation of § 185.43(c) (or that if such a violation has occurred, application for a waiver of ineligibility has been made to the Secretary); and (ii) a statement of the total number of children assigned by the applicant as of the date of the application to all-minority or all-nonminority classes for more than 25 percent of the school

day classroom periods, with an educational justification or explanation for any such assignments;

(4) (i) An assurance that the applicant has not had or maintained in effect prior to the date of its application for assistance under the Act, and will not have or maintain in effect subsequent to such date, any practice, policy, or procedure which results in discrimination against children in violation of § 185.43(d) (or that if such violation has occurred, application for a waiver of ineligibility has been made to the Secretary); (ii) a statement of the enrollment, by race, in classes maintained by the applicant as of the date of its application for the mentally retarded or for children with other learning disabilities; (iii) a statement of the number and percentage of students enrolled in the first grade of the applicant's schools as of the date of its application whose primary home language is other than English; (iv) if the number of children listed pursuant to subdivision (iii) of this subparagraph is greater than 100, or the percentage listed pursuant thereto is greater than 5 percent, a statement of the averages of the most recent standardized reading achievement scores, by race or ethnic group, for students enrolled in the third and sixth grades of the applicant's schools (or the nearest grades for which such scores are available) as of the date of its application; and

(5) An assurance that the applicant will carry out and comply with the terms of the agreement upon which its waiver of ineligibility (if any) by the Secretary is based.

(Public Law 92-318, section 706(d))

(m) *Compliance with applicable laws.* An assurance that the applicant is familiar with, and will comply with the provisions of, all applicable regulations, grant or contract terms, conditions and requirements; and

(n) *Transportation.* An assurance that no funds made available under the Act will be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance or to carry out a plan for racial desegregation, when the time or distance of travel is so great as to risk the health of the children involved or significantly impinge on the educational process of such children, or where the educational opportunities available at the school to which it is proposed that any such student be transported will be substantially inferior to those opportunities offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

(Public Law 92-318, section 802(a))

§ 185.14 Criteria for assistance.

(a) *Objective criteria.* In approving applications for assistance by local educational agencies under this subpart, the Assistant Secretary shall apply the following objective criteria (90 points):

(1) The need for such assistance, as indicated by the number and percentage of minority group children enrolled in the schools of such agency for the fiscal year or years for which assistance is sought, as compared to other school districts in the State (30 points); and

(2) The effective net reduction in minority group isolation (in terms of the number and percentage of children affected), in all the schools operated by such agency accomplished or to be accomplished by the implementation of a plan or project described in § 185.11 and the program, project, or activity to be assisted (60 points). The term "effective net reduction in minority group isolation," for purposes of this subparagraph, means the weighted net change effected or to be effected by such plan or project in the number of minority group children enrolled in minority group isolated schools operated by such agency, and the weighted net total of minority group children placed or to be placed as a result of such plan or project in a school in which the proportion of minority group children has been reduced (but remains greater than 50 percent). Minority group children placed as a result of such plan or project in schools in which the proportion of minority group children has been increased (and is greater than 50 percent) shall be counted against the reduction credited to such agency under this subparagraph. Such effective net reduction shall be computed between the fiscal year (or relevant portion thereof) immediately preceding implementation of such plan or project and the first fiscal year (or relevant portion thereof) for which assistance is sought under the Act.

(Public Law 92-318, sections 710(c) (1), (2), and (3))

(b) *Educational and programmatic criteria.* The Assistant Secretary shall determine the educational and programmatic merits of applications for assistance by local educational agencies under this subpart on the basis of the following criteria (45 points):

(1) *Needs assessment (6 points).* (i) The magnitude of needs assessed by the applicant in relation to desegregation, elimination, or reduction of minority group isolation, or the educational disadvantages of such isolation, and (ii) the degree to which the applicant has demonstrated, by standardized achievement test data or other objective evidence, the existence of such needs.

(2) *Statement of objectives (6 points).* (i) The degree to which the applicant sets out specific measurable objectives for its program, project, or activity, in relation to the needs identified; and

(ii) The degree to which (*a*) the program, project, or activity to be assisted promises realistically to address the needs identified in the application, and (*b*) such program, project, or activity involves to the fullest extent practicable the total educational resources, both public and private, of the community to be served.

(3) *Activities (21 points)*—(i) *Project design (11 points).* The extent to which (*a*) the proposed services are concentrated upon a group of participants which is sufficiently limited and specific to give promise of measurable growth for each participant; (*b*) such services are sufficiently intensive to give promise of such growth; (*c*) the proposed program, project, or activity emphasizes individualized instruction and services; (*d*) students to be served are afforded an opportunity to contribute to, and suggest changes in, the proposed program, project, or activity; and (*e*) the proposed program, project, or activity promotes interracial and intercultural understanding.

(ii) *Staffing (3 points).* The extent to which the application (*a*) sets out an adequate staffing plan which includes provisions for making maximum use of present staff capabilities, and (*b*) provides for continuing training of staff in order to increase the effectiveness of the proposed program, project, or activity.

(iii) *Delivery of services (3 points).* The extent to which the proposed program or project sets out a plan for meeting the logistical requirements of the proposed activities, including a description of adequate and conveniently available facilities and equipment; and

(iv) *Parent and community involvement (4 points).* The extent to which the application (*a*) delineates specific opportunities for community and advisory committee participation in the development and implementation of the proposed program, project, or activity in addition to those required by § 185.41, and (*b*) includes evidence that such participation has been encouraged and has in fact occurred.

(4) *Resource management (6 points).* The extent to which the application contains evidence that (i) the amount of funds requested is of sufficient magnitude in relation to the number of participants to be served to give substantial promise of achieving the stated objectives; (ii) the costs of project components are reasonable in relation to the expected benefits; (iii) the proposed project will be integrated with existing efforts; and (iv) all possible efforts have been made to minimize the amount of funds requested for purchase of equipment necessary for implementation of the proposed program, project, or activity.

(5) *Evaluation (6 points).* The extent to which the application sets out a format for objective, quantifiable measurement of the success of the proposed program, project, or activity in achieving the stated objectives, including (i) a timetable for compilation of data for evaluation and a method of reviewing the program, project, or activity in the light of such data; (ii) a description of instruments to be used for evaluation of the proposed program, project, or activity (and of the method for validating such instruments where necessary), or a description of the procedure to be employed in selecting such instruments; and (iii) provisions for comparison of evaluation results with norms, control group performance, results of other programs, or other external standards.

(6) In making the determinations required under this paragraph, the Assistant Secretary is authorized to purchase or utilize the services, recommendations, and advice of experts in the areas of education and human relations from the Department, other Federal agencies, State or local governmental units, or the private sector.

(Public Law 92-318, sections 702(b), 710(a)(11), 710(c)(1), (2), (4), and (6))

(c) *Funding criteria.* In determining amounts to be awarded to applicants for assistance under this subpart, the Assistant Secretary shall apply the following criteria:

(1) The additional cost to such applicant (as such cost is defined in § 185.13(a)) of effectively carrying out its proposed program, project, or activity, as compared to other applicants in the State; and

(2) The amount of funds available for assistance in the State under the Act in relation to the other applications from the State pending before him. The Assistant Secretary shall not be required to approve any application which does not meet the requirements of the Act or this part, or which sets forth a program, project, or activity of such insufficient promise for achieving the purposes of the Act that its approval is not warranted. In applying the criterion set out in this subparagraph, the Assistant Secretary shall award funds to applicants from a State (whose applications meet such requirements and are of sufficient promise to warrant approval) in the order of their ranking on the basis of the criteria set out in this section until the sums allotted to such State for the purposes of this subpart have been exhausted.

(Public Law 92-318, sections 705(a)(1), 705(b)(3), 706(b), 710(c)(5))

§§ 185.15–185.20 [Reserved]

Subpart C—Pilot Projects

§ 185.21 Eligibility for assistance.

(a) A local educational agency which is eligible for assistance under § 185.11 may apply for assistance by grant or contract for funds reserved pursuant to § 185.95(c), for unusually promising and innovative pilot programs or projects specially designed to overcome the adverse effects of minority group isolation by improving the academic achievement of children in one or more minority group isolated schools, if the number of minority group children enrolled in the schools of such agency for the fiscal year preceding the fiscal year for which assistance is to be provided (1) is at least 15,000, or (2) constitutes more than 50 percent of the total number of children enrolled in such schools.

(Public Law 92-318, sections 705(a)(2), 706(b))

(b) A local educational agency shall be considered eligible for assistance under this subpart if it is implementing or operating under a plan described in § 185.11 (a) or (b), regardless of whether it applies for or receives assistance under § 185.11 (a) or (b).

(Public Law 92-318, section 706(b))

§ 185.22 Authorized activities.

(a) Assistance under this subpart shall be made available to carry out the authorized activities described in § 185.12 with respect to the children or schools to be served by the proposed program, project, or activity.

(Public Law 92-318, sections 706(b), 707(b))

(b) Activities to be assisted under this subpart shall be directed toward improving the academic achievement of children in minority group isolated schools, particularly in the basic areas of reading and mathematics. In general, such activities should bear directly upon classroom performance, through remedial services; the provision of additional, specially trained professional or other staff members; recruiting, hiring, and training of teacher aides; and development and use of new curricula and instructional methods, practices, and techniques (and acquisition of related instructional materials); however, the Assistant Secretary shall consider other, indirect approaches which offer unusual promise in overcoming the adverse effects of minority group isolation.

(Public Law 92-318, sections 706(b), 707(b))

(c) The provisions of § 185.12 (b), (c), and (d) shall apply to assistance made available under this subpart.

(Public Law 92-318, sections 706(b), 707)

§ 185.23 Applications.

Applications for assistance under this subpart shall comply with the provisions of § 185.13.

(Public Law 92-318, section 710(a))

§ 185.24 Criteria for assistance.

(a) In approving applications for assistance under this subpart, the Assistant Secretary shall apply the objective criteria set out in § 185.14(a).

(Public Law 92-318, sections 706(b), 710(c)(1), (2), and (3))

(b) The Assistant Secretary shall determine the educational and programmatic merits of applications for assistance under this subpart on the basis of the criteria set out in § 185.14(b), except that the Assistant Secretary shall also determine the replicability of the proposed program, project, or activity on the basis of the following considerations (8 points):

(1) The extent to which the application demonstrates special thoroughness and specificity in the areas of needs assessment and evaluation design;

(2) The extent to which the applicant proposes (i) to extend some or all of the activities to be carried out under the program, project, or activity to be assisted to schools operated by the local educational agency which are not included in such program, project, or activity; and (ii) to provide opportunities for interested parties to observe the program, project, or activity, inspect project materials, equipment, and facilities, and interview staff members of such agency responsible for design and implementation of the program, project, or activity;

(3) The extent to which the application provides for effective collection and organization of information on the educational results of the proposed program, project, or activity; and

(4) The extent (i) to which the proposed program, project, or activity includes activities of modest to average cost, and (ii) to which secondary operating costs and one-time developmental costs are clearly and separately identified in the application, regardless of whether assistance is requested to cover such costs.

(Public Law 92-318, sections 706(b), 710(c)(1), 710(c)(4).)

(c) In determining the amounts to be awarded to local educational agencies for assistance under this subpart, the Assistant Secretary shall apply the criterial set out in § 185.14(c).

(Public Law 92-318, sections 705(a)(2), 705(b)(3), 706(b), 710(c)(5))

§§ 185.25–185.30 [Reserved]

Subpart D—Metropolitan Area Projects

§§ 185.31–185.40 [Reserved]

Subpart E—General Requirements for Educational Agencies

§ 18541. Advisory committees.

(a) *Consultation with advisory committee.* A local educational agency shall, prior to submission of an application for assistance under subpart B, C, or D of this part, consult with a districtwide advisory committee formed in accordance with paragraph (c) of this section in identifying problems and assessing the needs to be addressed by such application. Such agency shall afford such committee a reasonable opportunity (not less than 10 days) in which to review and comment upon such application, and shall establish such committee at least 5 days prior to the commencement of such review period. In connection with the establishment of such committee, the applicant shall furnish to each member of such committee a copy of the Act and this regulation.

(Public Law 92-318, section 710(a)(2)(B))

(b) *Public hearing.* Prior to submission of an application under subpart B, C, or D of this part, such agency shall hold at least one open, public hearing with parents, teachers, and (in any school district where a proposed program, project, or activity will affect the secondary school(s)) secondary school students, including but not limited to the members of a committee formed in accordance with paragraph (c) of this section, at which hearing such persons are afforded a full opportunity to understand the program, project, or activity for which assistance is being sought and to offer recommendations thereon. Such hearing shall be held no less than 7 days prior to submission of an application under the Act, and shall be advertised in a newspaper of general circulation or otherwise made public not less than 5 days prior to the date of such hearing. Evidence of such publication and a copy

of the minutes of the hearing required by this subparagraph shall be submitted with such agency's application for assistance.

(Public Law 92-318, section 710(a)(2)(A))

(c) *Composition of committee.* (1) In order to establish a districtwide advisory committee as required by this section, a local educational agency shall designate at least five civic or community organizations, each of which shall select a member of the committee. The civic or community organizations which participate in the selection process shall, when taken together rather than considered individually, be broadly representative of the minority and nonminority communities to be served by the proposed program, project, or activity.

(2) Such agency shall designate one nonminority group classroom teacher and one such teacher from each minority group substantially represented on the faculty of such agency to serve as members of the districtwide advisory committee.

(3) A committee formed under this paragraph must be composed of equal numbers of nonminority group members and members from each minority group substantially represented in the community. (For example, in a school district containing both Negro and Spanish-surnamed communities, the committee shall be composed of equal numbers of Negro, Spanish-surnamed American, and nonminority group members.) At least 50 percent of the members of the committee shall be parents of children directly affected by a program, project, or activity described in subpart B, C, or D of this part. In addition to members appointed pursuant to subparagraphs (1) and (2) of this paragraph, and taking into account the students to be appointed pursuant to subparagraph (4) of this paragraph, such agency shall select the minimum number of additional persons as may be necessary to meet the requirements of this subparagraph. (For example, if in a biracial community the civic or community organizations designate three minority group members and two nonminority group members, three of whom are parents; and two teachers who are not parents are also selected, and two students are to be selected pursuant to subparagraph (4) of this paragraph, the agency must select two nonminority parents and one minority parent to complete the committee.)

(4) Committee members appointed pursuant to subparagraphs (1), (2), and (3) of this paragraph shall select one nonminority group secondary school student and one such student from each minority group substantially represented in the community to serve as members of the districtwide advisory committee. Such students shall be regularly enrolled in a secondary school or schools operated by the local educational agency.

(5) A committee which has been formed pursuant to an order of a Federal or State court for the desegregation of the school system of such agency may be designated as the districtwide advisory committee required by this section, provided that the requirements of subparagraphs (2), (3), and (4) of this paragraph are observed.

(Public Law 92-318, section 710(a)(2)(B))

(d) *Comments by committee; hearings.* No application by a local educational agency for assistance under Subpart B, C, or D of this part shall be approved which is not accompanied by the written comments of a committee formed pursuant to paragraph (a) of this section. If a majority of the members of such committee requests an informal hearing with the Assistant Secretary with respect to such application, an opportunity for such a hearing shall be afforded to such committee prior to approval of such application. The Assistant Secretary or his designee shall hold such hearing in or near the school district served by such agency, and in no case at a greater distance from such school district than the appropriate Regional Office of the Department. The Assistant Secretary or his designee shall communicate his findings as to the matters presented by such committee at such hearing, and his action or decision on the basis of such findings, to the committee and the affected local educational agency, in writing, prior to approval of such agency's application for assistance.

(Public Law 92-318, section 710(b))

(e) *Postaward consultation.* Each application by a local educational agency for assistance under the Act shall contain an assurance that such agency will consult at least once a month with its districtwide advisory committee established under this section (in formal meetings of such committee) with respect to policy matters arising in the administration and operation of any program, project, or activity for which funds are made available under the Act, and that it will provide such committee with a reasonable opportunity to periodically observe (upon prior and adequate notice to such agency at such time or times as such committee and agency may agree) and comment upon all project-related activities. (Such consultation shall not be required in the event that the local educational agency is not awarded assistance under the Act.) Each such formal meeting shall be open to the public, and shall be advertised in a newspaper of general circulation or otherwise made public not less than 5 days prior to the date of such meeting.

(Public Law 92-318, section 710(a)(3))

(f) *Publication.* The names of the members of the districtwide advisory committee established pursuant to paragraph (a) of this section, and a statement of the purpose of such committee, shall be published in a newspaper of general circulation or otherwise made public not less than 5 days prior to the public hearing required by paragraph (b) of this section. Evidence of such publication shall be submitted with the local educational agency's application for assistance.

(Public Law 92-318, sections 710(a)(2) and (3))

(g) *Comments and suggestions by committee.* No amendment to the program, project, or activity of a local educational agency shall be approved, and no additional funds made available under the Act, unless the districtwide advisory committee has been given an opportunity to comment upon such amendment or addition to the program, project, or activity. Such comments shall be included with any application submitted by such agency for such amendment or additions. Amendments or additions suggested by the districtwide advisory committee shall be forwarded by the local education agency, with or without comment by such agency, to the Assistant Secretary for his consideration.

(Public Law 92-318, section 710(a)(3))

(h) *Student advisory committees.* (1) The local educational agency shall, not more than 15 days after approval of an application for assistance under the Act, establish in accordance with subparagraph (2) of this paragraph a student advisory committee of secondary school students at each school which will be affected by any program, project, or activity assisted under the Act and which offers secondary instruction.

(2) Each such committee shall be composed of equal numbers of nonminority group secondary students and of such students from each minority group substantially represented in each such school. The members of each such committee shall be selected by the student body or the student government of such school. Each such committee shall have at least six members.

(3) The application of such agency shall contain an assurance that representatives of the agency will periodically consult with student advisory committees established pursuant to this paragraph concerning matters relevant to the program, project, or activity, and that copies of the Act and this regulation and the agency's approved project proposal will be supplied to all members of such committees.

(4) The names of the members of such committees, and a statement of the purchase of such committees, shall be published in a newspaper of general circulation, or a student newspaper, or otherwise made public not more than 20 days after approval of an application for assistance under the Act. The names of the members of committees formed pursuant to this paragraph and evidence of such publication shall be submitted to the Assistant Secretary not more than 30 days after such approval.

(Public Law 92-318, sections 710(a)(2)(B), 710(a)(3))

§ 185.42 Participation by children enrolled in nonpublic schools.

(a) *Assurances.* Applications by local educational agencies for assistance under

Subpart B, C, D, or F of this part shall contain:

(1) In the case of project activities primarily directed to minority group children, an assurance that to the extent consistent with the number of minority group children who are enrolled in nonpublic nonprofit elementary and secondary schools in the area to be served (which are operated in a manner free from discrimination on the basis of race, color, or national origin, and which do not serve as alternatives for children seeking to avoid attendance in desegregated or integrated public schools), the participation of which children would assist in achieving the purposes of the Act, the applicant (after consultation with the appropriate nonpublic school officials) has made provision for the participation of such children on an equitable basis; and

(2) In the case of project activities directed to minority and nonminority group children, teachers, and other educational staff, an assurance that to the extent consistent with the number of children, teachers, and other educational staff enrolled or employed in nonpublic nonprofit elementary and secondary schools within the school district of the applicant (which are operated in a manner free from discrimination on the basis of race, color, or national origin, and which do not serve as alternatives for children seeking to avoid attendance in desegregated or integrated public schools), the participation of which children, teachers, and other educational staff would assist in achieving the purposes of the Act or, in the case of an application under Subpart F of this part, would assist in meeting the needs described in that subpart, the applicant (after consultation with the appropriate nonpublic school officials) has made provision for the participation of such children, teachers, and other educational staff on an equitable basis.

(Public Law 92-318, section 710(a)(12))

(b) *Definitions.* (1) "Area to be served," for purposes of paragraph (a)(1) of this section, means the general geographical area in which the program, project, or activity assisted under subpart B, C, D, or F of this part is to be conducted, and may include the entire school district of the local educational agency. The area to be served shall be determined on the basis of the activities proposed to be undertaken by the local educational agency, the need for such activities in nonpublic schools serving the school district of such agency, and the appropriateness of participation by children, teachers, and other educational staff enrolled in or employed by such nonpublic schools.

(2) "An equitable basis" for participation of nonpublic schoolchildren, teachers, and other educational staff, for purposes of paragraph (a) of this section, means that the special needs of such children, teachers, and other educational staff shall be served to the same extent that such needs are served with respect to children, teachers, and other educational staff enrolled in or employed by the local educational agency.

(Public Law 92-318, section 710(a)(12))

(c) *Exclusion of discriminatory nonpublic schools.* No child, teacher, or other educational staff member shall participate in any activity assisted under the Act if such child, teacher, or other educational staff member is enrolled in or employed by a nonpublic school which is operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated or integrated public schools, or otherwise practices, or permits to be practiced, discrimination on the basis of race, color, or national origin in admissions or the operation of any school activity. Determinations required under this paragraph shall be made in accordance with § 185.43(a).

(Public Law 92-318, section 702(b), 706(d)(1), 710(a)(12))

(d) *Applicability.* (1) The participation of children, teachers, or other educational staff enrolled in or employed by a nonpublic school shall be considered to assist in achieving the purposes of the Act if such nonpublic school is attended by a significant number or percentage of minority group children, or is implementing a plan to desegregate or reduce minority group isolation in its student body and faculty to a significant extent, or is part of a nonpublic school system implementing a plan to desegregate or reduce minority group isolation in one or more schools and is significantly affected by such plan.

(2) The participation of children, teachers, or other educational staff enrolled in or employed by a nonpublic school shall be considered to assist in meeting the needs described in subpart F of this part if such school is attended by a significant number or percentage of minority group children who are from an environment in which a dominant language is other than English and who, because of language barriers and cultural differences, do not have equality of educational opportunity.

(Public Law 92-318, sections 702(b), 706(d)(1), 708(c)(1), 710(a)(12))

(e) *Assessment of needs.* The special needs of children, teachers, and other educational staff enrolled in or employed by nonpublic schools, the number of such children, teachers, and staff who will participate in activities assisted under the Act, and the types of special services to be provided for them, shall be determined, after consultation with officials of such schools and other persons knowledgeable of the needs of such children, teachers, and other educational staff, on a basis comparable to that used in providing for the participation in activities assisted under the Act by children, teachers, and other educational staff enrolled in or employed by schools operated by the local educational agency.

(Public Law 92-318, section 710(a)(12))

(f) *Information required.* An application by a local educational agency for assistance under the Act shall show the number of children, teachers, and other educational staff enrolled in or employed by nonpublic schools who are expected to participate in the program, project, or activity described therein, and the degree and manner of their expected participation. For each nonpublic school which enrolls such children or employs such teachers and other educational staff, the application shall show the total enrollment of such school, by race, and the racial composition of the faculty and staff. Such application shall also describe the manner in which and extent to which representatives of such nonpublic schools, and persons knowledgeable of the needs of the children, teachers, and other educational staff enrolled in or employed by such schools have participated in the development of the application, and the provisions which have been made for effective liaison with such representatives or persons with regard to operation and review of the proposed program, project, or activity.

(Public Law 92-318, sections 706(d)(1)(A), 710(a)(12))

(g) *Joint participation.* Programs, projects, or activities assisted under the Act may be carried out at such locations as will efficiently and conveniently serve the children, teachers, and other educational staff of the affected public and nonpublic schools. Any project involving a joint participation of children, teachers, and other educational staff enrolled in or employed by public and nonpublic schools shall include such provisions as are necessary to prevent separation of such children ,teachers, and other educational staff by school or religious affiliation in any class or other project unit.

(Public Law 92-318, section 710(a)(12))

(h) *Activities on nonpublic school premises.* Public school personnel may be made available in other than public school facilities to the extent necessary to provide special services for those children, teachers, or other educational staff for whose needs such special services were designed, when such services are not normally provided by the nonpublic school. The applicant shall maintain administrative direction and control over such services. Mobile or portable equipment may be used on nonpublic school premises only for such time within the project period as is necessary for the successful participation in such program, project, or activity by children, teachers, and other educational staff enrolled in or employed by such nonpublic schools. Provisions for special services for children, teachers, and other educational staff enrolled in or employed by nonpublic schools shall not include the payment of salaries for teachers or other employees of nonpublic schools, nor shall they include the use of equipment other than mobile or portable equipment on nonpublic school premises or any construction, remodeling, or repair of nonpublic school facilities. "Mobile or portable equipment," for purposes of this paragraph, means manufactured items which

have an extended useful life and are not consumed in use, and are not permanently fastened to the building or the grounds.

(Public Law 92-318, section 710(a)(12))

(i) *Waiver.* In any case where a local educational agency considers itself to be prohibited by law from providing for the participation of children, teachers, and other educational staff enrolled in or employed by nonpublic schools as required by this section, such agency shall furnish to the Assistant Secretary copies of such laws, rules, court decisions, or opinions of State legal officers as are necessary to set out the basis for such prohibition. Where such prohibition exists, the Assistant Secretary may waive such requirement with respect to such agency and arrange for the participation of such children, teachers, and other educational staff as provided in sections 712(c) (1) and (2) of the Act.

(Public Law 92-318, sections 712(c) (1) and (2))

(j) *Failure to provide for nonpublic school participation.* If a local educational agency fails to provide for the participation, on an equitable basis, of children, teachers, and other educational staff enrolled in or employed by nonpublic schools in the school district served by such agency on any grounds other than those authorized by paragraph (i) of this section, it shall set out such grounds in its application or upon inquiry by the Assistant Secretary. If the Assistant Secretary determines such grounds to be insubstantial, and if the Assistant Secretary further determines that a local educational agency has substantially failed to provide for the participation, on an equitable basis, of such children, teachers, and other educational staff, he shall arrange for such participation as provided in section 712(c)(3) of the Act.

(Public Law 92-318, section 712(c)(3))

(k) *Informal conference.* Representatives of States, local educational agencies, nonpublic schools, or children, teachers, and other educational staff enrolled in or employed by nonpublic schools whose interests are directly affected by a determination made under this section may request an informal conference with the Assistant Secretary to show cause why such determination should be reviewed or revised. The Assistant Secretary or his designee shall hold such a conference within 15 days of receipt of such a request.

(Public Law 92-318, sections 710(a)(12) and 712(c))

§ 185.43 Limitations on eligibility.

(a) *Transfers to discriminatory nonpublic schools.* No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has transferred (directly or indirectly by gift, lease, loan, sale, or other means) any real or personal property, or made available any services, to a nonpublic school or school system (or any person or organization controlling, operating, or intending to establish such a school or school system) without a prior determination that such nonpublic school or school system is not operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated or integrated public schools, and that such nonpublic school or school system does not otherwise practice, or permit to be practiced, discrimination on the basis of race, color, or national origin in admissions or in the operation of any school activity.

(1) Subsequent to the effective date of this section, in order to determine whether a transferee under this paragraph is a nonpublic school or school system, or a person or organized conlish such a school or school system, an educational agency shall, at a minimum, obtain from such transferee, in writing, the following information:

(i) The legal name and address of the transferee and, if the immediate transferee is acting in a representative capacity, the legal name and address of his or its principal;

(ii) A copy of the articles of incorporation, charter, bylaws, or other documents indicating the legal status and stated purposes of the transferee or his or its principal; and

(iii) A statement of the use to be made of the property or services to be transferred.

(iv) In the case of a transfer occurring subsequent to June 23, 1972, but prior to the effective date of this section, a determination required by this subparagraph shall be substantiated by credible evidence satisfactory to the Assistant Secretary.

(2) Subsequent to the effective date of this section, in making the prior determination required under this paragraph as to the nature and practices of a nonpublic school or school system, an educational agency shall, to a minimum, obtain from such school or school system, in writing, the following information:

(i) Whether the school has publicized a policy of nondiscrimination in admissions, educational policies, scholarship programs, athletics, and extracurricular activities;

(ii) Whether the school has publicized this policy in a manner intended and reasonably likely to bring into the attention of school-age minority group persons, and their families, without making other statements or taking actions that negate the effect of such publicity;

(iii) Whether applicants for admission have been treated on a nondiscriminatory basis, and whether the racial composition of faculty, staff and student body is consistent with a policy of nondiscrimination;

(iv) Whether scholarship assistance is made available without regard to race, and whether students and scholarship recipients are recruited among all segments of the community; and

(v) Whether the school's incorporators, founders, board members, or donors of its land or buildings are announced or generally known as having as a primary objective the maintenance of segregated education, or are announced or identified as officers or active members of an organization with such an objective.

(vi) In the case of a transfer occurring subsequent to June 23, 1972, but prior to the effective date of this section, a determination required to be made by this subparagraph shall be substantiated by credible evidence satisfactory to the Assistant Secretary.

(3) For purposes of subparagraph (2) (iii) of this paragraph, a nonpublic school which has no minority students, or a nonpublic school system which has no minority students in one or more of its schools, shall be presumed to discriminate. If such a nonpublic school or school system has also failed to adopt and publish a policy of nondiscrimination in accordance with subparagraphs (2)(i) and (2)(ii) of this paragraph, the presumption of discrimination shall be conclusive.

(4) The fact that a local educational agency may have obtained an assurance or statement of nondiscrimination from a transferee, or included such assurance or statement in the transfer documents, shall not excuse such agency from making the determination required by this paragraph.

(Public Law 92-318, section 706(d)(1)(A); Green v. Connally, 330 F. Supp. 1150 (D.C. D.C. 1971), aff'd sub nom. Coit v. Green, 404 U.S. 997 (1971); Wright v. City of Brighton, Alabama, 441 F. 2d 447 (5th Cir. 1971), cert. den. 404 U.S. 915 (1971))

(b) *Demotion or dismissal of minority group personnel.* (1) No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any practice, policy, or procedure which results in the disproportionate demotion or dismissal of instructional, administrative, or other personnel from minority groups in conjunction with desegregation or the implementation of any plan or the conduct of any activity described in section 706 of the Act, or which has resulted in the disproportionate demotion or dismissal of such personnel during the period in which such educational agency has been desegregating (or eliminating or reducing isolation of minority group children) pursuant to an order of a Federal or State court, a plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964, or an order of a State agency or official of competent jurisdiction.

(i) For purposes of this subparagraph, a disproportionate demotion or dismissal of minority group personnel has occurred if the ratio of minority group elementary school teachers, secondary school teachers, principals, or other staff demoted or dismissed to the number of such minority group personnel employed by such agency before such demotions or dismissals exceeds by more than 10 percentage points the ratio of such nonminority group personnel so demoted or dismissed over the same period of time to the number of such nonminority group personnel employed by such agency prior

to such demotions or dismissals. (For example, such an agency would be in violation of this subparagraph if it has demoted or dismissed 21 percent of its minority group principals and 10 percent of its nonminority group principals over the same period of time.)

(ii) For purposes of this paragraph, a demotion includes any reassignment (*a*) under which a faculty or staff member receives less pay or has less responsibility than under the assignment he held prior to such reassignment, (*b*) which requires a lesser degree of skill than did the assignment he held previously, or (*c*) under which he is required to teach in a subject or grade other than one for which he is certified or in which he has substantial experience or qualifications.

(iii) For purposes of this paragraph, a dismissal includes any termination of or failure to renew a contract, for cause or otherwise, including resignations impelled by threatened administrative or other sanctions.

(2) No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any other practice, policy, or procedure which results in discrimination on the basis of race, color, or national origin in the recruiting, hiring, promotion, payment, demotion, dismissal, or assignment of any of its employees (or other personnel for which such agency has any administrative responsibility), including the assignment of full-time classroom teachers to the schools of such agency in such a manner as to identify any of such schools as intended for students of a particular race, color, or national origin.

(3) (i) A practice, policy, or procedure resulting in the disproportionate demotion or dismissal of minority group personnel shall be considered to be or remain in effect after June 23, 1972, if at the time such agency applies for assistance under the Act, the proportion of minority group elementary schoolteachers, secondary schoolteachers, principals, or other staff affected by such demotions or dismissals has not been restored at least to the proportion which existed prior to such demotions or dismissals, unless such an agency which has had or maintained in effect such a practice, policy, or procedure submits with its application for assistance information establishing that such a practice, policy, or procedure has not been in effect since June 23, 1972, as demonstrated by corrective measures taken and progress achieved in eliminating the results of such a practice, policy, or procedure.

(ii) A demotion or dismissal shall be considered to be discriminatory if the staff member demoted or dismissed has not been selected on the basis of objective, nonracial, reasonable, and nondiscriminatory criteria applied to staff members of all racial or ethnic groups. A discriminatory practice, policy, or procedure shall be considered to be or remain in effect after June 23, 1972, if, at the time such agency applies for assistance under the Act, any staff member so demoted or dismissed has not been offered reinstatement to his former position and offered pecuniary compensation for any loss incurred as a result of such demotion or dismissal, or if any staff vacancy occurring subsequent to any demotion or dismissal in the process of desegregation is or has been filled through hiring of a person of a different race, color, or national origin before a qualified staff member so demoted or dismissed has been offered employment in such vacancy and has failed to accept such an offer.

(Public Law 92-318, section 706(d)(1)(B); Senate Report No. 92-61, p. 19; Singleton v. Jackson Municipal Separate School District, 419 F. 2d 1211 (5th Cir. 1969))

(c) *Classroom segregation.* No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any procedure for the assignment of children to or within classes which results in any separation of minority group from nonminority group children for more than 25 percent of the schoolday classroom periods, in conjunction with desegregation or the conduct of any activity described in section 706 of the Act. This paragraph shall not be construed to prohibit bona fide ability grouping as a standard pedagogical practice. Such grouping is that which is:

(1) Based upon nondiscriminatory, objective standards of measurement which are educationally relevant to the purposes of such grouping and which, in the case of national origin minority group children, do not essentially measure English language skills (except for assignment to remedial language classes);

(2) Determined by the nondiscriminatory application of the standards described in subparagraph (1) of this paragraph, and maintained for only such portion of the school day classroom periods as is necessary to achieve the purposes of such grouping;

(3) Designed to meet the special needs of the students in each group determined by the application of the standards described in subparagraph (1) of this paragraph and to improve the academic performance and achievement of students determined to be in the less academically advanced groups, by means of specially developed curricula, specially trained or certified instructional personnel, and periodic retesting to determine academic progress and eligibility for promotion; and

(4) Validated by test scores or other reliable objective evidence indicating the educational benefits of such grouping.

(Public Law 92-318, section 706(d)(1)(C); Senate Report No. 92-61, p. 19)

(d) *Discrimination against children.* No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any practice, policy, or procedure which results or has resulted in discrimination against children on the basis of race, color, or national origin, including but not limited to:

(1) Limiting curricular or extracurricular activities (or participation by children therein) in order to avoid the participation of minority group children in such activities;

(2) Denying equality of educational opportunity or otherwise discriminating against national origin minority children on the basis of language or cultural background;

(3) Permitting the rental, use, or enjoyment o fany of such agency's facilities or services by any group or organization which discriminates against minority group children aged 5 to 17, inclusive, in its admissions or membership policies, or otherwise practices, or permits to be practiced, discrimination against such children on the basis of race, color, or national origin;

(4) Imposing disciplinary sanctions, including expulsion, suspension, or corporal or other punishment, in a manner which discriminates against minority group children on the basis of race, color, or national origin;

(5) Assigning students to ability groups, tracks, special education classes, classes for the mentally retarded, or other curricular or extracurricular activities on the basis of race, color, or national origin. Racially or ethnically identifiable groups, tracks, or classes which cannot be justified educationally under the criteria set out in paragraph (c) of this section shall be presumed to be assigned on the basis of race, color, or national origin.

(6) Denying comparable facilities or instructional or other services to minority group children enrolled in the schools of such agency on the basis of race, color, or national origin.

(Public Law 92-318, section 706(d)(1)(D))

(e) *Continuing conditions of eligibility.* The limitations on eligibility set forth in this section shall be continuing conditions of eligibility during the entire period for which assistance is made available to an educational agency under the Act, and such agency's failure to comply with such conditions after the award of such assistance shall be grounds for termination of assistance and for such other sanctions as the Assistant Secretary may determine.

(Public Law 92-318, section 706(d)(1); Senate Report No. 92-61, p. 18, 41-42)

§ 185.44 Waiver of ineligibility.

(a) In the event that a local educational agency prior to the award of assistance under the Act is determined to be ineligible for such assistance under § 185.43, such agency may apply to the Secertary for a waiver of such ineligibility.

(Public Law 92-318, sections 706(d)(1)-(3))

(b) An application for waiver under paragraph (a) of this section shall contain such information and assurances as will insure that any practice, policy, procedure, or other activity resulting in ineligibility has ceased to exist to occur, and shall include such provisions as are necessary to insure that such practice, policy, procedure, or activity will not reoccur after the submission of such application.

(Public Law 92-318, sections 706(d) (1)-(3))

(c) Transfers to discriminatory nonpublic schools: In the case of ineligibility under § 185.43(a), an application for waiver shall contain:

(1) A list of all property transferred or services made available to nonpublic schools or school systems operated on a racially segregated basis or which practice, or permit to be practiced, discrimination on the basis of race, color, or national origin in admissions or the operation of any school activity, the names and addresses of such schools or school systems, and the consideration received for such transfers;

(2) Evidence that all transfers described in subparagraph (1) of this paragraph have been rescinded and all unearned consideration received therefor has been repaid or returned, to the extent possible under the applicable State law; and

(3) A statement of steps taken by such agency to avoid or prevent such transfers in the future.

(Public Law 92-318, sections 706(d) (1)-(3))

(d) Demotion or dismissal of minority group personnel:

(1) In the case of ineligibility under § 185.43(b)(1) of this part resulting from the disproportionate demotion or dismissal of instructional, administrative, or other personnel from minority groups, an application for waiver shall contain:

(i) A plan of affirmative action to insure that within a reasonable time from the date of such application, the proportion of minority group elementary school teachers, secondary school teachers, principals, or other staff affected by such demotions or dismissals will be restored at least to the proportion which existed prior to such demotions or dismissals; and

(ii) A statement of steps taken by such agency to prevent any future disproportionate demotion or dismissal of minority group personnel.

(2) In the case of ineligibility under § 185.43(b)(2) resulting from discriminatory demotion or dismissal of instructional or other personnel from minority groups in the process of desegregation, an application for waiver shall contain:

(i) Evidence that all minority group personnel so demoted or dismissed have been offered reinstatement to their former positions and afforded pecuniary compensation for any loss incurred as a result of such demotions or dismissals, such as diminution in salaries, additional commuting expenses, and the like;

(ii) A plan of affirmative action as required by subdivision (i) of subparagraph (1) of this paragraph; and

(iii) A statement of steps taken by such agency to prevent any future discriminatory demotion or dismissal of minority group personnel, including but not limited to a statement of objective, nonracial, and reasonable criteria to be applied in the event that reinstatement of minority group personnel as required by subdivision (i) of this subparagraph necessitates a reduction in the number of elementary school teachers, secondary school teachers, principals, or other staff, or in the event of future demotions or dismissals for any reason.

(3) In the case of ineligibility resulting from discriminatory assignment of teachers as prohibited by § 185.43(b)(2), such applications for waiver shall include evidence that such agency has assigned its full-time classroom teachers to its schools so that no school is identified as intended for students of a particular race, color, or national origin. Such nondiscriminatory assignments shall, in the case of a local educational agency implementing a plan described in § 185.11(a), conform to the requirements of such plan with respect to the assignment of faculty. In the case of local educational agencies not implementing such a plan, or implementing such a plan which contains no provision as to assignment of faculty, such assignments shall be made so that the proportion of minority group full-time classroom teachers at each school is between 75 percent and 125 percent of the proportion of such minority group teachers which exists on the faculty as a whole, and so that the variations in such proportions which remain on various faculties do not correspond to such variations in the student populations of such schools.

(4) In the case of ineligibility resulting from other discriminatory practices, policies, or procedures prohibited by § 185.43(b)(2), an application for waiver shall contain:

(i) Evidence that minority group personnel subjected to such discrimination have been reinstated or restored to the position they held prior to, or would have held in the absence of, such discrimination, and have been afforded pecuniary compensation for any loss incurred as a result of such discrimination, such as diminution in salaries, additonal commutation expenses, and the like; and

(ii) A statement of steps taken by such agency to prevent such discrimination in the future.

(5) In the event that the corrective action required under this paragraph includes the employment or promotion of minority group teachers, principals, or other staff, such agency shall give preference in such employment or promotion first to qualified minority group members of its own faculty or staff previously demoted or dismissed for any reason, and secondly to qualified minority group faculty and staff members identified by the Department as previously demoted or dismissed by other local educational agencies in conjunction with desegregation or the conduct of any activity under the Act.

(Public Law 92-318, sections 706(d)(1)-(3); U.S. v. Texas Education Agency (LaVega), No. 71-3135 (5th Cir., May 10, 1972))

(e) Classroom segregation: In the case of ineligibility under § 185.43(c), an application for waiver shall contain:

(1) Evidence that minority group children are not separated from nonminority group children by or within classes for more than 25 percent of the school day classroom periods, except in instances of bona fide ability grouping which meet the requirements of § 185.43(c), where such agency has demonstrated by clear and convincing evidence that such separation is educationally necessary and is the only available method of achieving a specific educational objective; and

(2) A statement of steps taken by such agency to insure that separation of minority and nonminority group children as prohibited by § 185.43(c) will not reoccur in the future.

(Public Law 92-318, sections 706(d) (1)-(3))

(f) Discrimination against children: In the case of ineligibility under § 185.43(d), an application for waiver shall contain evidence that the practice, policy, or procedure prohibited by § 185.43(d) has ceased to exist or occur and that the effects of such practice, policy, or procedure have been remedied or eliminated. In particular:

(1) In the case of a denial of equal educational opportunity to national origin minority children as described in § 185.43(d)(2), such agency shall submit an educational plan of sufficient comprehensiveness to remedy or eliminate the effects of such denial and to meet the special educational needs of all national origin minority group children for whose education such agency is responsible. Such a plan, if required and approved under this subparagraph, shall be implemented regardless of whether funds for such purpose are made available under the Act.

(2) In the case of a violation under § 185.43(d)(3), such agency shall submit evidence that such rental, use, or enjoyment of its facilities is no longer permitted, and that any agreement with respect to such rental, use, or enjoyment has been rescinded and the unearned consideration therefore has been returned or repaid, to the extent possible under the applicable State law.

(3) In the case of assignment of students to classes on the basis of race, color, or national origin as prohibited by § 185.43(d)(5), such agency shall submit evidence that the groups, tracks, or classes resulting from such assignment have been completely eliminated and the students so assigned have been reassigned to classes on a nondiscriminatory basis; or that the students so assigned have been retested, re-evaluated, and, if necessary, reassigned to groups, tracks, or classes which satisfy the requirements of § 185.43(c).

(Public Law 92-318, sections 706(d) (1)-(3))

(g) Access to information and records: Agencies applying for assistance under the Act or for a waiver under this section shall furnish to the Secretary or the Assistant Secretary such information and such access to their facilities or records as such official may deem necessary for the administration of the Act, or for a determination as to eligibility or as to whether or not a waiver should be

granted. Consideration of applications for assistance under this part may be delayed pending submission or collection of such information. Such information may include files maintained by such agency on personnel and students, with racial or other identification of such personnel or students, and financial and other records maintained by such agency. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with any provision of the Act, this regulation, grant terms or conditions, or other applicable laws. Information of a confidential nature obtained by the Department in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or as otherwise required by law.

(Public Law 92-318, sections 706(d) (2), (3), and (5))

§ 185.45 Termination of assistance.

(a) *Termination and suspension.* (1) Assistance under the Act may be terminated in whole or in part if the Assistant Secretary determines, after affording the recipient reasonable notice and an opportunity for a full and fair hearing, that the recipient has failed to carry out its approved program, project, or activity in accordance with the applicable law and the terms of such assistance, or has otherwise failed to comply with any applicable law, regulation, assurance, term, or condition. Assistance under the Act may be suspended during the pendency of a termination proceeding initiated pursuant to this paragraph: *Provided however,* That the recipient is afforded reasonable notice and opportunity to show cause why such action should not be taken.

(2) Proceedings with respect to the termination of assistance shall be initiated by mailing to the recipient a notice, by certified mail, return receipt requested, informing the recipient of the Government's intent to terminate assistance and of the specific grounds for such termination, together with information regarding the time, place, and nature of the hearing to be afforded the recipient, the legal authority and jurisdiction under which the hearing is to be held, and such other information with respect to the conduct of such proceedings as the Assistant Secretary may determine.

(3) If the Assistant Secretary determines for good cause that suspension of assistance during the pendency of such proceedings is necessary, such notice shall, in addition to the matters described in subparagraph (2) of this paragraph, inform the recipient of such determination and shall offer the recipient an opportunity to show cause why such action should not be taken. Such notice of suspension of assistance shall advise the recipient that any new expenditures or obligations made or incurred in connection with the program, project, or activity assisted during the period of the suspension will not be recognized by the Government in the event such assistance is ultimately terminated. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved program, project, or activity, and not in anticipation of suspension or termination, shall not be considered new expenditures.

(4) Termination of assistance shall be effected by the delivery to the recipient of a final order of termination, signed by the Assistant Secretary or his designee, or upon an initial decision of an Administrative Law Judge becoming final without appeal to or review by the Assistant Secretary.

(5) In the event assistance is terminated under this section, financial obligations incurred by the recipient prior to the effective date of such termination will be allowable to the extent they would have been allowable had such assistance not been terminated, except that no obligations incurred during the period in which such assistance was suspended pursuant to subparagraph (1) of this paragraph and no obligations incurred in anticipation of such suspension or termination will be allowed. Within 60 days of the effective date of termination of assistance under this section, the recipient shall furnish to the Assistant Secretary an itemized accounting of funds expended, obligated, and remaining. Within 30 days of a request therefor, the recipient shall remit to the Government any amounts found due.

(Public Law 92-318, sections 706(d), 710 (a) and (b).)

(b) *Additional sanctions.* In an appropriate case, involving violations of the eligibility limitations set out in § 185.43 arising subsequent to approval of an application for assistance under this part or a failure to comply with the terms of a waiver granted pursuant to § 185.44, the Assistant Secretary shall declare the award of such assistance to be null and void as of the date of such violation or failure, and shall refuse to recognize any obligation incurred after such date or to reimburse the recipient for any costs incurred or expenditures made after such date, regardless of the date of obligation. Such sanctions shall be imposed in accordance with the provisions of this section.

(Public Law 92-318, sections 706(d), 710 (a) and (b); Senate Report No. 92-61, pp. 18, 41-42)

(c) *Proceedings.* (1) If the recipient requests an opportunity to show cause why a suspension of assistance pursuant to paragraph (a)(1) of this section should not be continued or imposed, the Assistant Secretary or his designee shall, within 7 days after receiving such request, hold an informal meeting for such purpose.

(2) Hearings respecting the termination of assistance pursuant to this section shall be conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 554-557). Proposed findings of fact, conclusions of law, and briefs will be submitted to the presiding officer within 20 days of the conclusion of the hearing.

(3) The initial decision of an Administrative Law Judge regarding the termination of assistance under the Act shall become the decision of the Assistant Secretary without further proceedings unless there is an appeal to, or review on motion of, the Assistant Secretary made in writing no later than 15 days after receipt (by the party requesting such appeal or review), of the decision of the Administrative Law Judge. A request for appeal or review under this section shall be accompanied by exceptions to the initial decision, proposed findings, supporting reasons, and briefs. The adverse party shall submit its reply no later than 15 days after its receipt of a copy of such request for appeal or review. The Assistant Secretary shall issue a final decision in the case of such appeal or review no later than 45 days after the final submission of the above materials by the parties. The Assistant Secretary may delegate his functions under this subparagraph to an appellate review council established and appointed by him.

(4) The procedures established by this section shall not preclude the Assistant Secretary from pursuing any other remedies authorized by law. Proceedings pursuant to Part 80 of this title with respect to the eligibility of an applicant for assistance under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) shall be governed by the regulations in that part and Part 81 of this title.

(Public Law 92-318, sections 706(d), 710 (a) and (b))

(d) *Effect of Federal action.* No official agent, or employee of the Department of Health, Education, and Welfare shall have the authority to waive or alter any provision of the Act or this regulation, or other relevant Act or regulation, and no action or failure to act on the part of such official, agent, or employee shall operate in derogation of the Assistant Secretary's enforcement of said provisions in accordance with their terms.

(43 Dec. Comp. Gen. 31 (1963))

§§ 185.46-185.50 [Reserved]

Subpart F—Bilingual Projects

§§ 185.51-185.60 [Reserved]

Subpart G—Public or Nonprofit Private Organizations

§ 185.61 Eligibility for assistance.

(a) *Eligible applicants.* (1) Any public agency, institution, or organization (other than a local educational agency) and any nonprofit private agency, institution, or organization may apply for assistance, by grant or contract, from funds reserved pursuant to § 185.95(d)(1)(i) to carry out programs, projects, or activities designed to support the development or implementation of a plan or project described in § 185.11.

(2) Any such agency, institution, or organization (other than a local educational agency or a nonpublic elementary or secondary school) may apply for such assistance from funds reserved pursuant to § 185.95(d)(1)(ii) to carry out such programs, projects, or activities.

(Public Law 92-318, sections 705(a)(3) and 708(b))

(b) *Nonprofit status.* A nonprofit agency, institution, or organization, for purposes of this section, means any organization owned and operated by one or more corporations or associations no part of whose net earnings may lawfully inure to the benefit of any private shareholder or individual. Any of the following shall be acceptable evidence of nonprofit status:

(1) A reference to the organization's listing in the Internal Revenue Service's most recent cumulative list of organizations described in section 501(c)(3) of the Internal Revenue Code as tax exempt;

(2) A copy of a currently valid Internal Revenue Service tax exemption certificate;

(3) A statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully inure to the benefit of any private shareholder or individual;

(4) A certified copy of the organization's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the organization; or

(5) Any of the evidence described in subparagraphs (1) through (4) of this paragraph which applies to a State or national parent organization, and a statement by the parent organization that the applicant organization is a local nonprofit affiliate.

(Public Law 92-318, sections 708(b), 720(11); HEW Grants Administration Manual, Chapter 1-00-30)

(c) *Form of organization.* Agencies, institutions, or organizations assisted under this subpart may be any form of legally cognizable entity. Nonprofit corporations are the preferred form of organization.

(Public Law 92-318, section 708(b))

(d) *Relation to local educational agency.* (1) A program, project, or activity designed to support the implementation of a plan or project described in § 185.11 may be assisted under this subpart if the local educational agency with respect to which the applicant proposes to carry out its program, project, or activity is implementing such a plan or project, regardless of whether such local educational agency applies for or receives assistance under the Act.

(2) A program, project, or activity designed to support the development of a plan or project described in § 185.11 may be assisted under this subpart without regard to whether the local educational agency with respect to which the applicant proposes to carry out its program, project, or activity applies for or receives assistance under the Act: *Provided, however,* That such local educational agency has requested such support in the development of such a plan or project.

(Public Law 92-318, section 708(b).)

§ 185.62 Authorized activities.

Financial assistance under this subpart shall be available for programs or projects which would not otherwise be funded and which involve activities designed to support the development or implementation of a plan or project described in § 185.11 and to carry out the purposes described in § 185.01. Such programs or projects shall include one or more of the following activities:

(a) Supplemental remedial services beyond those provided by the local educational agency, including student to student tutoring, to meet the special needs of children (including gifted or talented children) in schools which are affected by a plan or project described in § 185.11, when such services are necessary to the success of such plan or project;

(b) Educational programs beyond those offered by the local educational agency for career orientation;

(c) Innovative interracial educational enrichment programs or projects beyond those offered by the local educational agency, involving the joint participation of minority group children and other children attending different schools and, where appropriate, the parents of such children;

(d) Community activities, including public information and parental involvement efforts, regarding matters related to a plan or project described in § 185.11;

(e) Administrative and auxiliary services to facilitate the success of the applicant's program or project, where such services are part of, and in conjunction with, a comprehensive program or project designed to support the development or implementation of a plan or project described in § 185.11;

(f) Programs to prepare preschool or school-age children and, where appropriate, the parents of such children, for the experience of desegregation or reduction of minority group isolation in the schools of the local educational agency;

(g) Programs designed to deal with the problems of dropouts, academic failures, and increased suspensions or expulsions resulting from or attendant to the implementation of a plan or project described in § 185.11;

(h) Interracial programs or projects relating to the social and recreational needs of children attending schools affected by a plan or project described in § 185.11;

(i) Cultural enrichment activities which promote interracial and intercultural understanding among children attending schools affected by a plan or project described in § 185.11 and, where appropriate, the parents of such children;

(j) Home-focused projects for the enrichment of the educational atmosphere in the homes of children attending schools affected by a plan or project described in § 185.11, including parent-child home reading projects and school-related family or neighborhood activities;

(k) At the request of a local educational agency, assistance or support in the development of a plan or project described in § 185.11; or

(l) Special programs or projects of exceptional merit or promise which the Assistant Secretary determines will make substantial progress toward achieving the purposes set out in § 185.01.

(Public Law 92-318, section 708(b))

§ 185.63 Applications.

(a) *Basic assurances.* Applications for assistance under this subpart shall comply with the requirements of §§ 185.13(a), 185.13(b), 185.13(c), 185.13(d), 185.13(f), 185.13(h), 185.13(k)(1)(i) and (ii), 185.13(k)(2), and 185.13(m).

(b) *Additional assurances.* Applications for assistance under this subpart shall contain the following additional assurances and information:

(1) A description of the proposed program, project, or activity, and of such policies and procedures as will insure that the applicant will use funds received under the Act only for the activities set forth in § 185.62;

(2) An assurance that funds made available to the applicant under the Act, will be so used (i) as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of funds under the Act, be available from non-Federal sources for the purposes of the program for which assistance is sought; and (ii) in no case, as to supplant such funds from non-Federal sources;

(3) (i) An assurance that the appropriate local educational agency has been given at least 15 days to offer recommendations to the applicant with respect to such application and to submit comments to the Assistant Secretary; (ii) a statement indicating the local official or agency to whom the proposed program, project, or activity has been submitted for such recommendations or comment, and the date of such submission; and (iii) a description of the provisions which have been made for effective liaison with such agency with regard to operation of the proposed program, project, or activity and coordination of such program, project, or activity with similar or related efforts of such agency. No application for assistance under this subpart shall be approved less than 10 days after a copy of such application has been submitted by the Assistant Secretary to the appropriate State educational agency for comment, unless the Assistant Secretary has received comments from such agency upon such application prior to expiration of the 10-day period.

(4) A statement of (i) the extent to which other public or nonprofit private agencies, institutions, or organizations in the school district affected by a plan or project described in § 185.11 have been consulted in the preparation of the application, and (ii) of the provisions which have been made by the applicant for effective liaison with such agencies, institutions, or organizations which have

applied for, or received, assistance under the act with regard to coordination of programs, projects, or activities so assisted;

(5) A copy of the charter, articles of incorporation, bylaws, or other legal documents indicating the nature and purpose of the applicant, including evidence of nonprofit status as described in § 185.61(b);

(6) A statement of past activities engaged in by the applicant or its officers or employees in the appropriate school district with respect to such matters as education, human relations, desegregation or reduction of minority group isolation in public elementary or secondary schools, or other community activities or concerns; and

(7) A copy of the plan or project described in § 185.11 with respect to which assistance is sought under this subpart, or a complete description of such plan or project.

(Public Law 92-318, section 708(b))

§ 185.64 Criteria for assistance.

(a) *Objective criteria.* In approving applications for assistance under this subpart, the Assistant Secretary shall apply the following objective criteria (45 points):

(1) The number and percentage of minority group children enrolled in the schools operated by the local educational agency with respect to which the applicant proposes to carry out its program, project, or activity for the fiscal year or years for which assistance is sought (15 points);

(2) The effective net reduction in minority group isolation (in terms of the number and percentage of children affected), as defined in § 185.14(a)(2), in all the schools operated by such agency accomplished or to be accomplished by the implementation of the plan or project described in § 185.11 with respect to which assistance is sought by the applicant (30 points).

(Public Law 92-318, section 708(b))

(b) *Educational and programmatic criteria.* The Assistant Secretary shall determine the educational and programmatic merits of applications for assistance under this subpart on the basis of the following criteria (45 points):

(1) Needs assessment (6 points):

(i) The degree to which the applicant has cooperated with, or complemented the efforts of, the appropriate local educational agency in assessing the needs of the community with respect to desegregation or the reduction of minority group isolation; and

(ii) The magnitude of needs assessed by the applicant, and the degree to which the applicant has demonstrated, by objective evidence, the existence of such needs.

(2) Statement of objectives (6 points):

(i) The degree to which the applicant sets out specific, measurable objectives for its program, project, or activity, in relation to the needs identified; and

(ii) The degree to which (*a*) the program, project, or activity to be assisted affords promise of achieving the objectives specified in the application, and (*b*) such program, project, or activity involves to the fullest extent practicable the total educational and social resources already existing in the community, including those of other public or nonprofit private agencies, organizations, or institutions which are eligible for assistance under the Act.

(3) Activities (21 points):

(i) *Project design (8 points).* The extent to which the proposed program or project sets out activities clearly related to the needs identified and the stated objectives, which activities (*a*) complement activities being carried out by the local educational agency, under the Act or otherwise; (*b*) represent a cooperative or integrated effort among all the public or nonprofit private agencies, organizations, or institutions in the community; (*c*) present an opportunity for interracial or intercultural involvement of students, parents, and personnel of the appropriate local educational agency; (*d*) promote interracial or intercultural understanding in the community; (*e*) present an opportunity for increased communication between parents and the school system; and (*f*) utilize students' homes as a focal point for program or project operations.

(ii) *Staffing (3 points).* The extent to which (*a*) the proposed program or project sets out a plan to attract and hire qualified staff members and personnel; (*b*) qualified applicants residing in the community to be served are given priority for employment over other applicants; and (*c*) provision is made for adequate training of staff members and other personnel, both salaried and volunteer.

(iii) *Delivery of services (4 points).* The extent to which the proposed program or project (*a*) describes available facilities which are adequate for the performance of the proposed activities and are convenient and accessible to the persons involved in such activities; and (*b*) provides for effective notification of and communication with the intended beneficiaries of proposed activities, events, and services.

(iv) *Parent and community involvement (6 points).* The extent to which the application for assistance (*a*) reflects efforts to include persons broadly representative of the community to be served as members of the advisory committee established pursuant to § 185.65(a), and to utilize the contributions of such persons who are concerned with the problems of education and desegregation or the reduction of minority group isolation; (*b*) delineates specific responsibilities for the advisory committee in addition to those required in § 185.65(d); and (*c*) sets forth procedures for involving parents and residents of the community to the maximum extent possible in all aspects of the proposed program, project, or activity.

(4) Resource management (six points): The extent to which the application contains evidence that (i) the amount of funds requested is of sufficient magnitude to give substantial promise of achieving the stated objectives; (ii) the costs of project components are reasonable in relation to the expected benefits; and (iii) all possible efforts have been made to minimize the amount of funds requested for purchase of equipment necessary for implementation of the proposed program, project, or activity.

(5) Evaluation (six points): The extent to which the application sets out a format for objective measurement of the results of the proposed program, project, or activity, including (i) a timetable for compilation of data for evaluation and a method of reviewing the program, project, or activity in the light of such data; (ii) a description of the instruments to be used for evaluation of the proposed program, project, or activity (and of the method for validating such instruments where necessary), or a description of the procedure to be employed in selecting such instruments; and (iii) provisions for comparison of evaluation results with norms, control group performance, results of other programs, or other external standards.

(6) In making the determinations required under this paragraph, the Assistant Secretary is authorized to purchase or utilize the services, recommendations, and advice of experts in the areas of education and human relations from the Department, other Federal agencies, State or local governmental units, or the private sector.

(c) *Funding criteria.* In determining amounts to be awarded to applicants for assistance under this subpart, the Assistant Secretary shall apply the following criteria:

(1) The additional cost to such applicant (as such cost is defined in § 185.13(a)) of effectively carrying out its proposed program, project, or activity, as compared to other applicants in the State; and

(2) The amount of funds available for assistance in the State under the act, in relation to the other applications from the State pending before him. The Assistant Secretary shall not be required to approve any application which does not meet the requirements of the act or this part, or which sets forth a program, project, or activity of such insufficient promise for achieving the purposes of the act that its approval is not warranted. In applying the criterion set out in this subparagraph, the Assistant Secretary shall award funds to applicants from a State (whose applications meet such requirements and are of sufficient promise to warrant approval) in the order of their ranking on the basis of the criteria set out in this section until the sums allotted to such State for the purposes of this subpart have been exhausted.

(Public Law 92-318, sections 705(a)(3), 705(b)(3))

(3) No more than 33 percent of the sum of funds allotted to a State for grants or contracts pursuant to this subpart shall be awarded to applicants proposing to carry out programs, projects, or activities with respect to the same local educational agency, unless the Assistant Secretary determines that the applications pending before him for funds in excess of such amount for such programs, projects, or activities are of exceptional merit or promise.

(Public Law 92-318, section 708(b))

§ 185.65 Advisory committees.

(a) *Consultation with advisory committee.* An agency, institution, or organization applying for assistance under this subpart shall, prior to submission of such an application, consult with a districtwide advisory committee formed in accordance with paragraph (b) of this section in identifying problems and assessing the needs to be addressed by such application. Such applicant shall afford such committee a reasonable opportunity (not less than 10 days) in which to review and comment upon such application, and shall establish such committee at least 5 days prior to the commencement of such review period. In connection with the establishment of such committee, such applicant shall furnish to each member of such committee a copy of the act and this regulation.

(Public Law 92-318, section 708(b).)

(b) *Composition of committee.* (1) In order to establish a districtwide advisory committee as required by this section, the applicant shall designate at least five civic or community organizations, each of which shall select a member of the committee. The civic or community organizations which participate in the selection process shall, when taken together rather than considered individually, be broadly representative of the minority and nonminority communities to be served.

(2) The applicant shall invite the appropriate local educational agency to designate as a member of the committee described in this paragraph at least one person who is an administrator, principal, or teacher employed by such agency or a member of the school board of such agency. In addition, if the local educational agency has applied for or received assistance under this part, the applicant shall invite the advisory committee formed by such agency pursuant to § 185.41(a) to designate at least one of its memebrs as a member of the committee described in this paragraph. (An advisory committee established pursuant to § 185.41(a), with the appropriate additions required to conform to the provisions of this paragraph, may be adopted by the applicant as the committee required by this section.)

(3) A committee formed under this paragraph must be composed of equal numbers of nonminority group members and of members from each minority group substantially represented in the community. At least 50 percent of the nonstudent members of such committee shall be parents of children directly affected by a plan or project described in § 185.11. In addition to members appointed to the committee by civic or community organizations, and those selected pursuant to subparagraph (2) of this paragraph, the applicant shall select the minimum number of additional persons as may be necessary to meet the requirements of this subparagraph.

(4) In addition to the persons selected by the applicant pursuant to subparagraph (3) of this paragraph, the applicant shall select from the schools of the appropriate local educational agency equal numbers of nonminority group secondary students and of such students from each minority group substantially represented in the community, so that the number of such students so selected will constitute 50 percent of the total membership of such committee.

(Public Law 92-318, section 708(b))

(c) *Comments of committee.* No application for assistance under this subpart shall be approved which is not accompanied by the written comments on a committee formed in accordance with paragraph (b) of this section. No amendment to a program, project, or activity assisted under this subpart shall be approved, and no additional funds made available, unless such committee has been given an opportunity to comment upon such amendment of addition to such program, project, or activity. Such comments shall be included with any application submitted by such applicant for such amendments or additions.

(Public Law 92-318, section 708(b))

(d) *Post-award consultation.* Each application for assistance under this subpart shall contain an assurance that the applicant will consult at least once a month with its districtwide advisory committee established under this section with respect to policy matters arising in the administration and operation of any program, project, or activity for which funds are made available under this subpart, and that it will provide such committee with a reasonable opportunity to periodically observe and comment upon all project-related activities.

(Public Law 92-318, section 708(b))

(e) *Publication.* The names of the members of the districtwide advisory committee established pursuant to paragraph (a) of this section, and a statement of the purpose of such committee, shall be published in a newspaper of general circulation or otherwise made public prior to submission of an application for assistance under this subpart. Evidence of such publication shall be submitted with such application for assistance.

(Public Law 92-318, section 708(b))

§§ 185.66-185.70 [Reserved]

Subpart H—Educational Television

§§ 185.71-185.80 [Reserved]

Subpart I—Evaluation

§§ 185.81-185.90 [Reserved]

Subpart J—Special Projects

§§ 185.91-185.94 [Reserved]

Subpart K—Reservations

§ 185.95 Reservations of funds.

(a) The Assistant Secretary hereby reserves an amount equal to 5 percent of the sums appropriated under the act for any fiscal year for the purposes of metropolitan area projects under subpart D of this part.

(Public Law 92-318, sections 704(b)(1), 709)

(b) The Assistant Secretary hereby reserves:

(1) An amount equal to 4 percent of the sums appropriated under the act for any fiscal year for the purposes of special projects under subpart J of this part;

(2) An amount equal to 4 percent of the sums so appropriated for the purposes of bilingual activities under subpart E of this part;

(3) An amount equal to 4 percent of the sums so appropriated for the purposes of educational television projects under subpart H of this part; and

(4) An amount equal to 1 percent of the sums so appropriated for the purpose of evaluations under subpart I of this part.

(Public Law 92-318, sections 704(b)(2), 708(a), 708(c), 711, 713)

(c) The Assistant Secretary hereby reserves an amount equal to 15 percent of the sums appropriated under the act for any fiscal year for grants to, and contracts with, local educational agencies for pilot programs or projects pursuant to subpart C of this part.

(1) The sums reserved under this paragraph shall be apportioned to each State in accordance with section 705(a)(1) of the act, and shall be used in such States only for the purposes described in this paragraph.

(2) The amount by which the sum apportioned to a State for a fiscal year for the purposes described in this paragraph exceeds the amount which the Assistant Secretary determines will be required for such fiscal year for such pilot programs or projects shall be available for reapportionment to other States in accordance with section 705(b) of the act for the purposes described in this paragraph. Upon a determination by the Assistant Secretary that no need exists in any State for funds for such purposes, such excess amount shall be available for reapportionment to other States in accordance with section 705(b) of the act for grants or contracts pursuant to subpart B of this part. Upon a further determination by the Assistant Secretary that no need exists in any State

for funds for the purposes described in subpart B of this part, such remaining excess amount shall be available for reapportionment to other States in accordance with section 705(b) of the act for grants or contracts pursuant to subpart G of this part.

(Public Law 92-318, sections 705(a)(2), 705(b), 706(b))

(d)(1) The Assistant Secretary hereby reserves (i) an amount equal to 4 percent of the sums appropriated under the act for any fiscal year for grants to, or contracts with, public or nonprofit private agencies, institutions, or organizations (other than local educational agencies), pursuant to § 185.61(a)(1), and (ii) an amount equal to 4 percent of the sums appropriated under the act for any fiscal year for grants to, or contracts with, public or nonprofit private agencies, institutions, or organizations (other than local educational agencies and nonpublic elementary or secondary schools) pursuant to § 185.61(a)(2).

(2) The sums reserved under this paragraph shall be apportioned to each State in accordance with section 705(a)(1) of the Act, and shall be used in such States only for the purposes deserihed in this paragraph.

(3) The amount by which the sum apportioned to a State for a fiscal year for the purposes described in this paragraph exceeds the amount which the Assistant Secretary determines will be required for such fiscal year for such grants or contracts shall be available for reapportionment to other States in accordance with section 705(b) of the Act for the purposes described in this paragraph. Upon a determination by the Assistant Secretary that no need exists in any State for funds for such purposes, such excess amount shall be available for reapportionment to other States in accordance with section 705(b) of the Act for grants or contracts pursuant to Subpart B or Subpart C of this part.

(Public Law 92-318, sections 705(a)(3), 705(b), 708(b))

§§ 185.96–185.100 [Reserved]

Appendix A—Grant Terms and Conditions

1. Definitions.
2. Scope of the project.
3. Limitations on costs.
4. Allowable costs.
5. Accounts and records.
6. Payment procedures.
7. Reports.
8. Printing and duplicating.
9. Termination.
10. Applicability of State and local laws and institutional procedures.
11. Copyright and publication.
12. Acknowledgment and disclaimer in publication.
13. Patent rights.
14. Travel.
15. Equipment.
16. Contracting under grants.
17. Health and safety standards.
18. Compensation.
19. Labor standards.
20. Equal employment opportunity.
21. Use of consultants.
22. Clearance of forms.
23. Grant related income and investment income.
24. Changes in key personnel.
25. Animal care.

1. *Definitions.* As used in the grant documents relating to this award, the following terms shall have the meaning set forth below:

(a) "Assistant Secretary" means the Assistant Secretary for Education or his duly authorized representative.

(b) "Grantee" means the agency, institution, or organization named in the grant as the recipient.

(c) "Grants Officer" means the designee of the Assistant Secretary who is authorized to execute, and is responsible for the administration of, the grant on behalf of the Government.

(d) "Project Officer" means the designee of the Assistant Secretary who is responsible for the technical monitoring of the project of the Grantee as representative of the Grants Officer.

(e) "Project Director" is the person responsible for directing the project of the Grantee.

(f) "Project" is the activity or program defined in the proposal approved by the Assistant Secretary for support.

(g) "Grant Period" means the period specified in the Notification of Grant Award during which costs may be charged against a Grant.

(h) "Budget" means the estimated cost of performance of the project as set forth in the Notification of Grant Award.

2. *Scope of the project.* The project to be carried out hereunder shall be consistent with the proposal as approved for support by the Assistant Secretary and referred to in the Notification of Grant Award and shall be performed in accordance with this approved project proposal. No substantive changes in the program of a project shall be made unless the Grantee submits (at least 30 days prior to the effective date of the proposed change) an appropriate amendment thereto, along with the justification for the change, and this amendment is approved in writing by the Grants Officer.

3. *Limitation on costs.* (a) The total costs to the Government for the performance of the grant shall not exceed the amount set forth in the Notification of Grant Award or any appropriate modification thereof. The Government shall not be obligated to reimburse the grantee for costs incurred in excess of such amounts unless or until the Grants Officer has notified the grantee in writing that such amount has been increased and has specified such increased amount in a revised Notification of Grant Award. Such revised amount shall thereupon constitute the revised total cost of the performance of the grant.

(b) The Grantee may transfer funds among the various cost categories in the negotiated budget to the extent necessary to assure the effectiveness of the project, except that, no transfer may be made which alter the approved project.

(c) Funds for the production of audio visual materials (i.e., motion picture films, videotapes, film strips, slide sets, tape recordings, exhibits, or combinations thereof) for viewing, whether for limited or general public use, are not authorized until prior written approval is received from the Grants Officer.

(d) In the case of educational training programs, the limitation on costs stated in paragraph (a) above shall automatically be increased to cover the cost of allowance for additional dependents not specified in the Notification of Grant Award.

4. *Allowable costs.* (a) Expenditures of the Grantee may be charged to this grant only if they: (1) are incurred subsequent to the effective date of the project indicated in the Notification of Grant Award, which shall be no earlier than the date upon which the award document is signed by the Grants Officer, and (2) conform to the approved project proposal.

(b) Subject to paragraph (a), allowability of costs incurred under this grant shall be determined in accordance with the principles and procedures set forth in the documents identified below, as amended prior to the date of the award.

(1) Exhibit X–2–65–1 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is an institution of higher education; or

(2) Exhibit X–2–66–1 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is a hospital as defined therein; or

(3) Exhibit X–1–76–1 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is a nonprofit institution; or

(4) Chapter 5–60 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is a State or local government agency.

(c) In accordance with the policy of the Department of Health, Education, and Welfare, if the Grantee has an audited indirect cost rate that has been approved by the Department of Health, Education, and Welfare, Office of Grants Administration Policy, this approved rate may be applied to both the Federal and non-Federal share of allowable direct costs of the project. When an indirect cost rate is applied to either the Federal or non-Federal share of project costs, no item normally included in the Grantee's indirect cost pool (such as supervision, accounting, budgeting, or maintenance) shall be listed as a direct cost of the project. Procedures for establishing Indirect Cost Rates are covered in Department of Health, Education, and Welfare brochures: OASC–1, A Guide for Educational Institutions; OASC–3, A Guide for Hospitals; OASC–5, A Guide for Nonprofit Institutions; OASC–6, A Guide for State Government Agencies; OASC–7, Department of Health, Education, and Welfare Provisions for Establishing Indirect Cost Rates under OMB Circular A–88; and OASC–8, A Guide for Local Government Agencies.

(d) Indirect costs for educational training programs will be allowed at the lesser of the organizational indirect costs or 8 percent of total direct costs, including stipends and dependency allowances, except for State and local governments.

5. *Accounts and records.* (a) *Accounts.* The Grantee shall maintain accounts, records, and other evidence pertaining to all costs incurred, and revenues or other applicable credits acquired under this grant. The system of accounting employed by the Grantee shall be in accordance with generally accepted accounting principles generally used by State or local agencies or institutions of higher education, or nonprofit institutions, as appropriate, and will be applied in a consistent manner so that the project expenditures can be clearly identified.

(b) *Cost sharing records.* The Grantee's records shall demonstrate that any contribution made to the project by the Grantee is not less, in proportion to the charges against the grant, than the percentage specified in the grant or any subsequent revision thereof.

(c) *Examination of records.* The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the grantee that are pertinent to the grant, at all reasonable times during the period of retention provided for in paragraph (d) below.

(d) *Disposition of records.* Except as provided in paragraph (e), all pertinent records and books of accounts related to this grant in the possession of the Grantee shall be preserved by the Grantee for a period of 3 years after the end of the grant period, if audit by or on behalf of the Department has occurred by that time; or if audit by or on behalf of the Department has not occurred by that time, the records must be retained until completion of audit or until 5 years following the end of the grant period, whichever is earlier.

(e) *Questioned expenditures.* Records relating to any litigation or claim arising out of the performance of this grant, or costs and expenses of this grant to which exception has been taken as a result of inspection or audit, shall be retained by the Grantee until such litigation, claim, or exceptions has been disposed of.

(f) *Adjustments.* The grantee, in maintaining project expenditure accounts, records, and reports shall make any necessary adjustments to reflect refunds, credits, underpayments, or overpayments, as well as any adjustments resulting from administrative reviews and audits by the Federal Government or by the Grantee. Such adjustments shall be set forth in the financial reports filed with the Grants Officer.

6. *Payment procedures.* To obtain Federal funds, the Grantee shall receive payments in accordance with the payment schedule which is set forth in the Special Terms and Conditions.

7. *Reports.* The Grantee shall submit such fiscal and technical reports as may be required in the grant or by the Grants Officer, and in the quantity and at the time stated in the report schedule which is set forth in the Special Terms and Conditions.

8. *Printing and duplicating.* All printing and duplicating authorized under this grant is subject to the limitations and restrictions contained in the current issue of the U.S. Government Printing and Binding Regulations if done for the use of the Department within the meaning of those Regulations.

9. *Termination.* Subject to applicable statutes and regulations, if the Grantee fails to carry out the terms and conditions of the grant, the Government may terminate the period designated in the grant award document in whole or in part and may suspend the Grantee's right to incur new obligations pending a decision regarding such termination. The grant may also be terminated prior to such period because it is no longer susceptible to productive results and may be suspended pending a decision regarding such termination in accordance with applicable rules and regulations. Allowable costs properly chargeable to the grant for the period prior to such termination or suspension (whichever is earlier) will be allowed upon final settlement except that costs that would be allowable only in the case of a termination for convenience of the Government will not be allowed in the event of termination under the first sentence of this paragraph. Nothing in this paragraph shall be deemed to affect the applicability to the grant of other remedies available to the Government under law.

10. *Applicability of State and local laws and institutional procedures regarding expenditure of funds.* Except to the extent otherwise provided for in this document or any document incorporated herein by reference, nothing herein or therein shall be construed so as to alter the applicability to the Grantee of any State or local law, rule, regulation, or any institutional procedure which would otherwise pertain to the expenditure of funds.

11. *Copyright and publication.* (a) The term "materials" as used herein means writing, sound recordings, films, pictorial reproductions, drawings or other graphic representations, computer programs, and works of any similar nature produced under this grant. The term does not include financial reports, cost analyses, and similar information incidental to grant administration.

(b) It is the policy of the Department that the results of activities supported by it should be utilized in the manner which would best serve the public interest. To that end except as provided in paragraph (c), the Grantee shall not assert any rights at common law or in equity or establish any claim to statutory copyright in such materials; and all such materials shall be made freely available to the Government, the education community, and the general public.

(c) Notwithstanding the provisions of paragraph (b) above, upon request of the Grantee or his authorized designee, arrangements for copyright of the materials for a limited period of time may be authorized by the Assistant Secretary through the Grants Officer, upon a showing satisfactory to the Assistant Secretary that such protection will result in more effective development or dissemination of the materials and would be in the public interest.

(d) With respect to any materials for which the securing of a copyright protection is authorized under paragraph (c), the Grantee hereby grants a royalty-free, nonexclusive, and irrevocable license to the Government to publish, translate, reproduce, deliver, perform, use, and dispose of all such materials and to make any use of it.

(e) To the extent the Grantee has the right and permission to do so, the Grantee hereby grants to the Government a royalty-free, nonexclusive, and irrevocable license to use in any manner, copyrighted material not first produced in the performance of this grant but which is incorporated in the materials. The Grantee shall advise the Grants Officer of any such copyrighted material known to it not to be covered by such a license.

12. *Acknowledgment and disclaimer in publication.* (a) Any publication or presentation resulting from or primarily related to the project being performed hereunder shall contain the following acknowledgment: "The project presented or reported herein was performed pursuant to a Grant from the Department of Health, Education, and Welfare. However, the opinions expressed herein do not necessarily reflect the position or policy of the Department and no official endorsement by the Department should be inferred."

(b) Materials produced as a result of the grant may be published without prior review by the Assistant Secretary, provided that 15 copies of such materials shall be furnished to the Grants Officer and no such materials may be published for sale without the prior approval of the Grants Officer. Such approval shall be subject to such requirements as the Assistant Secretary deems appropriate.

13. *Patent rights.* (a) *Policy.* In accordance with Department of Health, Education, and Welfare Regulations (45 CFR Parts 6 and 8), all inventions made in the course of or under any grant shall be promptly and fully reported to the Assistant Secretary (Health and Scientific Affairs), Department of Health, Education, and Welfare. The grantee institution and the principal investigator shall neither have nor make any commitments or obligations which conflict with the requirements of this policy.

(b) *Determination.* Determination as to ownership and disposition of invention rights, including whether a patent application shall be filed, and if so, the manner of obtaining, administering, and disposing of rights under any patent application or patent which may be issued, shall be either:

(1) By the Assistant Secretary (Health and Scientific Affairs), whose decision shall be considered final, or

(2) Where the institution has a separate formal institutional agreement with the Department, by the grantee institution in accordance with such agreement.

Patent applications shall not be filed on inventions under (1) above without prior written consent of the Assistant Secretary (Health and Scientific Affairs) or his representative. Any patent application filed by the Grantee on an invention made in the course of or under a grant shall include the following statement in the first paragraph of the specification: "The invention described herein was made in the course of, or under, a grant from the Department of Health, Education, and Welfare."

(c) *Reports and other requirements.* A complete written disclosure of each invention in the form specified by the Assistant Secretary (Health and Scientific Affairs) shall be made by the Grantee promptly after conception or first actual reduction to practice, whichever occurs first under the grant. Upon request, the Grantee shall furnish such duly executed instruments (prepared by the Government) and such other papers as are deemed necessary to vest in the Government the rights reserved to it under this policy statement to enable the Government to apply for and prosecute any patent application, in any country, covering each invention where the Government has the right to file such application.

The Grantee shall furnish interim reports (Annual Invention Statement) prior to the continuation of any grant listing all inventions made during the budget period whether or not previously reported, or certifying that no inventions were made during the applicable period. Upon completion of the project period, the Grantee shall furnish a final invention report listing all inventions made during performance of work on the supported project or certifying that no inventions were made during that work.

(d) *Supplementary patent agreements.* The Grantee shall obtain appropriate patent agreements to fulfill the requirements of this provision from all persons who perform any part of the work under the grant, except such clerical and manual labor personnel as will have no access to technical data, and except as otherwise authorized in writing by the Department.

The Grantee shall insert in each subcontract or agreement having experimental, developmental, or research work as one of its purposes, a clause making this provision applicable to the subcontractor and its employees.

(e) *Definitions.*—As used in this provision, the stated terms are defined as follows for the purposes hereof:

(1) "Invention" or "invention or discovery" includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States.

(2) "Made," when used in relation to any invention or discovery, means the conception or first actual reduction to practice of such invention in the course of the grant.

(f) *Inventions resulting from grants made in support of research by Federal employees.* Inventions resulting from grants made in support of research by Federal employees shall be reported simultaneously to the Assistant Secretary (Health and Scientific Affairs) pursuant to terms of the grant and

to the employing agency under the terms of Executive Order 10096, as amended.

14. *Travel.* Travel allowances shall be paid in accordance with applicable State and local laws and regulations and grantee policies. If none of these are applicable, travel shall be done in accordance with Federal Government regulations. No foreign travel is authorized under the grant unless prior approval is received from the Grants Officer. Travel between the United States and Guam, American Samoa, Puerto Rico, the U.S. Virgin Islands, the Canal Zone, and Canada is not considered foreign travel.

15. *Equipment.* (a) Title to, and accountability for, equipment shall be determined in accordance with Chapter I–410, Management of Equipment and Supplies Acquired Under Projects Grants, of the Department of Health, Education, and Welfare Grants Administration Manual and the Property Management/Inventory System Operating Procedures issued by the Contracts and Grants Division, Office of Education.

(b) Equipment purchased with grant funds shall be used only to accomplish the purposes of the grant. The grantee assures that any equipment so purchased is not already on hand and that it will safeguard and protect all such equipment in accordance with prudent property management practices.

16. *Contracting under grants.* The Grantee may enter into contracts or agreements (to the extent permitted by State and local law) for the provision of part of the services under this grant by other appropriate public or private agencies or institutions. Such contract or agreement shall incorporate all rules and regulations applicable to the program, shall describe the services to be provided by the agency or institution, and shall contain provisions assuring that the Grantee will retain supervision and administrative control over the provision of services under the contract. Services to be provided by contract pursuant to this section shall be specified in the project proposal or in an amendment thereto, and the proposed contract shall be submitted to the Grants Officer and be approved by him in writing.

17. *Health and safety standards.* Whenever the Grantee, acting under the terms of the grant, shall rent, lease, purchase, or otherwise obtain classroom facilities (or any other facilities) which will be used by students and faculty, the Grantee shall comply with all health and safety regulations and laws applicable to similar facilities being used in that locality for such purpose.

18. *Compensation.* If a staff member is involved simultaneously in two or more projects supported by funds from the Federal Government, he may not be compensated for more than a total of 100 percent time from such Government funds for all projects during any given period of time. The grantee shall not use any grant funds or funds from other sources to pay a fee to, or travel expenses of, employees of the Department for lectures, attending program functions, or other activities in connection with the grant.

19. *Labor standards.* To the extent that grant funds will be used for alteration and repair (including painting and decorating) of facilities, the Grantee shall furnish the Grants Officer with the following:

(a) A description of the alteration or repair work and the estimated cost of the work to be performed at the site;

(b) The proposed advertising and bid opening dates for the work;

(c) The city, county, and State at which the work will be performed; and

(d) The name and address of the person to whom the necessary wage determination and labor standards provisions are to be sent for inclusion in contracts, not later than 6 weeks prior to the advertisement for bids for the alteration or repair work to be performed. The Grantee shall also include or have included in all such alterations or repairs the wage determination and labor standards provisions that are provided and required by the Secretary of Labor under 29 CFR Parts 3 and 5.

20. *Equal employment opportunity.* With respect to repair and minor remodeling, the Grantee shall comply with and provide for Contractor and Subcontractor compliance with the requirements of Executive Order 11246, as amended, as implemented by 41 CFR Part 60. The terms required by Executive Order 11246 will be included in any contract for construction work, or modification thereof, as defined in said Executive order.

21. *Use of consultants.* (a) The hiring of and payments to consultants shall be in accordance with applicable State and local laws and regulations and grantee policies. However, for the use of and payment to consultants whose rate will exceed $100 per day, prior written approval for the use of such consultants must be obtained from the Grants Officer.

(b) The Grantee must maintain a written report for the files on the results of all consultations charged to this grant. This report must include, as a minimum: (1) the consultant's name, dates, hours, and amount charged to the grant; (2) the names of the grantee staff to whom the services are provided; and (3) the results of the subject matter of the consultation.

22. *Clearance of forms.* To permit monitoring and clearance, the Grantee is to submit to the appropriate Project Officer, prior to use, five copies of all tests, questionnaires, interview schedules or guides, and rating scales which are to be employed in collecting data from 10 or more individuals or organizations. A brief report of related information (such as purposes of the study, relevance of the data-gathering instruments to these purposes, nature of the sample, number of respondents, burden on respondents, etc.) must accompany the copies of the instruments, in accordance with directions from the Department. Exceptions:

(a) Copies need not be submitted of conventional instruments which deal solely with (1) cognitive functions or technical proficiency (e.g., scholastic aptitude, school achievement, etc.), (2) routine demographic information, or (3) routine institutional information; but a report of the "related information" (as specified above) concerning the particular data-gathering instruments must be supplied to the Project Officer in order to permit appropriate monitoring and clearance.

(b) Ordinary classroom tests employed in the development of a new curriculum or as part of the regular instructional routine, constituting part of the project for which funds are granted, need be neither reported nor submitted; but final tests employed in such a project, serving purposes of evaluation, must be reported; and, if significantly unusual in such essential features as content, directions, form of response, etc., must be submitted in five copies.

23. *Grant-related income and investment income.* (a) Interest or other income earned by investment of the grant funds is termed "Investment Income." Any Investment Income earned by the Grantee on advance funds received under this grant, is to be paid to the Department for deposit as miscellaneous receipts in the U.S. Treasury, unless the Grantee is a State or State agency. If the Grantee is a State or State agency, the Grantee is not accountable to the Department for its use of Investment Income monies. Income derived by the Grantee from activities supported or funded by this grant, other than Investment Income and Copyright Royalty Income, is termed "Grant-Related Income."

(b) Grant-Related Income shall be disposed of, at the discretion of the Assistant Secretary, in either one of the following two ways:

(1) By returning the funds to the Federal Government, (*a*) by reducing the level of expenditures from grant funds in an amount equal to the Federal share of the Grant-Related Income, (*b*) by treating the funds as a partial payment to the award of a succeeding (continuation) grant, or (*c*) by payment to miscellaneous receipts of the U.S. Treasury; or

(2) By using the funds to further the purposes of the grant program from which the award was made.

(c) The Grantee shall obtain from the Grants Officer prior approval of the disposition of any facilities, services, equipment, or other materials described in paragraph (b) above.

(d) If the Grantee receives any grant related income or investment income in connection with this grant, the Grantee shall maintain records of the receipt and disposition of the Federal share of such income.

24. *Changes in key personnel.* The Project Director and other grant personnel specified by name in the proposal are considered to be essential to the work being performed. If for any reason substitution of a specified individual becomes necessary, the Grantee shall provide timely written notification to the Grants Officer. Such written notification shall include the successor's name with a resumé of his qualifications.

25. *Animal care.* Where research animals are used in any project financed wholly or in part with Federal funds, every precaution shall be taken to assure proper care and humane treatment of such animals.

[FR Doc.72–20847 Filed 12–1–72;8:53 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[No. 42]

DEPUTY DIRECTOR ET AL.

Delegation of Authority To Sign Official Correspondence

1. Official documents, papers, and correspondence addressed to congressional committees, Congressmen, the Secretary of the Treasury, his staff and assistants, heads of bureaus, industry leaders, executive officers of trade associations such as the Distilled Spirits Institute, Wine Institute, Brewers Association, National Rifle Association, Institute of Explosive Manufacturers, and similar organizations and persons, should be prepared for the signature of the Director.

2. The Deputy Director, in the absence of the Director is delegated authority to sign all of the above and in addition is delegated authority to sign in his own name all internal correspondence and official documents including personnel actions and allocation of resources.

3. The Assistant Director for Criminal Enforcement and the Assistant Director for Regulatory Enforcement are delegated authority to sign official correspondence and related documents pertaining to (1) operational matters directed to other headquarters offices and to regional directors, and (2) official correspondence of a technical nature directed to the public.

The Assistant Director for Administration, the Assistant Director for Inspection, and the Assistant Director for Technical and Scientific Services are delegated authority to sign correspondence and official documents pertaining to matters arising in their functional areas.

This delegation does not extend to actions with respect to which, by reason of delegation order limitations or other directive, I may not delegate my authority.

This delegation order supersedes Alcohol, Tobacco, and Firearms Division Order 71-11 (Rev. 2) dated June 27, 1972.

Date of issue: November 2, 1972.

Effective date: November 2, 1972.

REX D. DAVIS,
Director.

[FR Doc.72-20783 Filed 12-1-72;8:47 am]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

STATE PLANNING AGENCY GRANTS

Notice of Availability

Notice is hereby given that on September 11, 1972, the Law Enforcement Assistance Administration issued the manual "State Planning Agency Grants," Part II. These are the guidelines for Program 16.502 Law Enforcement Assistance—Part C Block Grants and Part E Grants distributed in block grant fashion. This program provides matching grants to implement the State's comprehensive law enforcement program. Copies of this manual are available and may be obtained from the regional office in any of the following cities:

LEAA—U.S. Department of Justice, 917 John W. McCormack Post Office and Courthouse, Boston, Mass. 02109.

LEAA—U.S. Department of Justice, 26 Federal Plaza, Room 1351, Federal Office Building, New York, NY 10007.

LEAA—U.S. Department of Justice, 325 Chestnut Street, Suite 800, Philadelphia, PA 19106.

LEAA—U.S. Department of Justice, 730 Peachtree Street NE., Room 985, Atlanta, GA 30308.

LEAA—U.S. Department of Justice, O'Hare Office Center, Room 121, 3166 Des Plaines Avenue, Des Plaines, IL 60018.

LEAA—U.S. Department of Justice, 500 South Ervay Street, Suite 313-C, Dallas, TX 75201.

LEAA—U.S. Department of Justice, 436 State Avenue, Kansas City, KS 66101.

LEAA—U.S. Department of Justice, Federal Building, Room 6519, Denver, CO 80202.

LEAA—U.S. Department of Justice, 1860 El Camino Real, Fourth Floor, Burlingame, CA 94010.

LEAA—U.S. Department of Justice, 130 Andover Building, Seattle, WA 98188.

JERRIS LEONARD,
Administrator.

NOVEMBER 28, 1972.

[FR Doc.72-20717 Filed 12-1-72;8:47 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Group 512]

ARIZONA

Notice of Filing of Plat of Survey and Order Providing for Opening of Public Lands; Correction

NOVEMBER 27, 1972.

1. In F.R. Doc. 72-19678, appearing on page 24371 of the issue of Thursday, November 16, 1972, the heading "Group 468" is corrected to read "Group 512."

2. Also, the first sentence of paragraph 5 is corrected to read as follows:

5. The lands have been and still are subject to the mining and mineral leasing laws.

CHARLES G. BAZAN, Jr.,
Chief, Branch of Records and Data Management.

[FR Doc.72-20741 Filed 12-1-72;8:51 am]

OUTER CONTINENTAL SHELF OFF MISSISSIPPI, ALABAMA, AND FLORIDA

Call for Nominations of Areas for Oil and Gas Leasing

Pursuant to the authority prescribed in 43 CFR Part 3300, notice is hereby given that nominations for areas for prospective oil and gas leasing in the Outer Continental Shelf off the States of Mississippi, Alabama, and Florida may be submitted to the Director, Bureau of Land Management, Washington, D.C. 20240, not later than March 19, 1973. Copies of nominations must be sent to the Area Supervisor, Geological Survey, Suite 336, Imperial Office Building, 3301 North Causeway Boulevard, Metairie, LA 70002, and to the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Suite 3200, The Plaza Tower, 1001 Howard Avenue, New Orleans, LA 70113. Envelopes should be marked "Nominations of Leasing in the Outer Continental Shelf—Mississippi, Alabama, and Florida."

All nominations must be described in accordance with Outer Continental Shelf leasing maps prepared by the Bureau of Land Management, Department of the Interior, specifically designated as Mobile, Mobile South No. 1, Pensacola, Pensacola South No. 1, Apalachicola, Apalachicola South, Gainesville, Tarpon Springs, Tampa, Tampa West No. 1, and Fort Myers West No. 1 Official Leasing Maps. Whole blocks or properly described subdivisions thereof not less than one-quarter of a block may be nominated. The leasing maps have been prepared to include blocked areas in excess of 200 meters of water depth. However, only nominations of blocks or partial blocks in areas of less than 200 meters will be considered.

The official leasing maps in a set of 11 maps may be purchased at $11 per set or singly, for $1 each, from the Manager, New Orleans Outer Continental Shelf Office at the above address, or the Manager, Eastern States Land Office, 7981 Eastern Avenue, Silver Spring, MD 20910.

Areas selected for competitive bidding will be published in the FEDERAL REGISTER and the published notice will state the

conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

GEORGE L. TURCOTT,
Acting Director,
Bureau of Land Management.

Approved: November 30, 1972.

HARRISON LOESCH,
Assistant Secretary of the Interior.

[FR Doc.72-20888 Filed 12-1-72;8:53 am]

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

MANNING LIVESTOCK AUCTION ET AL.

Proposed Posting of Stockyards

The Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration, U.S. Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

IA-244 Manning Livestock Auction, Manning, Iowa
MO-232 Mo-Ark Livestock Market, Poplar Bluff, Mo.
MO-231 Rolla Auction Co., Rolla, Mo.
TX-301 Tri-County Stockyard, Rio Grande City, Tex.
TX-300 Texoma Livestock Commission Co., Tom Bean, Tex.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule, may do so by filing them with the Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250, within 15 days after publication of this notice in the FEDERAL REGISTER.

All written submissions made pursuant to this notice shall be made available for public inspection at such times and places in a manner convenient to the public business (7 U.S.C. 1.27(b)).

Done at Washington, D.C., this 27th day of November 1972.

G. H. HOPPER,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.72-20721 Filed 12-1-72;8:46 am]

DEPARTMENT OF COMMERCE

Office of the Secretary

ECONOMIC ADVISORY BOARD

Notice of Meeting

A meeting of the Department of Commerce Economic Advisory Board will be held from 9:30 a.m. to 3 p.m. on Thursday, December 7, 1972, Room 4832, Commerce Building, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The purpose of the Board is to advise the Secretary of Commerce on economic policy issues.

The intended agenda is as follows:

9:30–11—Environmental Assessment Program.
11–11:45—U.S. Trade and Payments Position and Outlook.
11:45–12:30—Competitive Assessment Program.
2–3—Economic Outlook.

A limited number of seats will be available to the public and the press. Participation will be limited to requests for clarification of items under discussion; additional comments or inquiries may be submitted to the chairman following the meeting. Persons desiring to attend the meeting should contact Miss Maryann Ferko, telephone (202) 967–3523 by Monday, December 4, 1972.

For further information, inquiries should be directed to Mr. Basil R. Littin, Director of Public Affairs, Room 5419, Commerce Building, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 967–3263.

HAROLD C. PASSER,
Assistant Secretary for Economic Affairs.

[FR Doc.72-20750 Filed 12-1-72;8:50 am]

Office of Textiles

EXPORTERS' TEXTILE ADVISORY COMMITTEE

Notice of Public Meeting

At 10 a.m., December 13, 1972, the Exporters' Textile Advisory Committee will meet in room 4833 of the main building of the Commerce Department in Washington, D.C. The meeting will be open to public observation but not public participation, with limited seating facilities available.

The Committee is intended to facilitate consultation between Government officials and businessmen concerning ways of increasing U.S. exports of textile and apparel products. The public information officer is:

Judith McConahy, Committee Secretary, Office of Textiles, U.S. Department of Commerce.

The agenda for this meeting is:

1. Commendation of Washington Manufacturing Co. for "E" Award.
2. Review of Export Data.
3. Current and New International Marketing Plans for Textile and Apparel Products.
   a. Trade Missions.
   b. Joint Export Establishment Promotion.
   c. Consumer Goods Market in Japan.
4. Other Business.

A roster of Committee members may be obtained from the public information officer.

ALAN POLANSKY,
Acting Director,
Office of Textiles.

[FR Doc.72-20733 Filed 12-1-72;8:50 am]

MANAGEMENT-LABOR TEXTILE ADVISORY COMMITTEE

Notice of Closed Meeting

A. Management-Labor Textile Advisory Committee.

B. The purpose of the Committee is to provide advice and information to Department officials on conditions in the textile industry and on trade in textiles and apparel.

C. The meeting is scheduled for December 13, 1972, at 2 p.m., Main Commerce Building, U.S. Department of Commerce, Washington, D.C. 20230.

D. The Secretary of Commerce, pursuant to section 13(d) of Executive Order 11671 of June 5, 1972, determined, on November 8, 1972, that the Committee meeting scheduled for December 13, 1972, shall be exempt from the provisions of sections 13 (a), (b), and (c), relating to public participation and recordkeeping, because the Committee's activities are matters which fall within policies analogous to those recognized in section 552(b) of title 5 of the United States Code, and the public interest requires such activities to be withheld from disclosure. The specific exemption is the foreign policy exemption set forth in paragraph 1 of section 552(b).

E. Further information may be obtained from Mr. Alan Polansky, Acting Director, Office of Textiles, Room 2815, Main Commerce Building, U.S. Department of Commerce, Washington, D.C. 20230.

ALAN POLANSKY,
Acting Director,
Office of Textiles.

[FR Doc.72-20893 Filed 12-1-72;9:55 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

BACTERIAL POLYSACCHARIDE PROGRAM OF THE INFECTIOUS DISEASE COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of

the Bacterial Polysaccharide Program of the Infectious Disease Committee on December 4–5, 1972, at 9 a.m., National Institutes of Health, Building 31, Conference Room No. 7. This meeting will be closed to the public to review contractor performance on projects to evaluate the immune response to the meningococcal, pneumococcal, and *Hemophilus influenzae* type b polysaccharide vaccines presently under study in accordance with section 13(d) of Executive Order 11671 and the Secretary's determination of September 27, 1972.

Mr. Robert Schreiber, NIAID Information Officer, National Institutes of Health, Building 31, Room 7A–34, phone 496–5717, will furnish a summary of the meeting and a roster of the committee members.

Dr. Richard Horton, National Institutes of Health, Building 31, Room 7A–06, phone 496–5105, will furnish substantive program information.

Dated: November 24, 1972.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.72-20705 Filed 12-1-72;8:46 am]

REPRODUCTIVE AND PERINATAL BIOLOGY FACILITY, BETHESDA, MD.

Declaration of Environmental Impact

The National Institutes of Health proposes to construct a 22,000 gross square foot addition to the clinical center, Building 10 on the Bethesda Reservation, to support the National Institute of Child Health and Human Development's new reproductive and perinatal biology program. Research will be concentrated on infant mortality and improved population control processes. The new space will be provided by the addition of three stories to the existing seven-story high G-wing of the clinical center. This space will be utilized for general laboratories, offices, patient care and support, labor/delivery suites, and physician sleep-in space. A new double elevator shaft will also be built to provide service between the ground floors and the new program space. The program will be staffed by approximately 90 people (mostly new employees) during a 24-hour shift with approximately 50 employees working the normal day shift. In addition, space to support approximately 17 patients and 15 newborn babies will be provided.

In accordance with the requirements of the National Environmental Policy Act, Public Law 91–190 (NEPA), the NIH has prepared an environmental assessment of the proposed action with the conclusion that the proposed actions will not have a significant effect on the quality of the environment. Consequently, an Environmental Impact Statement (NEPA sec. 102–2C) is not required.

The Environmental Assessment is on file at room 4019, Building 12–A at NIH, Bethesda, Maryland, and is available for public study upon request.

Dated: November 27, 1972.

ROBERT Q. MARSTON,
Director.

[FR Doc.72-20747 Filed 12-1-72;8:49 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX72–1; Notice 1]

LOTUS CARS, LTD.

Petition for Temporary Exemption From Motor Vehicle Safety Standards

Lotus Cars, Ltd., Norwich Nor 92W, England, has applied for a temporary exemption of its Europa model from compliance with Federal Motor Vehicle Safety Standard No. 214, *Side Door Strength*, which is effective January 1, 1973.

Lotus states that an early decision is critically important to the company, for placement of appropriate orders with suppliers of raw materials and component parts. Because of the imminent effective date of Standard No. 214 and the consequent need of Lotus for a decision on its petition to be made before January 1, 1973, the National Highway Traffic Safety Administration has decided to consider the petition of Lotus in advance of adoption of the procedures for temporary exemption petitions recently proposed (37 F.R. 25533, December 1, 1972).

Lotus requests the exemption from January 1, 1973, until August 15, 1973, for up to 1,000 units. The company manufactured 2,682 vehicles in 1971, and has delivered a total of 765 Europas to the United States in the first 10 months of 1972. Depending upon market factors the company may seek a further exemption for the period of August 15, 1973, to May 1, 1974. The basis of the petition is that compliance with Standard No. 214 would cause Lotus substantial economic hardship. It alleges that the basic design of the Europa does not permit the introduction of a straight beam linking the door hinge and the door latch, implying that compliance is impracticable for the remainder of the model run. Thus far in 1972, 38 percent of the company's worldwide sales have been in the American market. Because of the inability to meet Federal safety standards effective September 1, 1972, Lotus has discontinued importation of its Elan models. Failure to obtain an exemption from Standard No. 214 will terminate its participation in the American market altogether, until a new conforming model is introduced late in 1973.

Interested persons are invited to submit comments on the petition of Lotus Cars, Ltd., described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed, and will be considered to the extent possible. If the petition is granted, notice will be published in the FEDERAL REGISTER pursuant to the authority indicated below.

Comment closing date: December 22, 1972.

Proposed effective date: January 1, 1973.

(Sec. 3, Public Law 92–548, 86 Stat. 1159, 15 U.S.C. 1410; delegation of authority at 49 CFR 1.51)

Issued on: December 1, 1972.

DOUGLAS W. TOMS,
Administrator.

[FR Doc.72-20905 Filed 12-1-72;11:08 am]

Office of the Secretary

URBAN TRANSPORTATION ADVISORY COUNCIL

Notice of Public Meeting

On December 5, 1972, the Transportation Advisory Council will hold a meeting in Washington, D.C. at the New Executive Office Building, 736 Jackson Place NW., room 2010.

The Urban Transportation Advisory Council is composed of 29 members appointed by the Secretary of Transportation in accordance with DOT Order 1120.16. The Council consists of recognized urban and transportation authorities in their respective fields selected from State, local, and city government, private industry, and the academic community.

The objective of the Council is to identify the requirements for, and improvements in, urban transportation systems. Specifically, the Council maintains contact and coordination with appropriate State, local, and city officials and key members of private industry and other interested groups:

(*a*) To insure that they are advised of, and have an opportunity to comment on, all significant DOT urban transportation programs and proposals;

(*b*) To obtain meaningful information regarding the urban transportation needs of the Nation.

The Council agenda for December 5 follows:

Reports on old business
Status of legislative proposals

Report on environmental procedures for transportation
Report on impact of the energy crisis on urban transportation

The meeting will be held from 9 a.m. until 5 p.m. and will be open to the public.

This notice is given pursuant to section 10 of Public Law 92–463.

Issued on November 29, 1972.

JOHN A. VOLPE,
Secretary of Transportation.

[FR Doc.72–20831 Filed 12–1–72;8:52 am]

AMERICAN REVOLUTION BICENTENNIAL COMMISSION

ADVISORY COMMITTEES AND PANELS

Notice of December Meetings

Notice is hereby given, pursuant to Executive Order 11671, that the following American Revolution Bicentennial Commission Advisory Committee and Panel Meetings will be held the month of December 1972:

Horizons '76 Committee. The Horizons '76 Committee will hold an open meeting on December 6, 1972, at 7 p.m. in the ARBC conference room, 736 Jackson Place NW. The Committee membership is composed of 11 ARBC Commissioners. The agenda will include discussion of the call for achievement program; "Trees from the Nation's History" project proposal; and Fort Lincoln Newtown.

Communications Committee. The Communications Committee will hold an open meeting from 9:30 a.m. to 1 p.m. on December 6, 1972, in the ARBC conference room, 736 Jackson Place NW. Membership on the Committee is represented by persons from Copley Newspapers; National Newspaper Publishers Association; Montgomery Ward & Co.; National Association of Broadcasters; Magazine Publishers Association, Inc.; La Opinion; Reader's Digest; NBC Television Network; National Newspaper Association; Tomorrow Entertainment, Inc.; American Association of Advertising Agencies; Public Relations Society of America; Corporation for Public Broadcasting; the Congress; and the White House. Special representatives from the Department of Defense and the U.S. Information Agency will also attend the meeting.

The agenda will include discussion of:

Ethnic Media Panel.
ARBC Medal Campaign Program.
ARBC/Ad Council.
Use of ARBC Symbol.
Film Needs.
Seminars for Regional Media.
Seminars for Federal Agency Public Information Officers.
Print Needs.

Heritage '76 Committee. The Heritage '76 Program Committee will be meeting on Wednesday, December 6, 1972, at 9:30 a.m. in the board room of the National Trust for Historic Preservation, 748 Jackson Place NW., Washington, D.C. The day-long meeting will be held in executive session. The Committee is chaired by James Biddle and is composed of the following other members: Dr. Paul S. Smith, Ann Hawkes Hutton, Frederick A. Seaton, Hon. Harry F. Byrd, Jr., Eugene J. Sleevi (for the Secretary of Defense), Lewis B. Jennings (for the Secretary of the Interior), Elizabeth E. Hamer, Dr. James B. Rhoads, Prof. Richard P. McCormick, Francis D. Lethbridge, Dr. Leonard Carmichael, Charles E. Lee, Prof. George A. Billias, and Judge Clarence Taylor.

The Committee will be meeting to review and recommend appropriate action on a number of programs and projects, specifically: Two symposia proposals and one International Congress of Philosophers; a museum proposal; and an Afro-American bicentennial exhibit. In addition, the current status of the Heritage '76 program budget will be discussed and a vote on a proposed new member of the Committee taken.

Ethnic Media Advisory Panel. The Ethnic Media Advisory Panel will be meeting on December 6, 1972, from 2 p.m. to 4:05 p.m. in the ARBC conference room, 736 Jackson Place NW. The meeting is open. Membership on the Panel is representative of the major ethnic newspapers of the country broken down into the following categories: Black, Spanish-language, Indian, Jewish, and European ethnic. The agenda will include briefing the ARBC staff and consideration of the role of the Ethnic Panel.

Dated: November 29, 1972.

HUGH A. HALL,
Acting Director, American Revolution Bicentennial Commission.

[FR Doc.72–20755 Filed 12–1–72;8:50 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50–373, 50–374]

COMMONWEALTH EDISON CO.

Establishment of Atomic Safety and Licensing Board

On October 6, 1972, the Commission published in the FEDERAL REGISTER, 37 F.R. 21197, a notice of hearing to consider the applications filed by the Commonwealth Edison Co. for construction permits for the La Salle County Nuclear Power Station, Units 1 and 2. The notice indicated that the Safety and Licensing Board for this proceeding would be designated at a later date, and that notice of its membership would be published in the FEDERAL REGISTER.

Pursuant to the Atomic Energy Act of 1954, as amended, the regulations of Title 10, Code of Federal Regulations, Part 2, rules of practice, and the notice of hearing referred to above, notice is hereby given that the Safety and Licensing Board in this proceeding will consist of Mr. Lester Kornblith, Jr., Dr. Donald P. de Sylva, and Elizabeth S. Bowers, Esq., Dr. Paul W. Purdom has been designated as a technically qualified alternate and Edward Luton, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

The positions and mailing addresses of the Board members are as follows:

1. Mrs. Elizabeth S. Bowers, Chairman, an attorney member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

2. Mr. Lester Kornblith, Jr., a technical member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

3. Dr. Donald P. de Sylva, associate professor of marine science, Rosenstiel School of Marine and Atmospheric Science, University of Miami, Miami, Fla. 33149.

4. Mr. Edward Luton, Alternate Chairman, an attorney member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

5. Dr. Paul W. Purdom, Alternate Director, Center for Urban Research and Environmental Studies, Drexel University, 32d and Chestnut Streets, Philadelphia, Pa. 19104.

As provided in the notice of hearing, the date and place of a prehearing conference and of a hearing will be scheduled by the Board and will be published in the FEDERAL REGISTER.

Dated at Washington, D.C., this 29th day of November 1972.

JAMES R. YORE,
Executive Secretary, Atomic Safety and Licensing Board Panel.

[FR Doc.72–20758 Filed 12–1–72;8:51 am]

[Docket No. 50–295]

COMMONWEALTH EDISON CO.

Order Extending Completion Date

Commonwealth Edison Co. is the holder of Provisional Construction Permit No. CPPR–58 issued by the Commission on December 26, 1968, for the construction of the Zion Station, Unit 1, a 3,250 megawatt (thermal) pressurized water nuclear reactor presently under construction at the company's site on the west shore of Lake Michigan in Zion, Lake County, Ill.

On November 3, 1972, the company filed a request, which was supplemented by letter dated November 15, 1972, for an extension of the completion date because of: (i) Construction delays due to piping system modifications for the safety valves and additional piping work which was necessitated by the installation of a hydrogen recombiner, and (ii) delay in the completion of various pipe hangers and restraints. Also, procurement of the materials needed to accomplish the work described above has not been completed. Good cause having been shown as required by section 185 of the

Atomic Energy Act of 1954, as amended, and § 50.55 of 10 CFR Part 50 of the Commission's regulations:

It is hereby ordered, That the latest completion date for CPPR–58 is extended from December 1, 1972, to June 1, 1973.

Date of Issuance: November 28, 1972.

For the Atomic Energy Commission.

A. GIAMBUSSO,
Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.72–20706 Filed 12–1–72;8:46 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF AGRICULTURE

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Confidential Assistant to the Under Secretary, Office of the Secretary.

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

[FR Doc.72–20729 Filed 12–1–72;8:45 am]

DEPARTMENT OF THE TREASURY

Notice of Title Change in Noncareer Executive Assignment

By notice of August 26, 1972, F.R. Doc. 72–14539 (37 F.R. 17440), the Civil Service Commission authorized the Department of the Treasury to make a change in title for the position of Assistant to the Deputy Secretary, Office of the Deputy Secretary. This is notice that the title of this position is now being changed to Executive Assistant to the Deputy Secretary, Office of the Secretary.

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

[FR Doc.72–20730 Filed 12–1–72;8:45 am]

DEPARTMENT OF THE TREASURY

Notice of Title Change in Noncareer Executive Assignment

By notice of June 5, 1970, F.R. Doc. 70–6994 the Civil Service Commission authorized the Department of the Treasury to fill by noncareer executive assignment the position of Director, Office of Law Enforcement, Office of the Secretary. This is notice that the title of this position is now being changed to Deputy Assistant Secretary for Enforcement, Office of the Secretary.

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

[FR Doc.72–20732 Filed 12–1–72;8:46 am]

ENVIRONMENTAL PROTECTION AGENCY

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Environmental Protection Agency to fill by noncareer executive assignment in the excepted service the position of Associate Commissioner, Federal Water Pollution Control Administration.

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

[FR Doc.72–20728 Filed 12–1–72;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Federal Communications Commission to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Chairman for Policy and Planning.

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

[FR Doc.72–20731 Filed 12–1–72;8:46 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Public Availability

Environmental impact statements received by the Council from November 20 through November 24, 1972.

NOTE: At the head of the listing of statements received from each agency is the name of an individual who can answer questions regarding those statements.

DEPARTMENT OF AGRICULTURE

Contact: Dr. T. C. Byerly, Office of the Secretary, Washington, D.C. 20250, 202—388–7803.

FOREST SERVICE

Draft, November 24

Blue Range Primitive Area, Ariz., county: Greenlee. The statement refers to the proposed drilling of one or two 2,000–4,000-foot holes by the Morenci Division of the Phelps Dodge Corp., in order to determine if an ore body exists in the area. The project will adversely affect water quality and will leave an irreparable scar upon the landscape, with long-term impact and adverse environmental effect. Phelps Dodge has 92 mining claims in Blue Range, which is part of the Apache National Forest. The primitive area is presently being considered for inclusion in the National Wilderness System; the proposed project would create a situation which is in direct conflict with the basic philosophy of the wilderness. (40 pages) (ELR Order No. 05674) (NTIS Order No. EIS 72 5674–D)

Draft, November 20

Herbicide Use, Olympic, Mount Baker, NF's, Washington, county: Several. The statement refers to a proposed program for the use of the herbicides Amitrole, Dicamba, 2,4-D, 2,4,5-T, Silvex and Picloram on the Olympic, Mount Baker, Snoqualmie, and Gifford Pinchot National Forests. The purposes of the action includes the control of vegetation which interferes with crop trees, is poisonous to livestock, or is classified as noxious on agricultural land. Additional purposes are the improvement of wildlife habitat and the reduction of rodent populations. The use of the chemicals will put herbicides into the environment in varying amounts; nontarget species will be hit. Very little is kown about the effects of these herbicides upon plant and wildlife communities. (ELR Order No. 05658) (NTIS Order No. EIS 72 5658–D)

RURAL ELECTRIFICATION ADMINISTRATION

Final, November 21

Marion Plant, Illinois, county: Williamson. The statement considers a loan request from Southern Illinois Power Co. If approved, part of the loan would be used to finance electrostatic precipitators for each of three existing coal gathering units of the Marion Plant. The precipitators would reduce fly ash emissions. (79 pages) Comments made by: EPA, DOI, and USDA. (ELR Order No. 05665) (NTIS Order No. EIS 72 5665–F)

ATOMIC ENERGY COMMISSION

Contact: For nonregulatory matters: Mr. Robert J. Catlin, Director, Division of Environmental Affairs, Washington, D.C. 20545, 202—973–5391.

For regulatory matters: Mr. A. Giambusso, Deputy Director for Reactor Projects, Directorate of Licensing, 202—973–7373. Washington, D.C. 20545

Draft, November 20

Duane Arnold Energy Center, Iowa, county: Linn. The statement refers to the proposed continuation of a construction permit and the issuance of an operating license to the Iowa Electric Light & Power Co., the Corn Belt Power Co-op., and the Central Iowa Power Co-op. The center will employ one boiling water reactor to produce 550 MWe (gross); cooling will be by a closed-cycle system using forced draft towers, with water being drawn from and discharged to the Cedar River. Approximately 500 acres of farmland have been converted from agricultural to industrial use; an additional 1,180 acres will be taken for transmission line right-of-way. (242 pages) (ELR Order No. 05662) (NTIS Order No. EIS 72 5662–D)

Draft, November 21

Shearon Harris Nuclear Power Plant, four units, North Carolina, counties: Wake and Chatham. The statement refers to the proposed granting of a construction permit to the Carolina Power & Light Co. for the four-unit plant. Identical pressurized water reactors will be employed to produce totals of 11,000 MWt and 3,600 MWe (net). Cooling will be by a once-through flow from a manmade lake of 10,000 acres. (Because of temperature and stratification conditions the lake will be only marginally suitable for recreational purposes.) There exists a potentially excessive thyroid dose to those living on or near the site boundary due to iodine release from gaseous effluent. Redesign of the radiological waste system and modification of normal operating procedures will reduce the levels to acceptable limits. (176 pages) (ELR Order No. 05666) (NTIS Order No. EIS 72 5666–D)

DEPARTMENT OF DEFENSE

ARMY CORPS

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs, Attention: DAEN–PAP, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, DC 20314, 202—693–7168.

Draft, November 20

Ofu Boat Harbor, American Samoa. The statement refers to the proposed construction of a harbor on Ofu, Manu's Islands. The harbor would consist of an entrance channel and a turning basin. Construction would extend over 7 acres of reef flat; and additional 3 acres of reef flat will be converted to land. Marine biota will be damaged by construction activities. (12 pages) (ELR Order No. 05655) (NTIS Order No. EIS 72 5655–D)

Draft, November 22

Kaneohe-Kailus Area, Hawaii. The statement refers to the proposed construction of a detention dam and reservoir in the headwaters of Kaneohe Stream, for the purpose of flood control. One thousand feet of stream will be channelized. Approximately 295 acres will be acquired for the project. Salvage work on four archeological sites will be completed before inundation. (16 pages) (ELR Order No. 05670) (NTIS Order No. EIS 72 5670–D)

DEPARTMENT OF HUD

Contract: Mr. Richard H. Broun, Director, Environmental and Land Use Planning Division, Washington, D.C. 20410, 202—755–6186.

Draft, November 15

Riviera Apartments. The statement refers to the proposed construction of a 19 building, 164 unit apartment complex being constructed in Virginia Beach, under section 236 of the National Housing Act. The complex, which will house low and moderate income families is situated on an 11.2-acre site in CNR Zone 2 of the Oceana Naval Air Station. There will be significant adverse impact on residents of the project from military aircraft noise from the station. Additional adverse effects will be the precedent established for development in this area and the taxing of school capacities in Virginia Beach. (37 pages) (ELR Order No. 05632) (NTIS Order No. EIS 72 5632–D)

Draft, November 6

Minimum property standards. The statement refers to HUD's Minimum Property Standards (MPS) for the design and construction of housing. The standards would involve a comprehensive new system of revised physical standards to serve new and existing construction for HUD housing programs. Three mandatory MPS and a guidance Manual of Acceptable Practices compose the system. (Statement, 28 pages; manual, several hundred pages) (ELR Order No. 05667) (NTIS Order No. EIS 72 5667–D)

Draft, November 1

Lakeland urban renewal project, Maryland, county: Prince Georges. The statement refers to an urban renewal project on 105 acres at Lakeland, in College Park. The project will involve residential rehabilitation of 70 units, the clearance of 80 structures, redevelopment for new residential and commercial use, and necessary flood protection measures on Paint Branch and Indian Creeks. Completion of the project could lead to severe downstream flooding and siltation damage to existing or future development. (120 pages) (ELR Order No. 05660) (NTIS Order No. EIS 72 5660–D)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Contact: Mr. Ralph E. Cushman, Special Assistant, Office of Administration, NASA, Washington, D.C. 20546, 202—962–8107.

Draft, November 21

John F. Kennedy Space Center, Fla. The statement refers to facility development and operations at the Kennedy Space Center (KSC), for the Space Shuttle Program. Facilities for receiving, inspection, checkout, launch, recovery, and refurbishment of Space Shuttle flight hardware are included. In addition to new facilities, some of those already installed for the Apollo and Skylab programs will be modified. If required, separate environmental impact statements will be prepared for those payloads which may have significant potential environmental implications. (The Space Shuttle program itself is treated in an impact statement of July, 1972. The NTIS order number for that statement is EIS 72 4939F.) (130 pages) (ELR Order No. 05664) (NTIS Order No. EIS 72 5664–D)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Quality, 400 Seventh Street SW., Washington, DC 20590, 202—426–4355.

FEDERAL AVIATION ADMINISTRATION

Draft, November 20

Valdosta Municipal Airport, Ga., county: Lowndes. The proposed project is the expansion of Runway 17–35 and related facilities to accommodate 70 percent of the basic transport fleet of turbojet-powered aircraft weighing less than 60,000 pounds. Approximately 82.6 acres of land will be committed to the project. Increased noise levels and air pollution will result. (60 pages) (ELR Order No. 05650) (NTIS Order No. EIS 72 5650–D)

Panola County Airport, Miss., county: Panola. The proposed project is the development of a general aviation airport which accommodates substantially all propeller aircraft of less than 12,500 pounds. The action consists of strengthening, extending, and lighting the existing runway. There will be increases in the noise level and in air pollution (14 pages) (ELR Order No. 05651) (NTIS Order No. EIS 72 5651–D)

Concord Municipal Airport, N.H., county: Merrimack. The project contemplates the construction, marking, and lighting of a 1000-foot extension to Runway 35 and the construction and marking of a parallel taxiway (4700 feet x 50 feet). The project is expected to eliminate the hazardous approach to Runway 17 and the practice of taxiing aircraft on an active runway. (16 pages) (ELR Order No. 05653) (NTIS Order No. EIS 72 5653–D)

Draft, November 24

Lamesa Municipal Airport, Tex. The statement refers to the proposed construction, lighting, and marking of a new 4200 foot x 75 foot runway with connecting taxiways. The existing runway will be converted to a parallel taxiway. Twenty-one acres will be acquired for the project. Increased airport use will result in a concomitant increase in air and noise pollution. (14 pages) (ELR Order No. 05672) (NTIS Order No. EIS 72 5672–D)

Final, November 22

Kenosha Municipal Airport, Wis., county: Kenosha. The project involves the acquisition of land (133 acres in fee, 23 acres in easement) and reconstruction and extension (by 600 feet) of an existing 75 foot x 3000 foot northwest/southeast runway, construction of taxiways, and installation of lighting. (34 pages) (Comments made by: USDA, DOT, DOI, EPA, and FAA. (ELR Order No. 05669) (NTIS Order No. EIS 72 5669–F)

FEDERAL HIGHWAY ADMINISTRATION

Draft, November 20

Rosemont Garden Extension, Kentucky, county: Fayette. The statement refers to the proposed construction of a circumferential arterial route from Limestone Street to New Circle Road (Kentucky 4). Length of the project is 3.113 miles. Twenty-four families, one farm building, and a water tower would be displaced. There would be an increase in noise levels. (26 pages) (ELR Order No. 05654) (NTIS Order No. EIS 72 5654–D)

Mississippi County Airport, Mo., county: Mississippi. The statement refers to the proposed development of a new airport facility to serve the general aviation needs of the county. The project consists of land acquisition for one north/south runway and supporting facilities (99 acres); auto parking area; and medium intensity lighting, etc. Several acres of rabbit and quail habitat will be lost to the project. (30 pages) (ELR Order No. 05652) (NTIS Order No. EIS 72 5652–D)

Draft, November 22

Pojoaque bridge widening, New Mexico, county: Santa Fe. The proposed project consists of reconstructing and widening the Rio Mambe River bridges, upgrading the bridge approaches north and south, and realining and upgrading the S.T. 4 county road intersection with U.S. 64–285. Approximately 2.3 acres, of which 1.1 acres is in the Rio Mambee flood plain, will be acquired for right-of-way. (35 pages) (ELR Order No. 05668) (NTIS Order No. EIS 72 5668–D)

TREASURY DEPARTMENT

Contact: Mr. Donald L. Ritger, Office of the General Counsel, Room 3014, Washington, D.C. 20220, 202—964–5404.

Final, November 24

Federal Law Enforcement Training Center, Prince Georges County, Md. The statement, which replaces an earlier one which was challenged in litigation, is concerned with the construction of facilities for the Center in the town of Beltsville. Environmental impacts discussed include effects upon water supply, sewerage, and special problems such as noise from firing ranges (approximately 420 pages). Comments made by: USDA, COE, DOD, HEW, HUD, DOI, EPA, NCPC, DOT (ELR Order No. 05675) (NTIS Order No. EIS 72 5675-F)

TIMOTHY ATKESON,
General Counsel.

[FR Doc.72-20785 Filed 12-1-72;8:47 am]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 17555-17558; FCC 72R-336]

AZALEA CORP., ET AL.

Memorandum Opinion and Order Enlarging Issues

In regard applications of Azalea Corp., Mobile, Ala., Docket No. 17555, File No. BP-17340; W.G.O.K., Inc. (WGOK), Mobile, Ala., Docket No. 17556, File No. BP-17398; People's Progressive Radio, Inc., Mobile, Ala., Docket No. 17557, File No. BP-17477; Mobile Broadcast Service, Inc., Mobile, Ala., Docket No. 17558, File No. BP-17478; for construction permits.

1. Each of the mutually exclusive applicants in this standard broadcast proceeding seeks an authorization to operate on the frequency 960 kHz, 1 kw., daytime only, at Mobile, Ala. Azalea Corp. (Azalea), People's Progressive Radio, Inc. (Peoples), and Mobile Broadcast Service, Inc. (MBS), request authority to construct a new class III station, whereas W.G.O.K., Inc., licensee of class II standard broadcast station WGOK, seeks to modify the present facilities of its daytime-only Mobile station. By memorandum opinion and order, FCC 67-756, 32 F.R. 10685, 10 RR 2d 717, published July 20, 1967, the Commission designated the applications for consolidated hearing on various issues, including "Suburban" issues against Azalea and MBS. The proceeding is pending before the Review Board on exceptions directed to the Administrative law judge's initial decision, FCC 69D-25, released April 22, 1969, wherein he concluded that, with the exception of Azalea, which had failed to sustain its burden under the "Suburban" issue, the other applicants had demonstrated their requisite qualifications, and recommended a grant of the MBS application under the standard comparative issue. In reaching this result, the presiding judge resolved the "Suburban" issue in favor of the preferred applicant, and extensive exceptions have been addressed by the parties to this and other determinations of the presiding judge. Following oral argument before the Review Board on February 17, 1970, the issuance of the Board's final decision in this proceeding was stayed by the Commission during the pendency of the "Primer" inquiry proceeding in Docket No. 18774. See "Interim Procedure Relating to Submission of Community Survey Showings in Connection with Radio and Television Applications," 22 FCC 2d 421, 18 RR 2d 1923 (1970). On February 23, 1971, the Commission released its "Report and Order" adopting the "Primer on Ascertainment Problems by Broadcast Applicants," 27 FCC 2d 650, 21 RR 2d 1507, and stated in paragraph 79 thereof that: "[A]pplicants in pending hearing cases may amend their applications if deemed necessary in view of our action here, within ninety (90) days of the release of the report and order, or such further time as the presiding tribunal may allow for cause shown." Presently before the Review Board for consideration are two amendments, filed on May 24, 1971, and February 2, 1972, respectively, by Azalea and MBS, which set forth additional information regarding the applicants' ascertainment of community needs. Also before the Board are two petitions to dismiss applications and eight separate petitions to reopen the record, which were filed by WGOK, Peoples, and MBS in order to disclose various events occurring since the close of the record in this proceeeding on December 10, 1968.[1]

THE SUBURBAN AMENDMENTS

2. Within the period specified by the Commission in paragraph 79 of the "Report and Order" and in response to a disqualifying "Suburban" issue, Azalea tendered a "Suburban" amendment with the Secretary of the Commission.[2] In the amendment, Azalea identifies the two reference sources it consulted to ascertain the demographic characteristics of the Mobile area and describes Mobile and its environs in terms of population, educational facilities, government, and labor force. The number of churches and hospitals in the area, as well as the circulation of the area's major newspaper, is also included in this material. The applicant further reports that it conducted a leadership survey and a telephone survey of the general public to ascertain the community problems of Mobile and its environs. Approximately 46 of the area's community leaders, who are identified by name and organization, were allegedly interviewed by Azalea and a brief enumeration of the 13 community problems reportedly culled from these interviews is set forth. Also included is a listing of the area's problems, derived from the 204 households that responded in Azalea's telephone sampling, and broken down into the following five general categories: (1) General social factors; (2) ecology and quality of life; (3) interpersonal relations; (4) personal economic factors; and (5) drug abuse. Azalea does not intend to change the proposed programing which it has described at the hearing, namely, programs directed to the needs of the black community in Mobile; rather, the applicant submits that the information elicited from its most recent surveys will be used "as a guide to the content of the programing heretofore proposed."

3. Following appeals to the Review Board and the Commission concerning the submission of further "Suburban" showings in this proceeding,[3] a telephone survey of Mobile area residents was conducted in mid-October of 1971, by a temporary employee who worked under the direction of two MBS stockholders. In all, 110 residents of Mobile and the surrounding area were interviewed and four problems (schools and school busing, pollution, crime, and jobs and industrial development) are listed as the most frequently mentioned problems facing the immediate area. A similar grouping

[1] A list of the numerous pleadings now before us is contained in the attached appendix below. As indicated, the last pleading was not filed until Nov. 13, 1972.

[2] By order, FCC 71R-299, released Oct. 6, 1971, the Review Board's consideration of the amendment was held in abeyance since the amendment had not been accompanied by proof of service upon the parties to this proceeding as required by § 1.296. Service was effected on Oct. 21, 1971, and comments regarding the amendment were filed on Nov. 1, 1971 and Nov. 19, 1971, by the Broadcast Bureau and MBS, respectively.

[3] Although the Review Board was of the opinion that the Commission's statement in par. 79 of the report and order would permit all of the applicants in this proceeding to revise their "Suburban" showings, the matter, raising novel questions of first impression affecting a substantial number of other adjudicatory proceedings, was certified to the Commission in order to promote the orderly and efficient administration of Commission business. See 29 FCC 2d 453, 21 RR 2d 1201 (1971). By order, FCC 71-589, 30 FCC 2d 1, released June 9, 1971, the Commission indicated that, consonant with its public notice of June 4, 1971 ("Amendments by Applicants in Pending Hearing Cases to Comply with the Primer on Ascertainment of Community Problems," 30 FCC 2d 136, 21 RR 2d 1746), "Suburban" amendments by the applicants herein should be accepted and consideration thereof should be limited to the resolution of the disqualifying issue. On June 11, 1971, MBS requested the Commission to reconsider its action, challenging the propriety of allowing Azalea to amend its "Suburban" showing and seeking to ascertain whether it was required to resurvey the community's needs and interests, notwithstanding the presiding judge's conclusion that MBS had met the "Suburban" standards in force when its application was filed. On Sept. 7, 1971, the Commission released its memorandum opinion and order denying the MBS petition, 31 FCC 2d 561, 22 RR 2d 909. In its order, the Commission waived Rule 1.106 and considered the petition on its merits since MBS had not been afforded a prior opportunity to argue directly on the matters set forth in the public notice of June 4, 1971; restated its determination that "good cause exists for the submission of an amended showing in all pending hearing cases whether or not the hearing record has been closed and without regard to an applicant's prior efforts in this respect"; and concluded that "it would be wholly inappropriate, in the absence of a detailed examination of the record which is not now before us to decide whether or not a further [Suburban] showing is required" from MBS.

is also included for the most important statewide problems in the respondents' view. From November 1971 to January 1972, three MBS stockholders conducted a survey of Mobile area leaders.[4] Seventeen blacks and six women are among the 51 leaders whom MBS named as participants and identified by occupation or affiliation. Among the 11 significant local problems identified in this leadership survey are unemployment, air and water pollution, lack of governmental leadership, and failure of public education. A listing of the four problems of statewide concern and the programing suggestions mentioned by the community leaders are also set forth in the MBS amendment. According to MBS, the community needs and problems ascertained in its latest surveys will be met in the daily, 1-hour public affairs program which is encompassed in the programing proposal the applicant presented at the hearing. Further, the applicant plans to conduct monthly public opinion surveys and to present the results of these surveys, along with interested speakers, as one of the features within MBS's already proposed 6-hour Sunday afternoon music and news program.

4. In its responsive pleadings, the Broadcast Bureau submits that the proffered amendments do not satisfactorily demonstrate that either Azalea or MBS has met its "Suburban" issue. Specifically, the Bureau points out that neither the interviewer nor the date of Azalea's interviews are set forth; that only one black community leader was contacted; that the random basis of the general public survey is not shown; and that Azalea has proposed no new programing to satisfy the community needs and problems ascertained in the aforenoted survey.[5] With respect to the MBS amendment, the Bureau contends that the amendment is unreasonably late and not accompanied by a valid showing of good cause for its acceptance. In addition, the Bureau urges that the MBS amendment does not fully comport with the requirements of the "Primer" and lists two alleged deficiencies to illustrate the amendment's inadequacies.[6]

5. The Review Board believes that the "Suburban" amendments of both Azalea and MBS should be accepted and considered on their merits. The Azalea amendment was tendered within the prescribed period and is otherwise consistent with the Commission's order of June 9, 1971. MBS did not file its amendment until February 3, 1972; however, the question of measuring MBS's "Suburban" showing against the contemporary Commission standards set forth in the "Primer" was not finally resolved until September of 1971, and the applicant's explanation of the less than 1-month delay in the subsequent revision of its "Suburban" showing, i.e., the relocation of its principal stockholders, the necessary reliance upon less experienced, resident stockholders, and the intervening holiday seasons, persuade the Board that good cause exists for the acceptance of the instant amendment. "Cf. Middle Georgia Broadcasting Co.", 30 FCC 2d 796, 22 RR 2d 524 (1971); "City of New York Municipal Broadcasting System (WNYC)," 29 FCC 2d 244, 21 RR 2d 1050 (1971).

6. Turning to the substance of the amendments, the Review Board finds that neither applicant appears to have complied fully with the "Primer" requirements. According to the demographic information supplied by Azalea, the 1970 black population of Mobile and Mobile County was over 35 percent and 32 percent of their respective populations of 190,000 and 317,000 persons; however, only one black community leader was apparently consulted by the applicant. Rather than indulge in a "numbers game" with respect to its community survey requirements, the Commission regularly looks to whether the applicant's survey is representative of the significant segments that comprise the community to be served. See "Primer," Q. and A. 14; and "RKO General, Inc.," 33 FCC 2d 664, 667, 23 RR 2d 930, 934 (1972). A single contact with Mobile's black leadership, however, can hardly be characterized as an adequate sampling of that segment of the community to which Azalea plans to specifically orient its programing. See "North Texas Enterprises, Inc.," FCC 72–197, 37 F.R. 5316, published January 12, 1972. In addition, Azalea has supplied virtually none of the basic information required by the "Primer" as to how the subject surveys were designed and conducted, "e.g., Primer," Q. and A. 11(c), 11(b), 13(b), and 15. Other shortcomings in Azalea's "Suburban" showing include the failure to relate the 13 broad program categories allegedly derived from its leadership survey, such as "crime," "poverty," and "civil rights," to the specific needs and interests of Mobile, and the failure to particularize what programs are designed to meet the specific problems ascertained. See "Primer, Q. and A. 29; Frank M. Cowles," FCC 72R–267, 25 RR 2d 475; and "William R. Gaston," 35 FCC 2d 624, 24 RR 2d 779 (1972); "Broadcasting Service of Carolina, Inc.," 30 FCC 2d 311, 22 RR 2d 289 (1971). In the same vein, the "Suburban" showing tendered by MBS suffers from several key deficiencies. MBS has not submitted a full profile of its community, indicating (in addition to the community's racial composition) Mobile's economic and governmental activities, its public service organizations, and any other factor or activities that make the community distinctive. Without such a community analysis, it is not clear that the various groups contacted by the applicant constitute a representative cross-section of the specified community. See "Guy S. Erway," FCC 72–879, 37 F.R. 22899, published October 26, 1972; "Harry D. Stephenson and Robert E. Stephenson," 33 FCC 2d 749, 753–54, 23 RR 2d 760, 766 (1972); "North American Broadcasting Co., Inc.," 30 FCC 2d 806, 22 RR 2d 508 (1971). Like Azalea, MBS has also failed to adequately correlate its proposed programing with any particular ascertained need. The applicant's statement that it will deal with all the community problems discovered in its latest surveys in its 1-hour public affairs program lacks the specificity called for by the Commission and this matter should be explored in an evidentiary hearing. See "Cosmos Broadcasting Corp. (WSFA–TV)," 31 FCC 2d 200, 22 RR 2d 723 (1971); "Middle Georgia Broadcasting Co., supra." In sum, both subject amendments lack the information required by the "Primer" which would enable the Review Board to conclude that each applicant has ascertained the community needs and interests of the area to be served by the proposed station and has designed programing in response to the community's ascertained needs as evaluated. In view of the foregoing, the Board believes that this proceeding must be remanded for further hearing under the "Suburban" issues and for preparation of a supplemental initial decision resolving these issues.

THE PETITIONS TO REOPEN THE RECORD

7. Subsequent to the issuance of the initial decision in this proceeding, Peoples requested the Review Board to reopen the record and remand the proceeding under added issues concerning MBS's failure to report the imposition of a lien against its principals and the effect thereof upon the applicant's character and financial qualifications. According to petitioner, the State of Alabama Department of Industrial Relations filed the subject lien with the Mobile County Probate Court on August 28, 1969, against the realty of two MBS stockholders, Howard L. and E. Howard Smith.[7] The lien, which arose from the Smith's failure to make the required State unemployment compensation payments for covered employees of station WLPR–FM, totalled $177.87 ($104.88 in payments plus $72.99 for interest and penalty).[7] It

[4] Reportedly, a detailed questionnaire was used in this survey and the questionnaire forms reflecting the specific contacts have been retained by MBS.

[5] MBS argues with the Bureau's evaluation of the Azalea amendment and maintains that the new material cannot be considered by the Board, unless and until the record is reopened and the proceeding remanded in order to afford the parties an opportunity to cross-examine with respect thereto.

[6] In response to the specific deficiencies noted by the Bureau, MBS has supplied further information concerning its ascertainment efforts, which it requests the Review Board to consider. Since the material is supplemental in nature and since MBS's request is not opposed, the Board has considered the applicant's latest "Suburban" showing as supplemented. See par. 3, supra.

[7] At that time, the Smiths, acting as Mobile Broadcast Service, were the licensee of station WLPR–FM, Mobile, Ala. On Aug. 26, 1970, however, the Commission approved the voluntary assignment (BALH–1353) of the station from the Smiths to Sound Broadcast Corp. By letter of Sept. 2, 1970, counsel for MBS informed the Commission and the parties to this proceeding of the consummation of the approved sale.

is the contention of Peoples that the lien should have been reported within the 30-day period prescribed by § 1.65 and that the existence of the lien raises a vital question as to the ability of the Smiths to fulfill their substantial commitments to the applicant.[8]

8. MBS opposes petitioner's request, disputing the decisional significance of the lien in light of Howard L. Smith's acquisition of his subscribed stock and E. Howard Smith's demonstrated ability to honor his financial commitments to MBS. See note 7, supra. Attached to MBS's pleading is an affidavit of Howard L. Smith, who states therein that in September of 1969, he was informed by the local director of the State unemployment office that the station's first two quarterly installments of the unemployment compensation payment, which contribution had theretofore been made on an annual basis, had matured. The affiant further states that although a check was drawn for the amount due and sent to the Alabama Department of Revenue, he was later informed by a representative of the county sheriff's office that the check should have been drawn payable to the Alabama Unemployment Compensation Agency and that another check for the amount claimed and a collection fee should be drawn payable to the sheriff of Mobile County. As directed, Smith reportedly sent the required check to the sheriff's office.[9] Howard E. Smith also avers that during his conversation with the aforenoted officials, no mention was made of the existence of the lien and that he had no record or recollection of receiving, on or about September 18, 1969, a letter informing station WLPR–FM of the imposition of the lien.

9. In reply, Peoples withdraws its request for the addition of basic qualifications issues since it has no reason to disbelieve Howard E. Smith's disavowal of receipt of written notice concerning the imposition of the lien. However, petitioner reiterates its contention that the existence of the lien should have been reported pursuant to § 1.65 and renews its request that the nondisclosure be examined comparatively, contending that Smith's discussions with the local officials concerning the indebtedness and the facts concerning the transmittal of the written notice of the lien should be determined on the basis of an evidentiary record.[10]

10. The obligation in question arose from the Smiths' operation of Station WLPR–FM; however, the Review Board is not persuaded that the mere existence of the lien is reportable pursuant to Rule 1.65. See "Advanced Electronics," FCC 65R–265, 5 RR 2d 980. Besides relevancy, the materiality of or significance of such an obligation must be demonstrated. See "Cosmopolitan Enterprises, Inc.," 8 FCC 2d 876, 10 RR 2d 532 (1967). The Board is of the opinion that the lien herein is not of sufficient magnitude to have required MBS to disclose its existence for even if E. Howard Smith had to meet the lien's underlying obligation individually, such satisfaction apparently would not affect his demonstrated ability to fulfill his outstanding obligations to the applicant.[11] See note 7, supra; and "Emerald Broadcasting Co.," 30 FCC 2d 879, 887–89, 22 RR 2d 633, 643–45 (1971); "Virginia Broadcasters," 16 FCC 2d 1024, 15 RR 2d 1016 (1969). Accordingly, we find petitioner's reliance upon "United Television Co., Inc. (WFAN–TV)," 19 FCC 2d 1060, 17 RR 2d 467 (1969), to be misplaced since the Federal tax liens in that case were substantial and could have seriously affected the applicant's financial qualifications had reliance upon funds from the prospective lender-subscriber become necessary. Apart from the instant indebtedness, there is no indication that the Smiths, in their operation of Station WLPR–FM, have been untimely in meeting the station's debts. In view of both the prior manner in which the station's unemployment compensation payments were made and the alacrity with which the Smiths sought to rectify their misunderstanding, the Review Board does not regard this one instance of untimeliness as significant. While Peoples is somewhat skeptical of Howard L. Smith's recollection of the conversations with the aforenoted officials, it has not supported its conjecture with affidavits from these individuals. In the absence of properly documented allegations, the Board believes that the requested action is not warranted. See "Viking Television Inc.," 16 FCC 2d 1018, 15 RR 2d 954 (1969); "Saul M. Miller," FCC 63R–206, 25 RR 2d 417.

11. MBS also seeks enlargment of the issues against Peoples, arguing that Peoples lacks reasonable assurance of the availability of its proposed transmitter site and that the applicant has been remiss in apprising the Commission of changes relating to that site. Examination of the financial and engineering portions of the Peoples application, which was filed on October 24, 1966, reflects that the applicant plans to utilize the transmission facilities of former standard broadcast Station WMOZ and to that effect, on August 25, 1966, the applicant's president allegedly "entered into a lease-option agreement whereby either he or his nominee (Peoples) will lease the Station WMOZ transmitter site, building and equipment from Edwin H. Estes."[12] As noted by MBS, however, Mr. Estes has died and, on February 7, 1972, his widow and executrix transferred the property and facilities in question to Bernard Dittman, the president of WABB, Inc., which is the licensee of Station WABB(AM) and the permittee of Station WABB–FM, Mobile, Ala.[13] According to petitioner, WABB, Inc., has modified, with Commission approval, its existing construction permit so as to specify the WMOZ property as its transmitter site and has represented that it will dismantle the existing radio tower at that site (which Peoples has proposed to use) and erect a new 420-foot structure. See BMPH–13,476, granted May 10, 1972. Under these circumstances, MBS submits that Peoples can no longer be reasonably assured of the availability of its proposed transmitter site and that the instant proceeding should be remanded for further hearing under a site availability issue. A § 1.65 issue is also requested because of the applicant's failure to inform the Commission of the developments concerning the proposed site.

12. The Review Board will add the requested site availability issue. We agree with the Broadcast Bureau that the changes in ownership of the land and facilities in question and the present owner's apparent intention to utilize the premises for its own purposes require Peoples to set forth the basis for its assurance concerning the continued availability of the proposed site. See "Guy S. Erway, supra; Harry D. Stephenson and Robert E. Stephenson," 15 FCC 2d 335, 14 RR 2d 945 (1968); "John N. Traxler and Alvera M. Traxler," FCC 65R–191, 5 RR 2d 735 (1972); "Kittyhawk Broadcasting Corporation," 8 FCC 2d 839, 10 RR 2d 628 (1967). The Board believes that the factual allegations before it,

[8] A limited financial issue which, inter alia, concerned the ability of several stockholders, including the Smiths, to satisfy their subscription agreements and the ability of E. Howard Smith to finance his $10,000 loan to the applicant, was specified by the Commission. See designation order, supra. As noted, the presiding judge resolved the financial issue in MBS's favor, holding that Howard L. Smith has satisfied his stock subscription and that E. Howard Smith has sufficient net liquid assets ($13,200) to meet his $12,500 financial commitment to the applicant. See initial decision, pars. 31–32, 53. No exceptions were addressed to these determinations of the presiding judge.

[9] Petitioner's subsequent inquiry ascertained that the indebtedness underlying the lien has been paid by the Smiths and that the lien would be released.

[10] Under the circumstances present herein, the Broadcast Bureau does not support the addition of a disqualifying issue; however, the Bureau poses no objection to the inclusion of the requested comparative issue.

[11] In the report and order adopting § 1.65 (FCC 64–1037, 29 F.R. 15516, 3 RR 2d 1622), the Commission noted that applicants are required to report "a change of circumstances * * * sufficiently altering the financial status of an applicant as to be pertinent to financial qualifications." "The rule," explained the Commission, "is not intended to require the reporting of minor changes which would have no significance in the Commission's consideration of an application under the public interest standard. We recognize that some material matters may normally fluctuate on a day-to-day basis, such as the financial position of an applicant * * *. The rule does not contemplate the reporting of normal, forseeable everyday changes unless they are substantial and might have a significant impact on the status of an application." 3 RR 2d at 1625.

[12] Reportedly, the agreement provided for a $100 monthly rental, which would be increased to $600 per month upon a grant of the Peoples application, and an option to purchase the WMOZ facilities for $20,000.

[13] The general warranty deed, a copy of which is attached to the instant petition, recites that Mrs. Estes has a fee-simple estate in the property and that "said property is free and clear of all encumbrances."

which are uncontroverted, raise a substantial question as to the availability of Peoples' site and merit the addition of an appropriate issue. The related § 1.65 issue, however, will not be added at this time. In this regard, the Board notes that no representation from either Mrs. Estes or Mr. Dittman concerning Peoples' alleged lease-option or the applicant's possible use of the property in question have been supplied and that MBS's allegations do not comport with the specificity requirements of § 1.229(c). See "William R. Gaston," 35 FCC 2d 615, 14 RR 2d 741 (1972), review denied FCC 72–828, released September 22, 1972; "Pettit Broadcasting Co.," FCC 71R–252, 22 RR 2d 717. Of course, should the evidence adduced under the site availability issue indicate the occurrence of substantial and material changes affecting the applicant's technical or other qualifications, our action herein would not foreclose MBS from requesting the addition of appropriate issues.[14]

13. MBS's other enlargement request is directed to the Azalea application. MBS contends that it recently became aware of the death of Dr. Francis T. England on September 16, 1971; that Dr. England had subscribed to a 20 percent interest in the Azalea corporation; and that this subscriber's demise "obviously produced a significant change in the ownership of Azalea." A § 1.65 issue is requested because of Azalea's alleged failure to keep its application substantially accurate and complete in all significant respects. No pleading in response to the instant request has been submitted by Azalea, and the time for filing said pleading has expired. See § 1.294(c). Nor has leave to amend the Azalea application with respect to this matter been requested. Under the circumstances, the Review Board believes that a substantial question has been raised concerning the applicant's compliance with § 1.65 and an appropriate issue will, therefore, be added. See "Creek County Broadcasting Co.," 31 FCC 2d 462, 470, 22 RR 2d 891, 902 (1971).

14. Three of the four remaining petitions request the Review Board to reopen the record for the limited purpose of accepting amendments to the application of WGOK. The WGOK application, as amended on October 24, 1966, discloses that the corporate applicant is comprised of two equal stockholders, Jules J. Paglin and Stanley W. Ray, Jr., who, through various other corporate entities, own the following standard broadcast stations: WXOK, Baton Rouge, La.; WBOK, New Orleans, La.; WLOK, Memphis, Tenn.; and KYOK, Houston, Tex. Through the proffered amendments, WGOK now seeks to update its application to reflect, inter alia, Commission consent to the voluntary assignment of Stations WBOK, WLOK, and KYOK and their disposal in June of 1969; the death of Stanley Ray, Jr., on November 19, 1970, and the corporate realinements following his demise; Mr. Paglin's assumption of the decedent's corporate and staffing duties at Station WGOK; and Commission consent to the voluntary assignment of Station WXOK and the sale of that station on June 1, 1972. WGOK asserts that no other party to this proceeding will be prejudiced by a grant of its petitions and acceptance of the attached amendments. None of the applicants herein opposes WGOK's request; however, the Broadcast Bureau submits that while the amendments may be accepted by the Board, their acceptance should be permitted only with the understanding that no comparative advantage accrue to WGOK by virtue of the reported changes.

15. Rule 1.65 requires an applicant to amend or seek to amend its pending application whenever the information set forth therein is no longer accurate and complete in all material respects. Disposition of the request to amend, however, depends on the facts of the particular case, for the "rule does not affect the rules governing amendment of applications in hearing status and is not intended as a means for applicants to improve their comparative positions vis-a-vis other applicants." "Report and Order," supra, 3 RR 2d at 1625. See also "D. H. Overmyer Communications Co.," 3 FCC 2d 557, 7 RR 2d 661 (1966). A showing of "good cause" must therefore be made before the proffered postdesignation amendments can be accepted by the Review Board. See § 1.522(b). In this regard, foremost in the Board's consideration are the primary functions of § 1.522(b), namely, to prevent undue disruption of the hearing process and to avoid unfairly prejudicing the parties involved. See "Triple C Broadcasting Corporation," 12 FCC 2d 503, 12 RR 2d 1008 (1968).[15] Here, as earlier indicated, the record will have to be reopened and further hearing will be required. It does not appear that our acceptance of the WGOK amendments would either necessitate rehearing of matters already litigated or unduly impede the orderly progress of the further hearing. The reported revisions in the applicant's ownership structure are not alleged to have devolved from other than Mr. Ray's death and there is no suggestion that the new stockholder, Mr. Paglin's daughter, will actually participate in the management of the station. See "Triple C Broadcasting Corporation, supra." Likewise, Mr. Paglin's succession to the corporate duties and responsibilities, which initially were to have been performed by the decedent, has not, in the Board's view, visibly enhanced the applicant's comparative position to the prejudice of the other applicants.[16] We therefore find no bar to acceptance of the amendments with respect to the foregoing matters. See "Creek County Broadcasting Co., supra; Lake-Valley Broadcasters, Inc.," FCC 65R–120, 4 RR 2d 872. The Review Board, however, cannot make the required good cause determination with respect to the sale of the applicant's four broadcast stations. Examination of the WGOK amendments fails to disclose any reasonable relationship between the disposal of these stations and the death of Mr. Ray on November 19, 1970. Indeed, three of the stations were sold prior to November 1970 and, as to the fourth station, WGOK acknowledged filing an application for the "voluntary assignment of license" more than 5 months after Ray's demise. More important, acceptance of the amendments in this regard would clearly improve WGOK's comparative position vis-a-vis the other applicants.[17] Accordingly, the portions of the subject amendments relating to the voluntary changes in the broadcast interests attributable to the amending applicant will be rejected. See "Allied Broadcasting, Inc. v. FCC," 140 U.S. App. D.C. 264, 266–67 n.9, 435 F. 2d 68, 70–71 n.9, 19 RR 2d 2071, 2074–75 n.9 (1970); "The News-Sun Broadcasting Co.," 24 FCC 2d 770, 775–76, 19 RR 2d 942, 951 (1970), review denied 27 FCC 2d 61, 20 RR 2d 1084 (1971); "The Young People's Church of the Air, Inc.," FCC 61–401, 21 RR 476, reconsideration denied FCC 61–851, 21 RR 479.

16. In the remaining petition, Peoples requests the Board to reopen the record for the limited purpose of receiving into evidence two extensions of a bank commitment, upon which the applicant relied at the hearing, and certain related materials. To place the instant request in the proper perspective, some relevant background information is necessary. On October 25, 1967, the Review Board, at

[14] On Oct. 20, 1972, MBS requested the Review Board to dismiss the Peoples application pursuant to § 1.568, arguing that the latter's reticence with respect to the above matters evidences an intention not to further prosecute its application. Such inference does not appear warranted and Peoples' course of conduct has not placed its application in default. Compare Unlimited Service Organization, 20 FCC 2d 289, 17 RR 2d 759 (1969), reconsideration denied 20 FCC 2d 1089, 18 RR 2d 197 (1970); Lebanon Valley Radio, 11 FCC 2d 31, 11 RR 2d 998 (1967). Accordingly, the Review Board will deny the motion to dismiss. For the same reasons, we will deny a similar motion to dismiss which MBS filed on Nov. 13, against Azalea. See para. 13, infra. Moreover, we see no reason to await the filing of responsive pleadings.

[15] As we indicated in Note 3 of the Triple C case, other elements, such as whether the tendered amendment resulted from a voluntary act of the amending applicant, must also be considered and their importance weighed in determining whether the required good cause is present. 12 FCC 2d at 503, 12 RR 2d at 1009.

[16] Decedent did not propose to spend an appreciable amount of time at the station. Accordingly, the Presiding Judge ranked WGOK as the least preferred applicant under the integration factor. See paragraphs 75–76, and 81 of the initial decision.

[17] As noted by the Presiding Judge, Azalea and Peoples have no other broadcast interest. By virtue of the Smiths' ownership of Station WLPR–FM, WGOK was accorded a "slight" preference over MBS under the diversification of control criterion. See paragraphs 7374, and 80 of the initial decision.

the request of MBS, specified a limited financial issue against Peoples because, inter alia, the duration, interest rate, repayment provisions and other items of its $100,000 line of credit from the First National Bank of Mobile (First National Bank) were not set forth in the commitment letter supplied by the applicant. See 10 FCC 2d 364, 11 RR 2d 541. The applicant's financial exhibits were introduced and received into evidence at the May 20, 1968, hearing session. Reliance was not placed upon the original bank commitment letter; rather, the earlier commitment was superseded by a March 16, 1968, commitment from the same bank, offering for another 1-year period to lend Peoples $100,000 at a fixed rate of interest. This bank commitment, which again required the personal endorsements of Peoples' stockholders and their financial status remaining as of the date of the letter,[18] also provided for a 1-year moratorium of principal payments with interest and principal thereafter payable monthly in 36 equal installments. The proposed bank loan was available throughout the hearing; however, the commitment, by its terms, expired on March 6, 1969—nearly 3 months after the record's closing on December 10, 1968.

17. On March 17, 1969, Peoples notified the Commission pursuant to § 1.65 that the First National Bank had extended its previous offer for another 1-year period—until March 6, 1970. In this letter, the bank affirmed the earlier repayment terms, but left the interest rate to be determined at the time of the loan's closing. The bank also reserved the right to determine that the financial status of the endorsers had not deteriorated and called for the submission of current and complete financial information therefrom in form acceptable to the bank. In his initial decision, the Presiding Judge noted the extension of the March 6, 1968, commitment and resolved the financial issue in favor of Peoples, holding that the applicant had demonstrated reasonable likelihood of the availability of the $100,000 bank loan. With respect to the conditions expressed in the March 12, 1969, letter, he further stated that "[W]hile the bank has conditioned its commitment on its satisfaction with the financial condition at the time the loan is taken down of the principals of Peoples who would endorse the note, such reservation seems to be no more than an explicit statement of a reservation which is implicit in virtually all loan commitments of this type here involved." See paragraph 54 of the initial decision. Both WGOK and MBS excepted to the Presiding Judge's reference to and reliance upon the March 12, 1969 bank letter in resolving the financial issue directed toward Peoples.

18. We turn now to the subject petition, which was filed on March 13, 1970, and which contains the March 12, 1969, extension and another letter (dated March 4, 1970) from the First National Bank, again offering to extend the $100,000 loan commitment until March 6, 1971. Also submitted therewith is a May 4, 1970, correspondence from the bank's president supplementing the terms of the 1970 commitment letter and a letter from Peoples' stockholders renewing their agreement to supply the required endorsements. According to Peoples, the March 4, 1970, extension and related documents have not varied the substance of its record showing or the basis upon which it was found to be financially qualified, WGOK, on the other hand, disagrees and urges the rejection of the tendered documents. Alternatively, WGOK argues that due process requires that it be afforded an opportunity to test the availability of the proposed bank loan at a further hearing.

19. Peoples has requested leave to conform its financial showing to the present realities; however, the proposed bank commitment, upon which the applicant's financial qualifications depend, has with the passage of time again expired by its terms, and the proffered showing is no longer current. Accordingly, the Review Board will dismiss Peoples' petition to reopen. Our action, however, should not be interpreted as foreclosing Peoples from demonstrating the present situation concerning its financial qualifications. To resolve the financial issue directed toward Peoples on the basis of a record showing which is nearly 4 years old and which, through the occurrence of subsequent events, is inconsistent with the present facts, would not, in the Board's judgment, be in the public interest where this proceeding will otherwise have to be remanded for further hearing and the matter in question relates to the basic qualifications of the applicant. "Cf. Click Broadcasting Company," 25 FCC 2d 511, 20 RR 2d 150 (1970); "Hayward F. Spinks," FCC 62R–70, 24 RR 197. In view of the foregoing circumstances, the Review Board concludes that Peoples should be afforded an opportunity to update its financial proposal at the further hearing. "Cf. Great Lakes Television, Inc.," FCC 57–772, 13 RR 718, reconsideration denied FCC 57–1155, 13 RR 722, affirmed "sub nom. Wyszatycki v. FCC," 105 U.S. App. D.C. 399, 267 F. 2d 676, 18 RR 2119 (1959).

20. *Accordingly, it is ordered,* That the petition to reopen record, enlarge issues, and remand for further hearings, filed October 28, 1969, by People's Progressive Radio, Inc., is denied; and that the petition to reopen the record and enlarge issues, filed October 20, 1972, by Mobile Broadcast Service, Inc., and the petition to reopen the record and enlarge issues, filed July 14, 1972, by Mobile Broadcast Service, Inc., are granted to the extent indicated below, and are denied in all other respects; and

21. *It is further ordered,* That the petition to reopen the record, filed May 13, 1970, by People's Progressive Radio, Inc., is dismissed as moot; and that the motions to dismiss, filed October 20 and November 13, 1972, by Mobile Broadcast Service, Inc., are denied; and

22. *It is further ordered,* That the amendment, filed May 24, 1971, by Azalea Corp., is accepted; that the petition for leave to amend filed February 2, 1972, by Mobile Broadcast Service, Inc., is granted and the attached amendment, as supplemented, is accepted; and that the petitions for leave to amend and reopen the record, filed March 24, 1971, November 22, 1971, and July 6, 1972, by W.G.O.K., Inc. (WGOK), are granted and the tendered amendments are accepted to the extent indicated in paragraph 15 of this memorandum opinion and order; and

23. *It is further ordered,* That the record herein is reopened; and that this proceeding is remanded to the Administrative Law Judge for adduction of evidence and issuance of a supplemental initial decision under the "Suburban" issues and the following added issues:

To determine whether People's Progressive Radio, Inc., has reasonable assurance of the availability of its proposed transmitter site.

To determine whether Azalea Corp. has failed to comply with the provisions of § 1.65 of the Commission's rules by keeping the Commission apprised of substantial changes in the matter specifically referred to in this memorandum opinion and order and, if not, to determine the effect of such noncompliance on the basic and/or comparative qualifications of the applicant.

24. *It is further ordered,* That the burden of proceeding with the introduction of evidence and the burden of proof under the first added issue herein shall be upon People's Progressive Radio, Inc., whereas the burden of proceeding under the second added issue shall be upon Mobile Broadcast Service, Inc., and the burden of proof under that issue shall be upon Azalea Corp.

Adopted: November 21, 1972.

Released: November 24, 1972.

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

APPENDIX

(1) Petition to reopen record, enlarge issues, and remand for further hearing, filed October 28, 1969, by People's Progressive Radio, Inc. (Peoples).

(2) Opposition, filed November 25, 1969, by Mobile Broadcast Service, Inc. (MBS).

(3) Broadcast Bureau's opposition, filed November 28, 1969.

(4) Reply, filed December 8, 1969, by Peoples.

(5) Petition to reopen record, filed May 13, 1970, by Peoples.

(6) Comments on (5), filed May 22, 1970, by the Broadcast Bureau.

(7) Opposition to (5), filed June 8, 1970, by W.G.O.K., Inc. (WGOK).

(8) Reply to (6) and (7), filed June 18, 1970, by Peoples.

(9) Petition for leave to amend and reopen the record, filed March 24, 1971, by WGOK.

(10) Amendment, filed May 24, 1971, by Azalea Corp. (Azalea).

(11) Certificate of service, and amendment thereto, filed October 14, 1971, and October 21, 1971, respectively, by Azalea.

[18] The record reflects that on May 9, 1968, each of Peoples' stockholders agreed to supply the required endorsement. See Peoples Exhibit 9.

(12) Broadcast Bureau's comments on (10), filed November 1, 1971.
(13) Comments on (10), filed November 19, 1971, by MBS.
(14) Petition for leave to amend and reopen the record, filed November 22, 1971, by WGOK.
(15) Petition for leave to amend, filed February 2, 1972, by MBS.
(16) Opposition to (15), filed February 11, 1972, by the Broadcast Bureau.
(17) Reply to (16), filed February 24, 1972, by MBS.
(18) Petition for leave to amend and reopen the record, filed July 6, 1972, by WGOK.
(19) Petition to reopen the record and enlarge issues, filed July 14, 1972, by MBS.
(20) Broadcast Bureau's comments on (19), filed July 26, 1972.
(21) Petition to reopen the record and enlarge issues, filed October 20, 1972, by MBS.
(22) Broadcast Bureau's comments on (21), filed November 1, 1972.
(23) Reply to (22), filed November 13, 1972, by MBS.
(24) Motion to dismiss, filed October 20, 1972, by MBS.
(25) Broadcast Bureau's comments on (24), filed November 1, 1972.
(26) Reply to (25), filed November 13, 1972, by MBS.
(27) Motion to dismiss, filed November 13, 1972, by MBS.

[FR Doc.72-20762 Filed 12-1-72;8:52 am]

[Docket No. 19325; FCC 960]

MARITIME MOBILE TELECOMMUNICATIONS

Second Notice of Inquiry Regarding Conference

In the matter of Preparation for the ITU World Administrative Radio Conference for maritime mobile telecommunications to be convened at the beginning of 1974, Docket No. 19325.

1. On September 29, 1971, the Commission adopted its initial Notice of Inquiry in this proceeding, preparatory to a World Administrative Radio Conference for Maritime Mobile Telecommunications (WARC-MAR) to be convened by the International Telecommunication Union (ITU) in Geneva, April 22 through June 7, 1974, and requested comments and recommendations on the substance of WARC-MAR agenda items.

2. Having taken all available sources of information and guidance into consideration, in response to the initial Notice, a Report was adopted on December 8, 1971, attaching the Commission's recommendations to the Department of State with regard to the proposed agenda for the 1974 WARC-MAR. The Administrative Council of the ITU at its meeting in May-June 1972 adopted the official agenda for the 1974 WARC-MAR, as set forth in Attachment A.

3. The WARC-MAR preparatory committee, consisting of representatives from the Federal Communications Commission, Office of Telecommunications Policy and private industry, and working under the aegis of the Department of State, has developed preliminary views and proposals on a number of items in the official agenda for the upcoming Conference. The Preliminary Views, Attachment B, sets forth the draft view and proposals developed to date relating to Regulations, Resolutions and Recommendations to delete, revise or to add to the provisions of the Radio Regulations, as amended, appended to the 1965 Montreux International Telecommunication Convention. It should be noted that the Commission has participated in the Study Groups of the Radio Technical Commission for Marine Services (RTCM) and has incorporated the views of that group on maritime regulations, as appropriate.

4. It is the purpose of this Second Notice to present the recommended Preliminary Views of the United States relative to the forthcoming WARC-MAR of the ITU to all interested persons for comment. In the preparation for ITU Conferences, the degree of support for United States proposals is clearly dependent in a significant amount on the extent to which the Preliminary Views find acceptance prior to the convening of the particular Conference. It is essential, therefore, that the Preliminary Views be circulated sufficiently in advance of the Conference to permit time for international discussions and revisions as may be necessary resulting from national and international reactions, and for recirculation of the amended Views.

5. While the WARC-MAR is scheduled to convene April 22, 1974, the U.S. draft proposals should be readied for publication and circulation no later than May 1, 1973. It is planned for the formal U.S. proposals to the Conference to reach the Secretary General, ITU, shortly after July 15, 1973, well in advance of the convening date of the conference, to ensure their being translated into the working languages of the union and distribution to all administrations in advance of the conference. Therefore, all views of interested parties within the United States on matters pertinent to the conference must be made known to the Commission by January 1, 1973, so that they may be embodied and reconciled with the views of other interested Government and non-Government entities into one consolidated document representing the draft U.S. proposals relevant to the upcoming WARC-MAR. It should be noted that such proposals are not irrevocable and that the United States may find it desirable, on the basis of new information or changing circumstances to modify its proposals even as late as during the conference itself.

6. The Preliminary Views set forth herein specifically propose changes to the radio regulations through a number of steps, as enumerated on page 6 of appendix B. Each of these steps is supported by appropriate proposals. These include, to mention a few, the realignment of maritime radiotelegraph frequencies for coast and ship stations, recognizing and providing for growth of data transmissions and teleprinter use; the inclusion of provisions for on-board communications to meet maritime safety and operational needs aboard ships; and the incorporation into the Radio Regulations of a general purpose digital selective calling system.

7. The Preliminary Views appended hereto have been transmitted to the Department of State by the Commission and by the Director of Telecommunications Policy with recommendations that they be distributed abroad to other administrations to obtain their reactions and comments.

8. It should again be noted that this is not a rulemaking proceeding, but rather one intended to serve as a means of obtaining public comment in the development of U.S. proposals to the upcoming WARC-MAR. It is expected that this second notice will be followed by additional notices as the conference preparatory work progresses.

9. This notice is issued pursuant to section 403 of the Communications Act of 1934, as amended. Interested persons responding to this inquiry shall furnish comments on or before November 30, 1972, and reply comments on or before December 15, 1972. An original and 14 copies of each response must be filed as required by section 1.49 of the Commission's Rules and Regulations. All comments directed to this Second Notice of Inquiry and/or the Preliminary Views, as well as any additional pertinent information available will be taken into account as the preparatory work moves forward. Comments and reply comments will be available for public inspection in the Commission's Broadcast and Dockets Reference Room.

Adopted: November 1, 1972.

Released: November 27, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

ATTACHMENT A

1. The revision on the basis of single sideband operation of the Frequency Allotment Plan for HF radiotelephone coast stations covering the channels in the present appendix 25 and the additional channels made available by the 1967 Maritime Conference.
2. The provisions for high-frequency radiotelephony.
3. The provisions concerning distress and safety in the Maritime Mobile Service. In particular:
3.1 The maintenance by certain ships of a distress watch on both 500 kHz and 2182 kHz;
3.2 The possibility of an alternative to 2182 kHz is the radiotelephone, distress and calling frequency;
3.3 The use of radioteleprinter and selective calling systems in relation to the safety service;
3.4 The designation of common scene-of-action frequencies other than 500 kHz and 2182 kHz;
3.5 The 1971 Space Conference's provisions with respect to frequencies for EPIRB's (Emergency Position-Indicating Radio Beacons);
3.6 Distress operations involving manned spacecraft;
3.7 The use of auto-alarm signals;
3.8 Silence periods;

[1] Commissioners H. Rex Lee and Hooks absent.

3.9 The use of portable devices on lifeboats and other survival craft;

3.10 The use of radio direction-finding.

4. The VHF provisions generally, with particular reference to:

4.1 Resolution No. Spa2-5 of the 1971 Space Conference with regard to the use of satellite systems for safety and distress on certain channels in the bands 157.3125–157.4125 MHz and 161.9125–162.0125 MHz;

4.2 The use of VHF for facsimile and similar transmissions; other than radiotelephony;

4.3 The use of selective calling on VHF;

4.4 The use of VHF for communication between helicopters/light aircraft and ships;

4.5 Further reduction of channel spacing in the VHF bands allocated to the Maritime Mobile Service (revision of appendix 18);

4.6 The use of frequencies for movements and safety communications;

5. The need for more specific provisions with regard to selective calling—in particular:

5.1 Amplification of procedures;

5.2 The classes of emission to be used.

6. The introduction of facsimile in the MF bands.

7. The provisions relating to the use of frequencies for manual telegraphy in the HF bands with particular reference to:

7.1 The possible abandonment of harmonic relationships between frequencies in the different bands;

7.2 Other technical and operational possibilities aimed at more effective frequency utilization;

7.3 Special calling frequencies (Art. 29, App. 15).

8. Matters relating to the use of direct printing and the assignment of frequencies for this purpose in the Maritime Service—in particular:

8.1 The possible use of direct printing telegraphy on MF and VHF as well as HF;

8.2 The question of international agreement on a standard system.

9. Technical and operational questions relating to the use of Lincompex.

10. Problems relating to the maritime services operating in the bands between 1605 kHz and 3800 kHz including the future assignment of the single sideband channels derived from the present double sideband coast and ship station assignments. In particular:

10.1 Improved use, by geographical spacing, of pairs of single sideband assignments;

10.2 Inter-ship channels;

10.3 International common frequencies for working.

(i) From coast radiotelephone stations to ships of other nationalities, and

(ii) From ships to coast stations of other nationalities.

11. The basic technical characteristics of equipment for maritime terrestrial services—powers, frequency tolerances, spurious emissions.

12. The international assignment of frequencies for operational internal communication on board ships.

13. Operational, technical, and frequency regulations for the Maritime Mobile-Satellite and Radiodetermination Satellite Services.

14. Questions relating to the use of frequencies for radiodetermination.

14. Transmission of port radar images to ships.

15. Article 40 and the associated provisions of the additional radio regulations.

16. The hours of watchkeeping on board ships and the watchkeeping zones.

17. Radio operators' certificates.

18. Revision of Resolution No. Mar 2 of the 1967 Maritime Conference and of the "Manual for Use by the Maritime Mobile Service" to take into account revisions of the Radio Regulations and the proposed revisions of the Telegraph Regulations and the C.C.I.T.T. recommendations (white book).

19. The status of the plan for oceanography provided for in Resolution No. Mar 20.

[FR Doc.72-20761 Filed 12-1-72;8:52 am]

[Docket Nos. 19434-19436; FCC 72R-333]

SALEM BROADCASTING CO., INC., ET AL.

Memorandum Opinion and Order Enlarging Issues

In regard applications of Salem Broadcasting Co., Inc., Salem, N.H., Docket No. 19434, File No. BP-18325; New Hampshire Broadcasting Corp., Salem, N.H., Docket No. 19435, File No. BP-18479; Spacetown Broadcasting Corp., West Derry, N.H., Docket No. 19436, File No. BP-18492; for construction permits.

1. This proceeding, involving the mutually exclusive applications of Salem Broadcasting Co., Inc. (Salem), New Hampshire Broadcasting Corp. (New Hampshire) and Spacetown Broadcasting Corp. (Spacetown), for new standard broadcast stations was designated for hearing by Commission Memorandum Opinion and Order, F.C.C. 72-136, 33 F.C.C. 2d 672, released February 15, 1972. Among the six issues specified were a "Suburban" issue against Spacetown, a limited financial issue against Salem, a 307(b) issue, and a contingent comparative issue. Presently before the Review Board are: (a) A motion to enlarge issues, filed March 13, 1972, by Spacetown; (b) a petition to enlarge issues, filed March 13, 1972, by New Hampshire; and (c) a petition to enlarge issues, filed May 10, 1972, by New Hampshire.[1] Spacetown's petition seeks the addition of 19 issues against Salem and New Hampshire, including issues concerning § 73.37 prohibited overlap, 307(b) Suburban Community, site availability, § 1.65, "Suburban" and financial qualifications. In addition, Spacetown requests a misrepresentation issue against Salem, and a real party-in-interest issue against New Hampshire. New Hampshire's petitions request site availability and financial issues against Salem. For the sake of clarity, the Board will discuss the issues in sequence.

Section 73.37 Issues—Prohibited Overlap

2. Spacetown first requests four issues to determine whether the applications of Salem and New Hampshire violate § 73.37 of the Commission's rules, and, if so, whether the applications should be dismissed. Spacetown alleges that the proposed 0.5 mv./m. contours of both applicants' proposed stations will overlap the 0.025 mv./m contour of standard broadcast Station WHIM, Providence, R.I., in violation of § 73.37. Spacetown further alleges that neither application falls within the exceptions to the prohibited overlap rule in § 73.37(b)[2] because, as reflected by the 1970 U.S. census figures, Salem, N.H., is located partly within the Lawrence-Haverhill, Mass., urbanized area and has a population of only 20,142; and, according to Spacetown, there has been no showing by either applicant that their proposed facilities would provide first primary service to at least 25 percent of the interference-free areas within their proposed 0.5 mv./m contours. Spacetown argues that the Commission requires "the use of the most recent and reasonable population figures available" (in this case the 1970 census figures) to determine the § 73.37 issue. In support, petitioner cites "Blue Ridge Broadcasting Co., Inc.," 37 F.R. 3564, 23 RR 2d 887 (1972); and "Albert L. Crain," 28 FCC 2d 381, 384, 21 RR 2d 607, 611 (1971).

3. In opposition, Salem and New Hamsphire argue that the requirements of § 73.37 are acceptability criteria only.[3] Therefore, at the time the applications were filed (November 11, 1968, for Salem, and February 27, 1969, for New Hampshire), they compiled with one of the exceptions of § 73.37(b), since the latest U.S. Census figures (those for 1960) showed Salem, New Hampshire, as being wholly outside any urbanized area and the Salem proposals would be the first standard broadcast facility for the community. Further, both Salem and New Hampshire maintain that "Blue Ridge Broadcasting, supra," does not apply here because the original application in that case was based on an erroneous determination that no prohibited overlap existed. Finally, both applicants request that if the Board fails to find that they fall within the exceptions of § 73.37(b), a waiver should be granted since it is alleged that the town of Salem will attain a population of 25,000 in the near future if its present growth rate continues and would then fall within another exception of § 73.37(b) since, according to New Hampshire, the proposal, if granted will be the first standard broadcast facility for Salem. The Broadcast Bureau, in its comments, considers the Commission's action in the "Blue Ridge" case as

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[1] See the attached appendix below for a complete list of the numerous related pleadings.

[2] The pertinent part of § 73.37(b) states: (b) An application for a new daytime station or a change in the daytime facilities of an existing station may be granted notwithstanding overlap of the proposed 0.5 mv./m contour and the 0.025 mv./m contour of another cochannel station, where the applicant station is or would be the first standard broadcast facility in a community of any size wholly outside of an urbanized area (as defined by the latest U.S. census), or the first standard broadcast facility in a community of 25,000 or more population wholly or partly within an urbanized area, or when the facilities proposed would provide a first primary service to at least 25 percent of the interference-free area within the proposed 0.5 mv./m contour * * *.

[3] The reasoning behind this argument, according to the opposition, is that § 73.37 refers to the factors that are necessary for the Commission to "accept" an application, and, once these requirements are met, subsequent changes are irrelevant.

controlling; therefore, the Bureau concludes that in light of the 1970 Census, neither of the two applicants falls within any of the exceptions to § 73.37(b). In reply, Spacetown argues that both applicants admit that prohibited overlap exists and that they no longer fall within the § 73.37(b) exceptions to the prohibited overlap rule.[4]

4. The Review Board is of the view that the Commission's opinions in "Blue Ridge, supra, and Albert L. Crain, supra," provide ample precedent for using the 1970 U.S. census data to establish that the town of Salem is within the Lawrence-Haverhill urbanized area and that the Salem applicants are therefore not entitled to the exception claimed by them in their original applications. The Commission will not ignore the present realities of an existing situation in reaching a decision. "Albert L. Crain, supra." In this regard, § 73.37(b) itself refers to the "latest" U.S. census figures. See note 2, "supra." Furthermore, it is equally clear from the "Blue Ridge" proceeding that the Commission intended this reasoning to apply to § 73.37 issues. In "Blue Ridge," the Commission designated the application of Hymen Lake for hearing on a § 73.37 prohibited overlap issue, after the application had been accepted for filing. In that case, it appeared that a 1970 preliminary U.S. census report included the applicant's cocommunity of license as part of an urbanized area for the first time, thereby eliminating his eligibility for a § 73.37(b) exception. Although the applicant argued that the Commission "should utilize the latest census data available at the time the application was filed, and not the preliminary 1970 map of the * * * urbanized area",[5] the Commission designated the issue. In so doing, the Commission stated:

> In light of the conflicting claims over the population, location and character of the communities * * *, and the Commission's recent ruling (citing "Albert L. Crain") upholding the use of the most recent and reasonable population figures available, the matter will be decided in hearing. Accordingly a § 73.37(b) issue will be specified, and if evidence received in hearing establishes that the proposal would violate § 73.37(b) of the rules, the application will be dismissed.[6]

Therefore, in this case and for purposes of this issue, Salem is a part of the Lawrence-Haverhill urbanized area according to the 1970 U.S. census figures. However, the language in "Blue Ridge and Albert L. Crain," also supports consideration at the hearing of the "most recent" population figures in determining compliance with the other exceptions in § 73.37 (b). For example, reliable population figures more recent than the 1970 census figures may exist which support the applicants' claims that Salem now has a population of 25,000. However, this is a question of fact to be determined by the Administrative Law Judge at the hearing. In light of the foregoing, the Board will add appropriate issue against both Salem and New Hampshire.[7] Consistent with Commission policy, waiver of § 73.37 (b) is not appropriate. "Blue Ridge, supra," 23 RR 2d at 891, n.4.

307(b) Suburban Community Issues

5. Spacetown also requests 307(b) Suburban Community issues against Salem and New Hampshire. Spacetown alleges that, although the Commission's observations in the designation Order with regard to the applicants' 5 mv./m coverage of Lawrence, Mass., are technically accurate,[8] the Commission failed to consider the applicants' 5 mv./m penetration of the "Lawrence-Haverhill urbanized area" which has a total population of 113,035. Spacetown's attached engineering statement indicates that Salem's 5 mv./m contour will cover an area encompassing 19,934 persons in the Lawrence-Haverhill area, while New Hampshire's 5 mv./m contour will cover an area with 27,480 persons in the same area. Considering the city of Haverhill separately, Spacetown alleges that since Haverhill is twice the size of Salem; since there is "substantial" penetration of the 5 mv./m contours of both Salem applicants into Haverhill;[9] and since the applicants could have obtained "substantial compliance" with the coverage requirements of § 73.188 at less than the present 5-kw. proposed power, a 307(b) Suburban Community issue should be added. Spacetown also places a great deal of emphasis on the fact that the proposals of both Salem applicants specify MEOV's (maximum expected operating values) on their respective antenna patterns. Petitioner argues that the MEOV's must be used to determine the realistic 5 mv./m contour penetration of Lawrence and Haverhill, which, alleges Spacetown, would result in a greater 5 mv./m peneration than the theoretical antenna patterns would indicate.

6. In opposition, Salem, New Hampshire, and the Broadcast Bureau (all of whose arguments will be consolidated here for clarity) submit that the Commission, in the designation order, thoroughly and accurately reviewed the applicability of the 307(b) Suburban Community presumption and considered it rebutted as to the city of Lawrence, Mass. It is further argued that any attempt to claim the status of a community for an urbanized area is without precedent, and, more important, Spacetown has not attempted to show any common interests that would indicate that the cities of Lawrence and Haverhill and the town of Methuen are a single community for 307(b) purposes. Further, considering Haverhill alone, argue respondents, it does not have the 50,000 population which automatically raises the 307(b) Suburban Community presumption and Spacetown has not shown any factors (e.g., excessive power, great size difference in communities, or programing) which would warrant giving rise to the presumption in spite of the population. In reply, Spacetown argues that it is requesting the addition of a Suburban Community issue because of a combination of the following factors: (a) 5 mv./m penetration of Lawrence and Haverhill; (b) allegedly excessive power proposed by both applicants; (c) 55 percent of Salem's proposed interference-free population will be located in Massachusetts; and (d) the MEOV's proposed by both applicants indicate that major distoration (in the theoretical antenna pattern) can be expected toward Lawrence, Haverhill, and Methuen.

7. The Review Board will not add the requested Suburban Community issues against either Salem or New Hampshire. In the designation Order, the Commission considered the 5 mv./m coverage of Lawrence, Massachusetts, and the shape and orientation of the radiation patterns proposed by the applicants in relation to the 307(b) Suburban Community issue. Spacetown's argument that the Salem applicants are proposing excessive power (i.e., 5 kw.) is unconvincing since the Commission, in its designation Order, also considered the possibility of a 1-kw. operation for the Salem proposals and found that 1 kw. "would not provide adequate service to Salem," the city of license. Since the Commission has, in a "reasoned analysis", considered and rejected these same arguments, it

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[4] In view of this, Spacetown states that it filed a petition to dismiss both applications on May 1, 1972. Since the petition was erroneously filed with the Commission and later refiled with the Administrative Law Judge, the actual date of the petition is May 12, 1972. The Administrative Law Judge has not acted on the petition as of the date of adoption of this document.

[5] 23 RR 2d at 891.

[6] 23 RR 2d at 891. (Footnotes omitted.)

[7] It is noted that the three applicants have filed no less than six petitions and related pleadings too numerous to mention (see the appendix for a list of all the pleadings), in a running debate over the population of Salem, N.H. In our opinion, these pleadings add nothing to the original dispute among the parties as to whether Salem qualifies for an exception to the prohibited overlap rule under § 73.37(b) because it has attained a population of 25,000; nor do they contain information which was unavailable at the time of the filing of the original petition and opposition. Therefore, the Board will deny those petitions listed as numbers 9, 12, 14, 16, 17, and 18 in the attached appendix. In addition, New Hampshire filed on May 1, 1972, a pleading entitled "Supplement and Errata". No petition requesting the Board to accept the pleading was filed; the material contained in the pleading goes far beyond mere correction of applicant's April 24, 1972 opposition; and it is not alleged that such material was not available at the time the opposition was filed. For these reasons, the Board will dismiss this unauthorized pleading. See Public Notice on Filing of Supplemental Pleadings Before the Review Board, No. 90836, released October 11, 1972.

[8] In its designation Order, the Commission considered specification of a 307(b) Suburban Community issue against the two Salem applicants because of the penetration of their 5 mv./m contours into Lawrence, Mass., but held that the data submitted by the applicants rebutted the presumption.

[9] This allegedly "substantial" penetration appears to be a maximum of 11 percent and 21 percent by Salem and New Hampshire, respectively. The figures are contained in pages 2–3 of Spacetown's Engineering Exhibit II. However, as to the alleged 21 percent penetration, it is not clear what the basis of the calculations are since Spacetown merely indicates that the figures were based on "our own population study."

would not be appropriate for the Board to consider the merits of Spacetown's allegations. "Atlantic Broadcasting Co.", 5 F.C.C. 2d 717, 8 RR 2d 991 (1966); "Jefferson Standard Broadcasting Co.", 25 F.C.C. 2d 559, 20 RR 2d 62 (1970). As to Spacetown's suggested reliance on MEOV's for determining penetration for a 307(b) issue, the Board rejects this argument. Maximum expected operating values (MEOV's) of radiation are used in calculating the extent of interference contours; while the theoretical values of radiation are used in calculating coverage contours. The 5 mv./m contour, as used in determining whether a Suburban Community presumption is raised, is a coverage contour and therefore it is based on the theoretical values of radiation. As the Board stated in deleting a Suburban Community issue in "Lawrence County Broadcasting Corporation": [10]

> • • • since it is a normal practice in determining the area coverage of a station to use computed values, the use of computed values, not MEOV's, is appropriate to determine whether or not the proposed station comes within the Commission's section 307(b) Suburban Community policy.

In addition, the applicants' proposed penetration of Haverhill does not, in the Board's opinion, give rise to a 307(b) Suburban Community presumption [11] because Haverhill does not have the required 50,000 population; [12] the directional patterns proposed by both applicants are designed so that the major radiation is not directed toward the Haverhill area, but the major lobes are directed over Salem; the difference in the populations of Salem and Haverhill is not that significant; the maximum 5 mv./m penetration of Haverhill is only about 20 percent; and no exceptional factors have been introduced by Spacetown to show that a 307(b) Suburban Community issue is warranted. See "Click Broadcasting Co.", 19 FCC 2d 497, 17 RR 2d 164 (1969); "Babcom, Inc.", 12 FCC 2d 306, 12 RR 2d 998 (1968); "V.W.B. Incorporated," 8 FCC 2d 744, 10 RR 2d 563, reconsideration denied 10 FCC 2d 534, 11 RR 2d 653 (1967).

SITE AVAILABILITY ISSUES AGAINST SALEM

8. Spacetown next requests issues of site availability, § 1.65, misrepresentation and comparative character qualifications against Salem. All of the requested issues arise out of the same basic fact situation.[13] In addition, New Hampshire, in its petition to enlarge issues, filed May 10, 1972, also requests a site availability issue against Salem.[14] Subsequently, on July 11, 1972, Salem filed an amendment to its application specifying a new site.[15]

9. Based on the affidavit of a local real estate agent, which is attached to the petition, Spacetown alleges that Salem's originally proposed site is part of a larger plot of land which the present owner does not intend to subdivide or sell other than as a whole. Spacetown further alleges that Salem has no option on any part of the site. According to Spacetown, Salem represented in its application that it "currently holds an option to purchase the property". Spacetown contends that since Salem has not had such option for some time, section 1.65 and misrepresentation issues are warranted.

10. In opposition, Salem and the Broadcast Bureau argue that Spacetown's allegations are not based on affidavits of individuals having personal knowledge as required by § 1.229(c) of the Commission's rules. The affidavit submitted is from a real estate agent and, according to respondents, constitutes hearsay. The Broadcast Bureau also alleges that no explanation is given for Spacetown's failure to obtain affidavits from the owners of the property in question, citing "Augusta Telecasters, Inc.," 10 FCC 2d 594, 11 RR 2d 625 (1967). In this regard, Salem submits that at the time it filed its application, it did have a written option on the site; [16] however, on April 1, 1972, the owner of the land, without Salem's knowledge, entered into an agreement to sell the entire tract to a Boston-based "concern." According to Salem, it learned of the agreement only about 2 weeks before the date it filed its opposition pleading (i.e., Apr. 25, 1972); it then entered into negotiations with the prospective purchaser for an option and also obtained an oral option on an alternate site 3,000 feet from the proposed site in the event the present site should become unavailable.[17] In reply, Spacetown stresses that Salem's account of the site availability question is not supported by an affidavit of any sort.[18]

11. The Review Board will add the requested issue because Salem's opposition, filed June 11, 1972, indicates that the applicant no longer has reasonable assurance of the availability of the site proposed in its application, and, in light of this, has filed an amendment with the Administrative Law Judge specifying an alternate site.[19] However, at least through April 1, 1972, and apparently for sometime beyond this date (when Salem alleges it actually became aware of the April 1 agreement), Salem had reasonable assurance of the availability of its site. According to Salem, it originally had a written option (which was subsequently renewed) on the proposed site and later received oral assurances from the owner and a prospective buyer (who did not purchase the land as expected) that the site would be available to Salem. Spacetown does not contradict this allegation. As of April 25, 1972, when Salem filed its § 1.65 statement, Salem states that it was still attempting to cure the problems with its proposed site, but that it also had secured an oral option on an alternate site 3,000 feet away. It is well established that an applicant need not have absolute assurance of the availability of a proposed site; it is only necessary for the applicant "to have reasonable assurance of site availability and to make a good faith representation that the site selected will be available to him for his

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[10] 7 FCC 2d 906, 907, 9 RR 2d 1070, 1072 (1967).

[11] The Board agrees with the Bureau and Spacetown that, if there is a 5 mv./m penetration of two cities and the applicant rebuts the presumption as to one, it does not mean that the applicant has rebutted the presumption as to the other. "Tidewater Broadcasting Company, Inc.", 12 FCC 2d 471, 12 RR 2d 1133, rehearing denied 14 FCC 2d 646, 14 RR 2d 161 (1968), affirmed "sub nom. Edwin R. Fisher v. FCC," 135 U.S. App. D.C. 134, 417 F.2d 551, 16 RR 2d 2145 (1969).

[12] Spacetown's Enginering Exhibit II, p. 2, indicates that Haverhill is actually decreasing in population.

[13] Spacetown had originally based both its requested site availability issues, in part, on zoning considerations; however, in its erratum to motion to enlarge issues, filed Mar. 24, 1972, Spacetown states that it misunderstood the results of a recent rezoning vote upon which it based its argument and therefore wishes to eliminate references to zoning in its original petition.

[14] New Hampshire's request is based specifically on Salem's Apr. 25, 1972 amendment which states that the owner of the land which was specified as Salem's proposed site, has agreed to sell the tract to a Boston, Mass., "concern"; however, it is being treated here because it is based on the same basic fact situation as Spacetown's request.

[15] The Administrative Law Judge has not yet acted on the proposed amendment.

[16] Upon the expiration of this option, a second written option was obtained. Salem also filed a petition for leave to file supplement, and supplement to opposition to motion to enlarge issues on May 22, 1972, which contains an executed copy of an affidavit previously mentioned, but not included in its opposition concerning the option. Since there is no opposition to the petition and it involves a minor technical correction, the Board will grant the petition.

[17] A description of Salem's efforts concerning both sites is contained in the § 1.65 statement filed with Salem's amendment of Apr. 25, 1972, and accepted by the presiding judge on Oct. 10, 1972 (FCC 72M-1262).

[18] On June 13, 1972, Spacetown filed a petition to supplement its motion to enlarge issues, in which it submits an affidavit of the owner of the proposed site stating that Salem has no option on the land. As Salem and the Broadcast Bureau point out in their oppositions, Spacetown's supplement shows nothing more than, as of May 11, 1972, Salem had no option on its original site, a proposition which is not disputed by Salem. The Board also agrees with the Bureau that it is difficult to understand why Spacetown has not submitted a statement from the owner of the land in question disputing Salem's account of the situation. In light of Salem's original opposition pleading, however, the Bureau is of the opinion that a site availability issue is warranted unless Salem's June 28, 1972, response to New Hampshire's petition to enlarge issues is able to establish that the prospective purchaser of the site is willing to permit Salem to use the tract in question. The Review Board will deny Spacetown's petition to file the supplement since it adds nothing material to the issues under discussion. See note 7, supra.

[19] The Board is aware that Salem filed a petition for leave to amend on July 11, 1972, which attempts to eliminate the problems with its presently proposed site by specifying an alternate site; however, since this amendment has not been accepted as yet by the Presiding Judge, the originally proposed site constitutes the site of record. See "Edward G. Atsinger III," 30 FCC 2d 493, 499-500, 22 RR 2d 236, 244 (1971), and cases cited therein.

desired purposes." "William R. Gaston," 35 FCC 2d 615, 620, 24 RR 2d 741, 748, review denied FCC 72-828, released September 22, 1972. See also "Edward G. Atsinger III, supra; Marvin C. Hanz," 21 FCC 2d 420, 18 RR 2d 310 (1970). In addition, it is well settled that an oral agreement is sufficient to satisfy the availability requirement. "William R. Gaston, supra." See "Lawrence County Broadcasting Corp.," 8 FCC 2d 597, 10 RR 2d 471 (1967). Under this test, it appears that Salem had "reasonable assurance" of the availability of its site until sometime after April 1, 1972. However, in light of Salem's pending amendment specifying a new site it now appears that Salem no longer has reasonable assurance of the availability of its site. Consequently, a site availability issue is warranted.

12. In our opinion, § 1.65 and misrepresentation issues are not warranted against Salem. Since Salem alleges that it did not know of the April 1 agreement by the owner of the proposed site until 2 weeks thereafter (and Spacetown has not disputed this), Salem was well within the 30-day period afforded by § 1.65 for notifying the Commission of changes in an application when it filed the April 25 statement. The requested misrepresentation issue will also be denied. The issue is based upon the statement in Salem's application that: "Applicant currently holds an option to purchase the property." Salem apparently did have an option when this statement was made; it had oral assurances of the availability of one or the other of the two sites until it filed an amendment specifying a new site. Spacetown offers no explanation for its failure to obtain an affidavit from the owner of the land in question if it wished to contradict Salem's statements; but, instead, chose to rely on statements of a real estate agent, which are clearly hearsay, as to the owner's intentions regarding his land. In view of these circumstances, a misrepresentation issue is inappropriate. "Cf. William R. Gaston, supra."

Site Availability Issue Against New Hampshire

13. Spacetown also requests site availability and § 1.65 issues against New Hampshire, alleging: (a) That New Hampshire has no option or other assurance as to the availability of its proposed site; and (b) that New Hampshire's site is presently owned by five separate owners, a factor which will make the likelihood of acquiring the site extremely remote. In support of these allegations, Spacetown offers sworn statements of its consulting engineer and a local real estate agent purporting to relate what was told to them by various owners of the land in question. The affidavit of the engineer states that a Mr. McDonough, owner of the main piece of property involved, told Spacetown's president that New Hampshire spoke to him (McDonough) about his property several years ago; however, according to the engineer, he did not give New Hampshire an option. In opposition, New Hampshire and the Broadcast Bureau submit that Spacetown relies on hearsay (in some cases double hearsay) and that no affidavit of individuals with personal knowledge has been submitted. The opposition pleadings also cite cases which stand for the proposition that reasonable assurance of the availability of the site has been held sufficient to avoid an issue.[20] In addition, New Hampshire attaches a copy of a proposed amendment filed with the Administrative Law Judge which includes a copy of an option from Mr. McDonough.

14. The Board will not add the requested site availability or § 1.65 issues against New Hampshire. The failure of Spacetown to submit affidavits from the landowners involved is unexplained and inexcusable in these circumstances. Second, and even third-hand, allegations will not support a petition to enlarge issues. "Cosmopolitan Enterprises, Inc.", 4 FCC 2d 637, 8 RR 2d 202 (1966).

Suburban Issues

15. Spacetown next requests "Suburban" issues against Salem and New Hampshire, alleging that both applicants have failed to comply with Question 6 of the "Primer."[21] In support, Spacetown alleges that substantial portions of the major communities of Lawrence, Haverhill, and Methuen, Mass., fall within the service contours of Salem's proposed station, but that no interviews have been conducted by Salem or New Hampshire with community leaders or members of the general public from these cities. Spacetown further alleges that: Nowhere does Salem's application indicate that it will not serve Haverhill (with programing), nor does it explain why; the application is ambiguous as to Salem's intended service to the city of Lawrence; and the applicant affirmatively states that it intends to serve Methuen, but no residents of that city were included in the applicant's survey. With respect to New Hampshire, Spacetown alleges that although this applicant states that it does not intend to serve Haverhill or Methuen (Lawrence is not involved in the requested "Suburban" issue against New Hampshire), the reasons given by New Hampshire for not proposing to serve the two communities are not supported by the "usable" coverage which will be provided to Haverhill and Methuen or by the integrated nature of this allegedly unified urbanized area.[22]

16. In opposition, Salem argues that its application states that Lawrence is currently served by two standard broadcast stations of its own (and, the Board assumes, this implies that Salem does not intend to serve Lawrence). The same rationale, according to Salem, applies to the city of Haverhill. As to Methuen, Salem argues that the "Primer, supra," does not necessarily require surveys of community leaders of Methuen; however, Salem has conducted six interviews of Methuen community leaders and is submitting the results in a proposed amendment.[23] The Bureau opposes the addition of an issue against New Hampshire because the reasons given by the applicant for not serving the communities of Methuen and Haverhill are in accordance with the "Primer, supra," and New Hampshire's decision not to serve these communities is not inherently unreasonable. Further, argues the Bureau, the fact that an urbanized area is involved is of little significance because, in the "Primer, supra," the Commission specifically stated that it was deleting any requirement that an applicant for a station licensed to a city within a Standard Metropolitan Statistical Area (SMSA) ascertain community problems in each of the cities within the area. As to Salem, the Bureau is of the opinion that, for the reasons discussed regarding New Hampshire's situation, the issue requested against Salem should also be denied. In its opposition, New Hampshire adopts the position of the Broadcast Bureau.

17. The Review Board, first, does not agree with Spacetown that Question 6 of the "Primer" is necessarily applicable to the instant fact situation. The "Primer" speaks in terms of "major" communities that "fall within" the applicant's service contours. According to Spacetown's own engineering exhibits, only portions of Lawrence and Haverhill fall within the 5 mv./m. contour of the proposals of Salem and New Hampshire (approximately 5 percent of the Lawrence population and 10–20 percent of Haverhill). It is not clear from these exhibits how much of the cities' populations fall within the relevant 2 mv./m. contours for establishing primary service to city

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[20] "Lorenzo W. Milam and Jeremy D. Lansman," 4 FCC 2d 610, 7 RR 2d 765 (1966); "El Camino Broadcasting Corp.," 23 FCC 2d 173, 19 RR 2d 53 (1970).

[21] Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Question 6 of the Primer reads as follows:

Q. Is an applicant expected to ascertain community problems outside the community of license?

A. Yes. Of course, an applicant's principal obligation is to ascertain the problems of his community of license. But he should also ascertain the problems of other communities that he undertakes to serve, as set forth in his response to Question 1(A)(2) of section IV–A or IV–B * * *. If an applicant chooses not to serve a major community that falls within his service contours a showing must be submitted explaining why.

[22] New Hampshire's reasons are stated in its application and include: (a) Both communities are in another State; (b) Haverhill has two broadcast stations licensed to it; and (c) residents of Haverhill and Methuen "turn to" Lawrence and Haverhill stations for their broadcast service.

[23] The amendment, filed Apr. 25, 1972, and accepted by the Administrative Law Judge by Order, FCC 72M–1262, released Oct. 10, 1972, includes interviews with community leaders from Methuen and is obviously aimed at curing this alleged defect in its application. Since Question 7 of the "Primer" indicates that interviews with community leaders are sufficient to ascertain community needs and problems in areas outside the city of license, the request for a "Suburban" issue as to Salem's survey of Methuen is now moot.

residential areas. See § 73.182(f) of the rules. However, because of the directionalized coverage pattern of the stations, the coverage is directed away from these cities. In any event, nothing in the "Primer" requires a broadcast applicant to survey small "portions" [24] of large communities which fall within its service area, even though these communities as a whole would constitute "major" communities in relation to the community of license. In addition, the fact that Lawrence and Haverhill are in the same urbanized area as the applicant's specified station location is not a persuasive argument for addition of the requested issue since the Commission specifically disclaimed use of the SMSA in defining the area to be surveyed and the applicant has shown no other factors requiring a survey. Finally, the reasons given by New Hampshire for not serving Haverhill and Methuen (see note 22, supra) are not unreasonable and are in accord with the "Primer." [25] Therefore, the Board will deny the requested "Suburban" issues.

FINANCIAL AND REAL PARTY-IN-INTEREST ISSUES AGAINST NEW HAMPSHIRE

18. Spacetown's requests for financial and real party-in-interest issues against New Hampshire are based on the applicant's financial arrangement with the Merrimack Valley National Bank of Lawrence, Mass. Spacetown alleges that the bank's letter of August 31, 1971, is unacceptable for the purposes of establishing New Hampshire's ability to construct and operate its proposed station for numerous reasons. In addition, Spacetown argues that New Hampshire has underestimated the cost of acquiring its proposed transmitter site by at least $6,000.[26] Spacetown further alleges that the $18,000 parcel is only half of New Hampshire's proposed site; therefore, total land costs will amount to $36,000, or $19,500 less than funds available. The Broadcast Bureau supports the addition of a financial issue against New Hampshire because of the expiration of the bank's commitment letter and a missing signature on the loan commitment. The Bureau, however, opposes Spacetown's contention that New Hampshire has underestimated the cost of its proposed site because the contention is based on double hearsay (Peter V. Gureckis, Spacetown's engineer, states in an affidavit that Albert P. Gureckis, Spacetown's president, spoke to the owner of the land who stated the price) and the contention that the proposed site appears to encompass more than just one parcel of land with total costs approaching $36,000 is mere speculation. In opposition, New Hampshire states that it has submitted an updated letter of credit eliminating all possible bases for the financial and real party-in-interest issues, including a new loan commitment which eliminates the objections of the Broadcast Bureau.[27]

19. In light of the Presiding Judge's acceptance of this amendment which appears to eliminate the provisions in New Hampshire's financial showing which were objected to by Spacetown and the Bureau, the Review Board will not add the requested financial and real party-in-interest issues. In addition, to the extent that Spacetown's allegations are not answered by New Hampshire's April 20, 1972 amendment, the Board rejects them as being unsupported by affidavits of persons having personal knowledge of the facts alleged. See § 1.229(c) of the Commission's rules. See also RKO General, Inc., 34 FCC 2d 263, 24 RR 2d 22 (1972); "Roberts Flying Service, Inc.," 31 FCC 2d 777, 22 RR 2d 985 (1971). However, since it appears that New Hampshire's most recent loan commitment expired as of September 1, 1972, the Board will add a limited financial issue against New Hampshire for the sole purpose of determining the continuing availability of its loan from the Merrimack Valley National Bank.

FINANCIAL QUALIFICATIONS ISSUES AGAINST SALEM

20. Spacetown petition: Finally, Spacetown requests that the limited financial issue specified against Salem in the designation Order be expanded to include an inquiry into the cost of acquiring the site since, petitioner alleges, the proposed site has a value substantially in excess of the $18,000 estimated by Salem. The Broadcast Bureau opposes expansion of the financial issue against Salem based on its underestimated cost of acquiring the land for its proposed site because Spacetown relies on a letter from a real estate agent, rather than the owner of the property to establish the sale price of the site. The Board agrees with the Bureau and will not add the requested issue since Spacetown has not supported its request by affidavits of persons having personal knowledge as required by § 1.229 (c) of the Commission's rules. "RKO General, Inc., supra; and Roberts Flying Service, Inc., supra."

21. New Hampshire petition: New Hampshire requests expansion of the limited financial issue specified against Salem on numerous grounds, most of which have been mooted by several amendments filed by Salem earlier this year [28] and accepted by the Administrative Law Judge on October 10, 1972 (FCC 72M-1262). Therefore, the parties' arguments on these matters are moot and need not be considered. However, one argument raised by New Hampshire in its reply remains unanswered. According to New Hampshire, Salem's application authorizes the issuance of 200 shares of stock; nevertheless, New Hampshire states, Salem's recent amendment shows over 1,900 shares already subscribed. In addition, New Hampshire argues, two of the three balance sheets submitted do not indicate the financial ability of the subscribers to comply with the terms of the agreement.[29] New Hampshire also states that its requested issue inquiring into Salem's first-year cost of operation was premised on Salem's failure to provide the itemization required in response to item (1)(b), section III of FCC Form 301, which are the bases of the estimates submitted by the applicant in item (a), section III. For the above reasons, New Hampshire requests that several financial issues be added against Salem to inquire into the above matters.

22. The Board agrees with New Hampshire that regardless of the amendments, several problems with Salem's financial qualifications remain. Two of the subscribers' balance sheets (Perry's and Ebert's) raise questions as to their ability to meet their subscription agreements. First, Carol Ebert has subscribed to $10,000 worth of stock despite the fact that she has an annual salary of $10,000 per year.[30] Her balance sheet lists $3,500 in cash and $3,450 in unexplained "notes receivable." Without further explanation of this latter item, a substantial question is raised as to whether Ebert has sufficient resources to meet her substantial stock subscription, which amounts to a year's gross salary. Second, Edward Perry, who is subscribing to $1,750 in stock, lists his net worth as over $30,000 but has only $200 in cash on hand. The bulk of Perry's assets are stock in, and salaries and commissions due from, C & I Broadcasting; however, without a balance sheet for this company and in light of Perry's very low cash balance in relation to net worth, it is impossible to determine the liquidity of these assets. Further, the $1,700 unexplained "accounts receivable" is equally unclear. The Board cannot accept such vague assurances of the availability of such large amounts of money. As the Board stated in "Vista Broadcasting Co., Inc.," 18 FCC 2d 636, 637, 16 RR 2d 838, 840 (1969): "It is well established that receivables, stocks and bonds, and fixed assets, in the absence of proof of market-

[24] See the Board's comments on the petitioner's use of MEOV's to allege greater penetration of these cities at paragraph 7, supra.

[25] 27 FCC 2d at 659, 21 RR 2d at 1516-17.

[26] New Hampshire's supplemental amendment of Apr. 24, 1972 (accepted by order of the Administrative Law Judge, FCC 72M-622, released May 11, 1972) increased its estimated cost of land acquisition from $12,000 to $18,000 (thereby eliminating this objection) and decreased its estimated building costs by $20,000.

[27] The amendment containing these changes was accepted by the Presiding Judge, by order, FCC 72M-622, released May 11, 1972.

[28] (a) Amendment of Apr. 25, 1972; (b) supplement thereto of May 19, 1972; and (c) amendment of Aug. 11, 1972.

[29] New Hampshire also states that both Salem and the Bureau misunderstood its requested issue regarding Salem's projected professional fees. New Hampshire states that it was not questioning the reasonableness of the fees, but the availability of funds to meet these fees. The Board considers this simply another way of stating that New Hampshire questions Salem's overall financial qualifications.

[30] The Board is aware that Salem's amendment, filed July 11, 1972, indicates an increased annual salary of $11,000, but this does not change the Board's analysis.

ability or liquidity, afford no reasonable assurance that funds will, in fact, be available to meet commitments to an applicant for a radio station." See also "Miami Broadcasting Corporation," 9 FCC 2d 694, 10 RR 2d 1037 (1967). The financial position of these stockholders is even more important in light of Salem's amendment of August 11, 1972 (accepted by the Administrative Law Judge on October 11, 1972), which indicates that Perry and Ebert are two of only four remaining stockholders personally guaranteeing the indebtedness of the corporation. Further, Salem's pending amendment, filed July 11, 1972, indicates that Perry's subscription may increase substantially to $8,500. In addition, the discrepancy in the number of shares of stock issued and the number authorized and Salem's failure to furnish the financial information required in item (1) (b), section III of the April 25th amendment to its application, raise further questions as to Salem's financial qualifications. Therefore, the financial issue against Salem will be expanded in accordance with the above discussion.

23. *Accordingly, it is ordered,* That the petition to supplement reply, filed August 4, 1972, by Spacetown Broadcasting Corp.; that the petition for leave to file further supplement, filed August 2, 1972, by Salem Broadcasting Co., Inc.; that the petition to supplement opposition, filed July 25, 1972, by Salem Broadcasting Co., Inc.; that the petition to file further supplement to reply, filed June 27, 1972, by Spacetown Broadcasting Corp.; that the petition to file supplement to motion to enlarge issues and supplement to motion to enlarge issues, filed June 13, 1972, by Spacetown Broadcasting Corp.; that the petition to file supplement to reply, filed June 13, 1972, by Spacetown Broadcasting Corp.; and that the petition to file supplement to opposition to motion to enlarge issues, filed May 23, 1972, by Salem Broadcasting Co., Inc., are denied; and

24. *It is further ordered,* That the petition for leave to file supplement to opposition, filed May 22, 1972, by Salem Broadcasting Co., Inc., is granted; and

25. *It is further ordered,* That the motion to enlarge issues, filed March 13, 1972, by Spacetown Broadcasting Corp. is granted to the extent indicated below and is denied in all other respects; and

26. *It is further ordered,* That the petition to enlarge issues, filed March 13, 1972, by New Hampshire Broadcasting Corp., is granted to the extent indicated below and is denied in all other respects; and

27. *It is further ordered,* That the petition to enlarge issues, filed May 10, 1972, by New Hampshire Broadcasting Corp., is granted;

28. *It is further ordered,* That the issues in this proceeding are enlarged to include the following issues:

(a) To determine whether overlap would occur between the proposed 0.5 mv/m contour of Salem Broadcasting Co., Inc., and the 0.025 mv/m contour of Radio Station WHIM, Providence, R.I., in contravention of § 73.37 of the Commission's rules and regulations;

(b) To determine, if it is found that the overlap described above would occur, whether the application of Salem Broadcasting Co., Inc., falls within the exceptions to the rule contained in § 73.37(b), or whether the application should be dismissed;

(c) To determine, with respect to the application of Salem Broadcasting Co., Inc., whether the applicant is reasonably assured of its proposed transmitter site;

(d) To determine whether overlap would occur between the proposed 0.5 mv/m contour of New Hampshire Broadcasting Corp. and the 0.025 mv/m contour of Radio Station WHIM, Providence, R.I., in contravention of § 73.37 of the Commission's rules and regulations;

(e) To determine, if it is found that the overlap described above would occur, whether the application of New Hampshire Broadcasting Corp. falls within the exceptions to the rule contained in § 73.37(b), or whether the application should be dismissed;

(f) To determine, with respect to the application of New Hampshire Broadcasting Corp., whether the Merrimack Valley National Bank, or any other banking institution, is willing to loan the applicant the amount it proposes to use for first-year construction and operation expenses.

29. *It is further ordered,* That the burden of proceeding with the introduction of evidence and the burden of proof with respect to issues (a), (b), and (c), added above, shall be on Salem Broadcasting Co., Inc., and the burden of proceeding with the introduction of evidence and the burden of proof with respect to issues (d), (e), and (f), added above, shall be on New Hampshire Broadcasting Corp.; and

30. *It is further ordered,* That the financial issue (No. 3 in the designation order, supra) specified against Salem Broadcasting Co., Inc., is modified to read as follows:

3. To determine, with respect to the application of Salem Broadcasting Co., Inc.:

(a) Whether the Arlington Trust Co., or any other banking institution, is willing to loan the applicant the amount it proposes to use for first-year construction and operation expenses;

(b) The number of shares of stock issued and/or authorized by the corporation;

(c) The facts concerning the failure of the applicant to provide the information requested by section III, 1(b) of Commission Form 301;

(d) Whether Edward Perry and Carol Ebert, stockholders of Salem Broadcasting Co., Inc., have sufficient net liquid assets to meet their stock subscription commitments; and

(e) Whether, in light of the evidence adduced pursuant to a, b, c, and d above, the applicant is financially qualified.

31. *It is further ordered,* That the burden of proceeding with the introduction of evidence and the burden of proof with respect to the financial qualifications issue, as modified, shall be on Salem Broadcasting Co., Inc.

Adopted: November 20, 1972.

Released: November 22, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[21]
[SEAL] BEN F. WAPLE,
Secretary.

APPENDIX

A. (1) Motion to enlarge issues, filed March 13, 1972, by Spacetown Broadcasting Corp.

(2) Erratum, filed March 24, 1972, by Spacetown.

(3) Broadcast Bureau's comments, filed April 20, 1972.

(4) Opposition, filed April 24, 1972, by Salem Broadcasting Co., Inc.

(5) Opposition, filed April 24, 1972, by New Hampshire Broadcasting Corp.

(6) Supplement and errata, filed May 1, 1972, by New Hampshire.

(7) Reply to oppositions, filed May 15, 1972, by Spacetown.

(8) Petition for leave to file supplement, and supplement to opposition, filed May 22, 1972, by Salem.

(9) Petition to file supplement to opposition, filed May 23, 1972, filed by Salem.

(10) Supplement to opposition, filed May 23, 1972, by Salem.

(11) Petition to file supplement to motion to enlarge issues and supplement to motion to enlarge issues, filed June 13, 1972, by Spacetown.

(12) Petition to file supplement to reply and supplement to reply, filed June 13, 1972, by Spacetown.

(13) Broadcast Bureau's comments on "Petition to file supplement to motion to enlarge issues and supplement to motion to enlarge issues," filed June 21, 1972.

(14) Petition to file further supplement to reply and further supplement to reply, filed June 27, 1972, by Spacetown.

(15) Opposition to petitions to supplement motion to enlarge issues, and reply to oppositions thereto, filed July 11, 1972, by Salem.

(16) Petition to supplement opposition and supplement, filed July 25, 1972, by Salem.

(17) Petition for leave to file further supplement and supplement, filed August 2, 1972, by Salem.

[FR Doc.72-20763 Filed 12-1-72;8:52 am]

[Dockets Nos. 18805, 18806; FCC 72R-345]

WHCN, INC. (WHCN-FM) AND COMMUNICOM MEDIA, INC.

Memorandum Opinion and Order Enlarging Issues

In re applications of WHCN, Inc. (WHCN-FM), Hartford, Conn., Docket No. 18805, File No. BRH-24, for renewal of license, Kenneth W. Sasso, W. Francis Pingree, and Lawrence H. Buck, doing business as Communicom Media, Inc., Berlin, Conn., Docket No. 18806, File No. BPH-6806, for construction permits.

1. WHCN, Inc. (WHCN), requests the Board to add a series of issues to this proceeding and to find good cause for the

[21] Board member Kessler absent.

late filing of the petition to enlarge.[1] WHCN has established good cause for the late filing of its petition. The request for a legal qualifications issue against Communicom has been withdrawn by petitioner, and it will not be considered further.

2. An issue based on Communicom's failure to include all information called for by the application form (§ 1.514(a) of the rules) will be added. Communicom's March 1972 amendment, including the exhibits filed in April, does not adequately respond to the requirements of the form, for the reasons noted by petitioner and the Bureau. It is unnecessary for the Board to spell out these deficiencies. However, since Communicom is not represented by counsel and since the omissions appear to stem more from ignorance than an effort to conceal, the issue will be cast only in terms of the effect these deficiencies have on that applicant's comparative qualifications.

3. The Board agrees with the Broadcast Bureau's arguments for not adding ineptness and abuse of process issues against Communicom.

4. One of the owners of Communicom, Mr. Pingree, would appear to be in violation of the Commission's cross interest policy were he to continue to serve as a part-time announcer at WHNB–TV after a grant to Communicom. Therefore a cross interest issue will be added. However, were adequate assurances to be given that, in the event of a grant to Communicom, Mr. Pingree would discontinue employment with WHNB–TV prior to the issuance of a construction permit, the issue would be rendered moot.

5. The § 1.65 issue requested by petitioner will be added; it is apparent from the pleadings that Communicom may not have kept the Commission promptly informed of significant personnel changes as they involved Mr. Pingree and Mr. Sasso. For the reasons noted in connection with the Rule 1.514 issue, the Rule 1.65 issue will also be limited to consideration of the effect noncompliance may have on Communicom's comparative qualifications.

6. Sufficient doubt exists as to the real party-in-interest in Communicom to warrant the addition of an issue. Mr. Hershfeld's interest in the applicant may well exceed that represented in the application, and Communicom has made no adequate response on this question to petitioner's allegations. A candor issue is also justified since the ambiguity of Mr. Hershfeld's role and other recent changes in the plan of financing of the applicant cast doubts on earlier assertions by Communicom that it had $24,000 on deposit.

7. *Accordingly, it is ordered,* That the issues herein are enlarged by the addition of the following:

(a) To determine whether Communicom Media, Inc., has failed to comply with the provisions of §§ 1.514(a) and 1.65 of the Commission's rules, and, if so, the effect of such failure on that applicant's comparative qualifications.

(b) To determine whether a grant to Communicom Media, Inc., would violate the Commission's cross interest policy as it applies to the operation of FM and television stations serving substantially the same area.

(c) To determine whether the application of Communicom Media, Inc., and the amendments thereto have accurately reflected the real parties-in-interest in that application, and, if not, to determine who are the real parties-in-interest.

(d) To determine whether the principals of Communicom Media, Inc., or any of them, have made any false statements or misrepresentations or have been lacking in candor in their submissions to the Commission in connection with that application.

(e) To determine, in view of the facts ascertained under the three preceding issues, whether Communicom Media, Inc. possesses the qualifications to be a licensee of this Commission.

8. *It is further ordered,* That the burden of proceeding under issues (a) through (e) above shall be upon WHCN and the burden of proof under all the above issues shall be upon Communicom Media;

9. *It is further ordered,* That in all other respects the petition to enlarge issues, filed May 9, 1972, by WHCN, Inc., is denied, and that the request to dismiss WHCN's petition, filed May 19, 1972, by Communicom Media, Inc., is denied.

Adopted: November 24, 1972.

Released: November 28, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[FR Doc.72-20760 Filed 12-1-72;8:51 am]

[1] The pleadings under consideration are: (a) Petition to enlarge issues, filed by WHCN, on May 9, 1972; (b) Broadcast Bureau's comments, filed May 31, 1972; (c) comment and request to dismiss, filed May 19, 1972, by Communicom Media; and (d) reply of WHCN, filed June 9, 1972.

[1] Board Member Berkemeyer absent.

[Report 624]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

NOVEMBER 27, 1972.

Pursuant to §§ 1.227(b)(3) and 21.30(b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Secretary.*

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

[2] The above alternative cutoff rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (Part 21 of the rules).

APPENDIX

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

NOVEMBER 27, 1972.

3585–C2–P–73—Chickamauga Telephone Corp. (New), for a new one-way station to operate on 158.10 MHz at Grand Center Road, 1 mile west of Chickamauga, Ga.

3586–C2–MP–73—Mobilfone Communications (KLB500), replace transmitter operating on 152.18 MHz and additional facilities to operate on 152.03 MHz at location No. 4: 200 West Capitol, Little Rock, AR.

3595–C2–P–73—Long Island Paging (New), for a new one-way station to operate on 43.58 MHz at 110 West Main Street, Smithtown, NY.

3627–C2–P–(2)–73—Northwestern Bell Telephone Co. (KFJ893), change the antenna system operating on 152.51 and 152.75 MHz at 619 Third Avenue SE., Cedar Rapids, IA.

3628–C2–P–(4)–73—Radio Dispatch Service (KLJ352), for additional facilities to operate on 454.025 and 454.125 MHz at location No. 1: 2140 Warwick Road, Birmingham, AL, and a new site described as location No. 3: Highway No. 150 near Readers Gap, Bessemer, AL.

3629–C2–P–73—Jackson Mobilphone Co., Inc. (New), for a new two-way station to operate on 152.06 MHz at 550 Wallace Road, Jackson, TN.

3630–C2–MP–73—Tel-Car, Inc. (KUA224), change the base frequency at location No. 1 to 454.325 MHz and relocate to a new site described as location No. 4: Deer Point, 10.75 miles northeast of Boise, ID.

3631–C2–MP–73—Answerphone of Cumberland & Atlantic Counties (KTS279), replace transmitter operating on 454.300 MHz at Elm and Orchard, Vineland, N.J.

3632–C2–AL–73—Palestine Telephone Co. Consent to assignment of license from Palestine Telephone Co., assignor, to: Gulf States-United Telephone Co., assignee. Station: KFL901, Palestine, Tex.

3633–C2–AL–73—Navasota Telephone Co. Consent to assignment of license from Navasota Telephone Co., assignor, to Gulf States-United Telephone Co., assignee. Station: KFQ939, Navasota, Tex.

3664–C2–P–73—Otis L. Hale doing business as Mobilfone Communications (KQZ752), add new site identified as location No. 2: 30th and Maple, Little Rock, Ark., and additional channel 158.70 MHz.

3665–C2–P–73—Twin Lakes Telephone Cooperative Corp. (New), for a new one-way signaling station to operate on 158.10 MHz at 1.5 miles west-southwest of Fairview, Tenn.

RURAL RADIO SERVICE

3634–C1–P–73—Southwestern Bell Telephone Co. (New), for a new rural subscriber-fixed station to operate on 157.95 MHz at 38 miles east of Laredo, Tex.

POINT-TO-POINT MICROWAVE RADIO SERVICE

3587–C1–P–73—American Telephone & Telegraph Co. (KED51), 400 Hamilton Avenue, White Plains, NY. Latitude 41°02'08" N., longitude 73°45'59" W. C.P. to add frequency 3910V MHz toward Alpine, N.J.

3588–C1–P–73—Same (KEM67), 2.2 miles north-northeast of Alpine, N.J. Latitude 40°58'45" N., longitude 73°54'56" W. C.P. to add frequency 3870V MHz toward White Plains, N.Y.; frequency 3870H MHz toward Paterson West, N.J.

3589–C1–P–73—Same (KEM65), Paterson Hamburg Turnpike, Benwell Avenue, Wayne Township, N.J. Latitude 40°56'27" N., longitude 74°12'01" W. C.P. to add frequency 3910H MHz toward Alpine, N.J.; frequency 3830V MHz toward Rochelle Park, N.J.; frequency 4070H MHz toward Netcong, N.J.

3590–C1–P–73—Same (KEM66), 75 Passaic Street, Rochelle Park (Bergen), NJ. Latitude 40°54'39" N., longitude 74°04'36" W. C.P. to add frequency 3790V MHz toward Paterson West, N.J.

3591–C1–P–73—Same (KEM64), 2.6 miles south of Netcong (Morris) N.J. Latitude 40°51'54" N., longitude 74°40'47" W. C.P. to add frequency 4030H MHz toward Paterson West, N.J.

3592–C1–P–73—Same (KKN23), 1407 Jefferson Street, Houston, TX. Latitude 29°44'55" N., longitude 95°21'56" W. C.P. to add frequency 3790H MHz toward Fairbanks, Tex.

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

3593–C1–P–73—Same (KGP78), 2.4 miles north of Fairbanks, Tex. Latitude 29°52'03" N., longitude 95°31'18" W. C.P. to add frequency 3830H MHz toward Houston, Tex.; frequency 3830V MHz toward Spring, Tex.

3594–C1–P–73—Same (KGP77), 2.2 miles south-southwest of Spring, Tex. Latitude 30°02'54" N., longitude 95°25'54" W. C.P. to add frequency 3790V MHz toward Fairbanks, Tex.

3596–C1–P–73—Same (KZA40), 1.8 miles west of Rosenberg, Tex. Latitude 29°33'15" N., longitude 95°50'41" W. C.P. to add frequency 3970V MHz toward Pattison, Tex.

3597–C1–P–73—Same (KZA39), 8.6 miles north of Pattison, Tex. Latitude 29°56'51" N., longitude 96°00'36" W. C.P. to add frequency 4010V MHz toward Rosenberg, Tex.; frequency 4010V MHz toward Independence, Tex.

3598–C1–P–73—Same (KZA38), 1.9 miles east of Independence, Tex. Latitude 30°19'05" N., longitude 96°18'55" W. C.P. to add frequency 3970V MHz toward Pattison, Tex.; frequency 3970V MHz toward Caldwell, Tex.

3599–C1–P–73—Same (KZA37), 10 miles north of Caldwell, Tex. Latitude 30°40'47" N., longitude 96°40'22" W. C.P. to add frequency 4010V MHz toward Independence, Tex.; frequency 4010V MHz toward Hammond, Tex.

3600–C1–P–73—American Telephone & Telegraph Co. (KZA36), 0.5 mile west of Hammond, Tex. Latitude 31°05'32" N., longitude 96°43'13" W. C.P. to add frequency 3970V MHz toward Caldwell, Tex.; frequency 3970H MHz toward Riesel, Tex.

3601–C1–P–73—Same (KZA35), 2.4 miles east-southeast of Riesel, Tex. Latitude 31°27'36" N., longitude 96°53'14" W. C.P. to add frequency 4010H MHz toward Hammond, Tex.; frequency 4010H MHz toward West, Tex.

3602–C1–P–73—Same (KZA34), 1 mile north of West, Tex. Latitude 31°49'35" N., longitude 97°05'32" W. C.P. to add frequency 3970H MHz toward Riesel, Tex.; frequency 3970H MHz toward Itasca, Tex.

3603–C1–P–73—Same (KZA33), 2.4 miles east of Itasca, Tex. Latitude 32°09'43" N., longitude 97°06'00" W. C.P. to add frequency 4010H MHz toward West, Tex.; frequency 4010V MHz toward Kennedale, Tex.

3604–C1–P–73—Same (KYZ92), 3 miles southeast of Kennedale, Tex. Latitude 32°36'29" N., longitude 97°11'13" W. C.P. to add frequency 3970V MHz toward Itasca, Tex.; frequency 3970V MHz toward Roanoke, Tex.

3605–C1–P–73—Same (KYZ91), 4.9 miles northwest of Roanoke, Tex. Latitude 33°01'41" N., longitude 97°18'05" W. C.P. to add frequency 4010V MHz toward Kennedale, Tex.

3635–C1–P–73—MCI Mid-Atlantic Communications, Inc. (New), 3.5 miles west of Midlothian, Va. Latitude 37°30'17" N., longitude 77°42'55" W. C.P. for a new station on frequency 6197.2V MHz toward Chimney Corners, Va.

3636–C1–P–73—Same (New), 1.7 miles north of Stokesdale, N.C. Latitude 36°16'04" N., longitude 79°59'00" W. C.P. for a new station on frequency 3730.0V MHz toward Winston-Salem, N.C.

3637–C1–P–73—Same (New), 5 miles southeast of Kernersville, N.C. Latitude 36°04'08" N., longitude 79°59'26" W. C.P. for a new station on frequencies 11,665.0H and 11,265.0H MHz toward Greensboro, N.C.

3638–C1–P–73—Same (New), 4 miles west-northwest of Huntersville, N.C. Latitude 35°25'23" N., longitude 80°54'45" W. C.P. for a new station on frequencies 11,665.0H and 11,265.0H MHz toward Charlotte, N.C.

3639–C1–P–73—Same (New), 2.5 miles east-southeast of Estelle, N.C. Latitude 36°29'44" N., longitude 79°11'47" W. C.P. for a new station on frequency 5974.8H MHz toward Hurdle Mills, N.C.

3640–C1–P–73—Same (New), 3.2 miles west of Pacolet, S.C. Latitude 34°53'12" N., longitude 81°49'15" W. C.P. for a new station on frequencies 11,665.0H and 11,265.0H MHz toward Spartanburg, S.C.

3641–C1–P–73—MCI Mid-Atlantic Communications, Inc. (New), 1.6 miles southwest of Fountain In, S.C. Latitude 34°43'08" N., longitude 82°14'10" W. C.P. for a new station on frequencies 10,735.0H and 11,135.0H MHz toward Greenville, S.C.

3642–C1–P–73—CPI Microwave, Inc. (New), 2.7 miles west of Axtell, Tex. Latitude 31°39'18" N., longitude 96°59'49" W. C.P. for a new station on frequency 11,405H MHz toward Waco, Tex. (INFORMATIVE: CPI proposes to provide one channel of network video service to Station KWTX-TV in Waco, Tex.)

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

3643–C1–P–73—The Mountain States Telephone & Telegraph Co. (KPV23), Childs Mountain, 6.7 miles northwest of Gibson, Ariz. Latitude 32°26'43'' N., longitude 112°57'12'' W. C.P. to add frequency 2128.0H MHz toward Organ Pipe National Monument, Ariz.

3644–C1–P–73—Same (New), Organ Pipe National Monument, 5 miles north of Lukeville, Ariz. Latitude 31°57'45'' N., longitude 112°48'40'' W. C.P. for a new station on frequency 2178.0H MHz toward Childs Mountain, Ariz.

3663–C1–P/ML–73—Southwestern Bell Telephone Co. (KYJ66), 1407 Jefferson Street, Houston, TX. Latitude 29°44'55'' N., longitude 95°21'56'' W. C.P. and modification of license to add frequency 10,875V MHz toward Houston, Tex.

3667–C1–TC–(3)–73—Laredo Microwave, Inc., consent to transfer of control from stockholders of UA Cablevision, Inc., transferors to UA Columbia Cablevision, Inc., transferee. Stations: KLH77—Pearsall, Tex.; KLH78—Cotulla, Tex.; KLH79—Encinal, Tex.

3668–C1–P–73—Continental Telephone Company of California (New), Mary Alley, Independence, Calif. Latitude 36°48'11'' N., longitude 118°11'59'' W. C.P. for a new station on frequency 2112H MHz toward Poverty Hill, Calif.

3669–C1–P–73—Same (KMQ71), Poverty Hill, 7.8 miles south-southeast of Big Pine, Calif. Latitude 37°03'26'' N., longitude 118°14'32'' W. C.P. to add frequency 2162.0H MHz toward Independence, Calif.

3670–C1–ML–73—South Central Bell Telephone Co. (KIU60), 215 Church Street, Nashville, TN. Latitude 36°09'51'' N., longitude 86°46'38'' W. Modification of license to change polarization from H to V on frequencies 3730V, 3810V, 3890V, 4050V, and 4130V MHz toward Brentwood, Tenn.; change from H to V on frequencies 3730V, 3810V, 3890V, 3970V, 4050V, and 4130V MHz; change from V to H on frequencies 3750H, 3830H, and 3910H MHz toward Lebanon, Tenn.

3671–C1–ML–73—Same (KRW74), 7 miles southwest of Lebanon, Tenn. Latitude 36°09'00'' N., longitude 86°23'13'' W. Modification of license to change polarization from H to V on frequencies 3770V, 3850V, 3930V, 4010V, and 4170V MHz; change from V to H on frequencies 3710H, 3790H, and 3870H MHz toward Nashville, Tenn.

3672–C1–ML–73—South Central Bell Telephone Co. (KJG58), Brentwood, approximately 7.5 miles south of Nashville, Tenn. Latitude 36°00'16'' N., longitude 86°50'01'' W. Modification of license to change polarization from H to V on frequencies 3770V, 3850V, 3930V, 4010V, 4090V, and 4170V MHz toward Nashville, Tenn.

3673–C1–P–73—Southern Bell Telephone & Telegraph Co. (KJA97), 213 South Coit Street, Florence, SC. Latitude 34°11'39'' N., longitude 79°46'17'' W. C.P. to add frequencies 3710V, 3790V, 3870V, and 3950V MHz toward Lake City, S.C.

3674–C1–ML–73—Same (KJW87), 2 miles northwest of Lake City, S.C. Latitude 33°53'38'' N., longitude 79°46'02'' W. Modification of license to change polarization from V to H on frequencies 3970H, 4050H, and 4130H MHz toward Florence, S.C.

3675–C1–P–73—Continental Telephone Company of California (KOB48), Big Pine, Calif. Latitude 37°09'53'' N., longitude 118-17'22'' W. C.P. to change frequency 2162.0H to 2170H MHz toward Bishop, Calif.

3676–C1–P–73—Same (KMQ70), 350 Lagoon Street, Bishop, CA. Latitude 37°21'33'' N., longitude 118°23'46'' W. C.P. to change frequency 2112.0H to 2120H MHz toward Big Pine, Calif.

3677–C1–MP–73—Same (KNB40), Pratt Mountain, near Garberville, Calif. Modification. C.P. to change emission and power; replace transmitter on frequency 6345.5H MHz toward Garberville, Calif., via passive reflector. Latitude 40°07'11'' N., longitude 123°-41'29'' W.

3678–C1–P–73—Same (KNB39), Garberville, Calif. Latitude 40°06'07'' N., longitude 123°-47'31'' W. C.P. to change power and increase height of antenna by 1 foot, change emission, and replace transmitter on frequency 6093.5H MHz toward Pratt Mountain, Calif., via passive reflector.

Major Amendments

4607–C1–P–71—MCI Southeast Communications, Inc. (New), 8.5 miles east of Nashville, Ga. Change polarization of frequency 5945.2 MHz to vertical on azimuth 113°17' toward Homerville, Ga. All other particulars same as reported on public notices, dated March 8, 1971, and October 10, 1972.

Major Amendments—Continued

4429–C1–P–72—Mountain Microwave Corp. (New), Forbes Butte, 9 miles west-northwest of Forbes, S. Dak. Latitude 45°57'48'' N., longitude 98°58'06'' W. Applications amended to change point of communication to Burnstad, N. Dak., on frequencies 11,325H MHz and 11,485H MHz, on azimuth 308°23'.

4430–C1–P–72—Same (New), 3.4 miles northeast of Burnstad, N. Dak. Latitude 46°20'45'' N., longitude 99°40'10'' W. Application amended to relocate station to foregoing coordinates on frequencies 10,835H and 1155H MHz toward Moffit Butte, N. Dak., on azimuth 301°29'.

4431–C1–P–72—Same (New), Moffit Butte, 6.5 miles west of Moffit, N. Dak. Latitude 46°-39'55'' N., longitude 100°26'00'' W. Application amended to relocate station to foregoing coordinates on frequencies 11,325H and 11,485H MHz toward Manden Butte, N. Dak., on azimuth 297°57'. (INFORMATIVE: Mountain Microwave amending applications to change site locations and their related azimuths. The frequencies are unchanged.)

3325–C1–P–73—Midwestern Relay Co. (WLJ48), 1 mile northwest of Rubicon, Wis. Latitude 43°20'53'' N., longitude 88°28'15'' W. Application amended to change frequency 6345.5H MHz to 6404.8H MHz toward Graham Corner, Wis., on azimuth 30°07'.

MULTIPOINT DISTRIBUTION SERVICE

3666–C5–P–73—International Television Corp. (New), Idaho and Capitol Avenues, Boise, Idaho. Latitude 43°36'19'' N., longitude 116°12'24'' W. C.P. for a new station on frequencies 2154.750V (Visual) and 2150.250V (Aural). (Primary service area: Boise, Idaho.)

APPLICATIONS FILED PURSUANT TO SECTION 214 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED:

Telephone Wire Facilities

P–C–8500—Southwestern Bell Telephone Co. and South Central Bell Telephone Co. INFORMAL (Section 63.03) for authority to supplement existing facilities between Greenville, Miss., and Lake Village, Ark.

P–C–8501—American Telephone & Telegraph Co. and South Central Bell Telephone Co. INFORMAL (Section 63.03) for authority to supplement existing facilities at various locations in Arkansas, Oklahoma, Texas, and Alabama.

P–C–8502—Pacific Northwest Bell Telephone Co. INFORMAL (Section 63.03) for authority to construct telephone carrier facilities between various points in Oregon and Washington.

P–C–8499—New Jersey Bell Telephone Co. and New York Telephone Co. INFORMAL (Section 63.03) for authority to supplement existing facilities between New Jersey and New York.

Telegraph Wire Facilities

T–C–1896–21—Western Union International, Inc. FORMAL (Section 63.01) for authority to supplement its existing facilities by acquiring and operating up to three satellite voice-grade circuits between an appropriate communications satellite or satellites over the Atlantic Ocean, together with any necessary domestic connecting facilities, connecting with similar circuits between the satellite and an earth station in Ecuador, and to lease part of the bandwidth of a similar circuit from another carrier, to provide all of WUI's regularly authorized communications services between the United States and Ecuador and beyond.

T–C–1892–23—ITT World Communications, Inc. FORMAL (Section 63.01) for authority to share in the lease and operation of one voice-grade satellite circuit between the United States and Israel.

T–C–1890–25—RCA Global Communications, Inc. FORMAL (Section 63.01) for authority to supplement its existing facilities between the United States and Ecuador by sharing in the lease and operation of two satellite voice circuits between those points.

T–C–1892–22—Same as above. FORMAL (Section 63.01) for authority to lease and operate one voice-grade satellite circuit between the United States and Nicaragua.

T–C–2459–2—TRT Telecommunications Corp. FORMAL (Section 63.01) for authority to supplement its existing facilities between the United States and Honduras by operation of a voice-grade circuit between Tegucigalpa, Honduras, and Panama City, Republic of Panama, to provide the services that TRT is now or may be hereafter authorized to provide between the United States and Honduras and points served via either or both such countries.

Telegraph Wire Facilities—Continued

T-C-2039-2-A-1—RCA Global Communications, Inc. Amendment to T-C-2039-2-A to permit the alternate use of the satellite capacity provided as a wideband channel capable of full-duplex transmission of synchronous serial binary data at a rate of 28.5 kilobits per second (kbs) simultaneous with one channel of voice bandwidth which is to be used only as a cue and contact channel for control and coordination of the data transmission and four discrete channels of voice bandwidth to be used for alternate voice/data ("AVD") services.

T-C-2472-A—Western Union International, Inc. Amendment to T-C-2472 to request for authority to operate their previously authorized facilities to provide telepost service between the gateway cities on the U.S. mainland and Hawaii, Puerto Rico, and the Virgin Islands.

T-C-2474-A—RCA Global Communications, Inc. Amendment to T-C-2474, for authority to use its authorized facilities between the U.S. Mainland and Hawaii, Puerto Rico and the U.S. Virgin Islands to provide Telepost Service.

INFORMATIVE: P-C-8479 (Section 214 filing) and S-C-L-46 (Submarine Cable Landing filing). These applications have now been accepted for filing as supplemented. Refer to Report No. 617 dated October 10, 1972, and deleted Report 619 dated October 24, 1972.

[FR Doc.72-20759 Filed 12-1-72;8:50 am]

FEDERAL MARITIME COMMISSION

PACIFIC WESTBOUND CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

D. D. Day, Jr., Chairman, Pacific Westbound Conference, 635 Sacramento Street, San Francisco, CA 94111.

Agreement No. 57-98 reflects a request for a change of membership status of Transportation Maritime Mexicana S.A. from that of a regular member to that of an associate member of the Pacific Westbound Conference.

Dated: November 28, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-20744 Filed 12-1-72;8:49 am]

SCHENKERS INTERNATIONAL FORWARDERS, INC., AND SCHENKERS INTERNATIONAL, INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. G. A. Trampler, Vice President, Schenkers International Forwarders, Inc., One World Trade Center, Suite 1867, New York, NY 10048.

Agreement No. FF 72-8, between Schenkers International Forwarders, Inc. (FMC No. 911) and Schenkers International, Inc. (FMC No. 802) was filed for the purpose of obtaining Commission approval pursuant to section 15, Shipping Act, 1916, of the assumption by Schenkers International Forwarders, Inc., of all the assets and liabilities of its wholly owned subsidiary, Schenkers International, Inc.

Schenkers International, Inc., is to submit its independent ocean freight forwarding license to the Federal Maritime Commission for revocation.

Dated: November 28, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-20743 Filed 12-1-72;8:49 am]

FEDERAL POWER COMMISSION

[Docket No. CP73-131]

EL PASO NATURAL GAS CO.

Notice of Application

NOVEMBER 29, 1972.

Take notice that on November 15, 1972, El Paso Natural Gas Co. (Applicant), Post Office Box 1492, El Paso, TX 79978, filed in Docket No. CP73-131 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas tap and valve facilities on its Southern Division System in New Mexico, and the transportation of synthetic pipeline gas (SPG) produced from coal and thereafter commingled with natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is planning a coal gasification complex (Burnham Complex) to be constructed and owned by a subsidiary company, which will be located on an approximate 40,287-acre coal lease within the Burnham Chapter Area of the Navajo Indian Reservation, Navajo Tribal Lands, San Juan County, N .Mex., and which is designed to produce approximately 250,000 Mcf of SPG per day. Applicant herein requests authorization to construct and operate a 24-inch O.D. tap with block and check valve assemblies to be located on its 34-inch O.D. San Juan mainline in San Juan County, N. Mex., and SPG purchase meter station with appurtenances to be located immediately upstream of its proposed tap and valve assemblies and at the terminus of a 24-inch SPC pipeline to be constructed, owned, and operated by Fuel Conversion Co. (Conversion), a

wholly owned subsidiary of Applicant, all in order to receive SPG to be produced from the Burnham Complex.

Applicant estimates the cost of the proposed facilities including overhead, contingency, intangible plant costs, and filing fees at $670,170, which it plans to finance initially from working funds, supplemented, as necessary, by short-term borrowings.

Applicant estimates the initial cost of the SPG at $1.21 cents per Mcf and proposes that the purchased cost attributable to the SPG supply be subjected to its purchased cost adjustment as contained in its FPC Gas Tariff applicable to its Southern Division System. Applicant expects the economic impact of this SPG sale to amount to a 6-cent per Mcf increase on its average cost of service on its Southern Division System.

Applicant requests authorization to transport the SPG produced from the Burnham Complex in its pipeline system. Applicant alleges that it is experiencing a continuing decline of natural gas supplies on its Southern Division System and that by 1977 its existing supply sources will be deficient in meeting its total Southern Division System projected gas demands by an estimated 2,113,000 Mcf on an average day basis. Applicant further alleges that as of October 30, 1972, it was compelled to initiate curtailments of firm natural gas service and that by 1977, when the Burnham Complex is estimated to be in its first full year of operation, its San Juan mainline will possess sufficient capacity to transport the 250,000 Mcf of SPG per day output from the Burnham Complex without the need for additional mainline facilities.

Applicant states that Conversion will construct, own and operate the Burnham Coal Gasification Complex and related SPG handling facilities including a 2.3-mile lateral connecting the complex with Applicant's pipeline and a proposed water pipeline. Another wholly owned subsidiary of Applicant, Mesa Resource Co. (Mesa), will own and operate the coal lease and will sell to Conversion the necessary quantities of coal to support the Burnham Complex, Applicant further states.

Applicant estimates that the recoverable sub-bituminous coal reserves underlying the coal lease are in excess of 700 million tons under less than 150 feet of overburden. Applicant states that conventional surface mining techniques will be employed to supply the Burnham Complex with approximately 26,000 tons of coal daily and 8,840,000 tons annually. Applicant also states that it has secured by lease agreement dated October 24, 1968, with The Navajo Tribe of Indians and Consolidation Coal Co. (Consolidation) and by option agreement dated June 12, 1972, with Consolidation, the coal rights in 40,286.75 acres of land owned by the Navajo Tribe of Indians. Applicant indicates that it will convey its interest in the coal lease to Mesa and estimates the capital cost of the mine facilities at $67,492,000.

Applicant indicates that the Lurgi Pressure Gasification Process, which was developed by Lurgi Mineralötechnik, GmbH of West Germany and is at the present time the only commercially proven pressure process for converting coal to SPG, plus the use of a methane synthesis step, will produce SPG at the Burnham Complex with a heat value of approximately 972 B.t.u. per cubic foot. Applicant states that over the 25-year period of the Burnham Complex operations, 10,000 acre-feet of water per year will be needed to produce the 250,000 Mcf of SPG per day. Applicant indicates that it is currently negotiating with the Bureau of Reclamation, Department of the Interior, for the acquisition of a water allotment in the amount of up to 28,250 acre-feet per year from the Navajo Reservoir, located on the San Juan River in San Juan and Rio Arriba Counties, N. Mex., and Archuleta County Colo. Applicant claims that a 40-mile water pipeline with related pumping equipment will have to be constructed to bring the reservoir water to the Burnham Complex. Applicant estimates the total cost of the coal gasification facility at $353,180,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 19, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20773 Filed 12-1-72;8:48 am]

[Docket No. CI73-375]

EXPANDO PRODUCTION CO.

Notice of Application

NOVEMBER 29, 1972.

Take notice that on November 22, 1972, Expando Production Co. (Applicant), c/o W. M. Thacker, Jr., 607 Hamilton Building, Wichita Falls, Tex. 76301, filed in Docket No. CI73-375 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co. from the Refugio Field, Refugio County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on November 10, 1972, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell an average daily quantity of up to 1,500 Mcf of gas at 35 cents per Mcf at 14.65 p.s.i.a., subject to upward and downward B.t.u. adjustment.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 11, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10), All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required,

further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecesary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20768 Filed 12-1-72;8:49 am]

[Docket No. CP73-133]

FLORIDA GAS TRANSMISSION CO.

Notice of Application

NOVEMBER 29, 1972.

Take notice that on November 20, 1972, Florida Gas Transmission Co. (Applicant), Post Office Box 44, Winter Park, FL 32789, filed in Docket No. CP73-133 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 5.02 miles of 26-inch pipeline loop paralleling an equal distance of its existing 24-inch main transmission pipeline immediately north of its Compressor Station 18 and to install and operate an 8-inch 600# ASA Regulator at Valve 17-3 on its existing 24-inch main transmission pipeline, all in Orange County, Fla. Applicant states that these proposed facilities are needed in order to comply with the safety regulations of the Department of Transportation issued pursuant to the Natural Gas Pipeline Safety Act of 1968. Applicant further states that the only other feasible method of complying with the current pipeline safety standards would be to replace certain of its existing pipeline and that, although the replacement cost would be lower than that of the proposed facilities, the cost per mile of such replacement greatly exceeds the corresponding cost of the proposed facilities due to the congested area in which such replacement would occur. Additionally, Applicant alleges that the relatively minor added expenditure of $165,000 for the proposed project over the alternative project cost is justified because it would eliminate the cost of future pipe replacements for certain class location changes and would improve the reliability of its mainline system.

Applicant estimates the cost of the proposed project at $1,330,000, which it plans to finance from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 22, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20774 Filed 12-1-72;8:48 am]

[Docket No. CI73-376]

HUMBLE OIL & REFINING CO.

Notice of Application

NOVEMBER 29, 1972.

Take notice that on November 24, 1972, Humble Oil & Refining Co. (Applicant), Post Office Box 2180, Houston, TX 77001, filed in Docket No. CI73-376 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Florida Gas Transmission Co. from the Little Escambia Creek Field, Escambia County, Ala., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell up to a daily average of 10,000 Mcf of gas at 40 cents per Mcf at 14.65 p.s.i.a., subject to upward and downward B.t.u. adjustment, for 1 year within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Initial upward B.t.u. adjustment is estimated at 14 cents per Mcf.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 11, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20769 Filed 12-1-72;8:49 am]

[Docket No. E-7740]

INDIANA & MICHIGAN ELECTRIC CO.

Notice of Extension of Time

NOVEMBER 28, 1972.

On November 8, 1972, Commission Staff Counsel filed a motion for a postponement of the procedural dates established by the order issued August 11, 1972, in the above-designated matter. The motion stated that all parties had been contacted and raised no objection to the proposed staff service date and the proposed date of the prehearing conference, and that all but one agreed with the remaining proposed dates. The Indiana and Michigan Municipal Distributor Group objected to the dates for the service of evidence by the interveners and Indiana & Michigan Electric Co. (I&M) and the date of the hearing.

The notice issued November 10, 1972, fixed dates for the filing of staff evidence and the date of the prehearing conference and deferred action on the other dates and provided for the filing of answers with respect to those dates on or before November 17, 1972. On that day, I&M filed an answer, interposing no objection to the intervener service date of January 16, 1973, if the dates for the

service of rebuttal evidence by I&M and the date for the commencement of the hearing are postponed to February 16, 1973 and March 9, 1973, respectively.

Upon consideration, notice is hereby given that the procedural dates fixed by the order issued August 11, 1972, in the above-designated matter are changed as follows:

Staff service date, December 14, 1972.
Prehearing Conference, January 3, 1973.
Intervener service date, January 16, 1973.
I&M rebuttal service date, February 16, 1973.
Hearing date, March 9, 1973.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20778 Filed 12-1-72;8:49 am]

[Project No. 2340]

INTERSTATE POWER CO.

Notice of Extension of Time

NOVEMBER 28, 1972.

On November 20, 1972, Interstate Power Co. filed a motion for an extension of time within which to answer the petition to intervene and protest filed by the Delhi Recreation Association, Inc. in the above-designated matter.

Upon consideration, notice is hereby given that the time is extended to and including December 15, 1972, within which Interstate Power Co. may answer the petition to intervene of Delhi Recreation Association, Inc.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20775 Filed 12-1-72;8:48 am]

[Docket No. CP73-130]

MISSISSIPPI RIVER TRANSMISSION CORP.

Notice of Application

NOVEMBER 28, 1972.

Take notice that on November 14, 1972, Mississippi River Transmission Corp. (Applicant), 9900 Clayton Road, St. Louis, MO 63124, filed in Docket No. CP73-190 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition of interests in producing wells, leases and reserves and the construction and operation of certain natural gas storage facilities in the East Unionville Field, Lincoln Parish, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In order to develop and operate an underground natural gas storage reservoir in the East Unionville Field, Applicant requests authorization for the following:

1. To construct and operate approximately 4.75 miles of 10¾-inch outside diameter pipeline connecting the East Unionville gathering system to its existing West Unionville Storage Field Compressor Station;

2. To construct and operate a total of approximately 5.2 miles of 4½-inch outside diameter field gathering pipeline;

3. To acquire, rework, and operate five existing producing wells as injection withdrawal wells;

4. To acquire, re-enter and complete six abandoned wells for observation purposes; and

5. To construct and operate measurement and regulation facilities and other appurtenant facilities, including additional piping at West Unionville Compressor Station and to acquire interests in other leases and reserves within the proposed storage field for its development.

Applicant states that the East Unionville Field was established by the drilling of a well in the field in 1951 and that cumulative raw gas production from the reservoir is now nearly depleted.[1] Applicant indicates that this storage project will include approximately 8,440 acres in which it plans to acquire the necessary storage and other rights from land, leasehold, mineral, and royalty owners. Applicant further states that it anticipates the following approximate amounts of gas to be injected into the field during the first 3 years of operation:

Year:	*Volume* (Mcf)
1973	4,400,000
1974	6,000,000
1975	6,000,000

and that, of such amounts, 3,200,000 Mcf in 1973, 3,600,000 Mcf in 1974 and 2,800,000 Mcf in 1975 will remain, in addition to the native gas in the reservoir, as cushion gas.

Applicant submits that it needs this gas storage project in order for it to continue its attempt to meet present and future winter gas supply requirements.

Applicant estimates the total cost of the proposed project including cushion gas at $7,874,000, which it plans to finance initially from internally generated funds and interim bank loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 19, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20710 Filed 12-1-72;8:46 am]

[1] Texas Eastern Transmission Co. presently purchases natural gas from certain leasehold interests in the producing acreage of this field.

[Docket No. RP71-125]

NATURAL GAS PIPELINE CO. OF AMERICA

Filing of Stipulation Relative to Advance Payments

NOVEMBER 28, 1972.

Take notice that Natural Gas Pipeline Co. of America (Natural) on November 3, 1972, filed a motion for approval of two stipulations relative to advance payments in the above-styled docket.

The first stipulation relates to an advance of $13 million from Natural to the California Co., a division of Chevron Oil Co. (Calco) in which Natural seeks to include that advance in its rate base. In return Natural proposes to stipulate that "in the event Natural, within 5 years (or such other period as may be authorized by the Commission) from the date gas deliveries commence, recoups less than the full amount of the $13 million advance from Calco, Natural will file and place into effect a change in its jurisdictional rates to give effect to the cost of service decrease relative to elimination of the unrecovered portion of the advance from rate base, and will make a refund to its jurisdictional customers".

The second stipulation relates to Natural's advance of $5 million to Imperial Oil Limited and Imperial Oil Enterprises, Ltd. (Imperial) and of $5 million each on the next three anniversary dates of the initial payment date.

Natural states its agreement with Imperial is substantially identical to the agreement between Imperial and Michigan Wisconsin Pipe Line Co. which is the subject matter of Docket No. RP71-112. Pending Commission action in the latter docket, Natural seeks to include the advance in its rate base subject to removal from rate base and refund in accordance with the Commission's action in Docket No. RP71-112.

Refunds under each stipulation are proposed to be in accordance with the provisions of paragraphs 1 and 2 of

Article IX of the Stipulation and Agreement approved by Commission order issued March 14, 1972, in Docket No. RP71-125.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 8, 1972. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this motion are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20707 Filed 12-1-72;8:46 am]

[Docket No. E-7777]

PACIFIC GAS & ELECTRIC CO.

Order Suspending Proposed Revised Tariff Sheets, Providing for Hearing and Permitting Interventions

NOVEMBER 27, 1972.

On September 29, 1972, Pacific Gas & Electric Co. (PG&E) tendered for filing a proposed supplement to Rate Schedule FPC No. 8 and Original Volume No. 2 of its FPC Electric Tariff, superseding rate schedules now on file with the Commission.[1] The proposed changes would increase revenues from jurisdictional sales and service by $2,385,361 or 22 percent based on operations for the 12-month period ending December 31, 1971, to become effective November 28, 1972.

Copies of the filing were served on PG&E's jurisdictional customers and the State commissions of California and Nevada. The filing was noticed on October 16, 1972. California-Pacific Utilities Co., Sierra Pacific Power Co., Northern California Power Agency and the cities of Alameda, Healdsburg, Lodi, Lompor, Santa Clara, and Uhiah (Cities) filed petitions to intervene. Cities also urges the Commission to reject the filing on grounds that PG&E's rates will be excessive and that PG&E is engaging in anticompetitive behavior to the detriment of its resale jurisdictional customers. Northern California Power Agency also alleges that PG&E has engaged in anticompetitive behavior.

Our review of the various pleadings indicates that rejection of the filing is not justified. However, the issues raised by the pleadings as well as other issues raised by our review of the filing may require development in evidentiary proceedings. The proposed changes in rates and charges have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in PG&E's Electric Tariff as proposed to be amended in this docket, and that the tendered tariff sheets be suspended as hereinafter provided.

(2) The disposition of this proceeding should be expedited in accordance with the procedure set forth below.

(3) In the event this proceeding is not concluded prior to the termination of the suspension period herein ordered, the placing of the tariff changes applied for in this proceeding into effect, subject to refund with interest while pending Commission determination as to their justness and reasonableness, is consistent with the purpose of the Economic Stabilization Act of 1970, as amended.

(4) Participation of the above-named persons in this proceeding may be in the public interest.

The Commission orders:

(A) Pursuant to the authority of the Federal Power Act, particularly section 205(e) thereof, the Commission's Rules of Practice and Procedure, and the regulations under the Federal Power Act (18 CFR Ch. I), a public hearing shall be held, commencing with a prehearing conference on March 20, 1973, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426, concerning the lawfulness of the rates, charges, classifications and services contained in PG&E's Electric Tariff as proposed to be revised herein.

(B) At the prehearing conference on March 20, 1973, PG&E's prepared testimony (Statement P) together with its entire rate filing shall be admitted to the record as its complete case-in-chief subject to appropriate motions, if any, by parties to the proceeding. All parties will be expected to come to this conference prepared to effectuate the provisions of §§ 1.18 and 2.59 of the Commission's rules of practice.

(C) On or before March 13, 1973, the Commission staff shall serve its prepared testimony and exhibits. The prepared testimony and exhibits of any or all intervenors shall be served on or before March 27, 1973. Any rebuttal evidence by PG&E shall be served on or before April 10, 1973. Cross-examination of the evidence filed will commence on April 24, 1973.

(D) A presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control the proceeding in accordance with the policies expressed in § 2.59 of the Commission's rules of practice and procedure.

(E) Pending hearing and a final decision in this proceeding, PG&E's proposed tariff sheets, tendered on September 29, 1972, are suspended and the use thereof deferred until April 28, 1973.

(F) The above-named petitioners are hereby permitted to intervene in these proceedings, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting rights and interests specifically set forth in the respective petitions to intervene: *And provided, further,* That the admission of such intervenors shall not be construed as recognition that they or any of them might be aggrieved because of any order or orders issued by the Commission in these proceedings.

(G) Pursuant to § 2.59(c) of the Commission's Rules of Practice and Procedure, PG&E shall promptly serve copies of its filing upon all of the above mentioned intervenors, unless such service has already been effected pursuant to Part 154 of the regulations under the Natural Gas Act.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

APPENDIX A

PACIFIC GAS & ELECTIC CO.

Designation	Other party	Supersedes
(1) Supplement No. 8 to Rate Schedule FPC No. 8.	Sierra Pacific	Supplement No. 7 to Rate Schedule FPC No. 8.
(2) Original sheets 1 through 29 FPC Electric Tariff Original Volume No. 2.		
(3) Service agreements under FPC Electric Tariff Original Volume No. 2 with—		
	City of Alameda	Rate Schedule FPC No. 10 as supplemented.
	Bay Point Light and Power Co	Rate Schedule FPC No. 11.
	California Pacific Utilities Co. (Weaverville).	Rate Schedule FPC No. 13.
	California Pacific Utilities Co. (Chester and Westwood).	Rate Schedule FPC No. 14.
	City of Healdsburg	Rate Schedule FPC No. 15 as supplemented.
	City of Lompoc	Rate Schedule FPC No. 19 as supplemented.
	City of Ukiak	Rate Schedule FPC No. 23 as supplemented.
	City of Santa Clara	Rate Schedule FPC No. 42 as supplemented.
	City of Lodi	Rate Schedule FPC No. 47 as supplemented.
	City of Palo Alto	Rate Schedule FPC No. 48.

[1] See Appendix A.

[FR Doc.72-20776 Filed 12-1-72; 8:48 am]

[Docket No. CI73-63]

SOUTHERN UNION GATHERING CO.

Notice of Further Extension of Time

NOVEMBER 28, 1972.

On November 22, 1972, Southern Union Gathering Co. and Aztec Oil and Gas Co. (Aztec) filed a motion for a further extension of time within which evidence is to be filed and a postponement of the date for hearing in the above-designated matter, established by order issued September 29, 1972 as amended by notices issued October 10, 1972 and November 3, 1972. The motion states that the New Mexico Public Service Commission has no objection to the motion, in view of Aztec's agreement to defer the effective date of its rate increase to February 16, 1973.

Upon consideration, notice is hereby given that the time is further extended to and including January 2, 1973, within which prepared testimony and exhibits shall be filed. The hearing is postponed to January 8, 1973, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-20777 Filed 12-1-72;8:48 am]

[Docket Nos. RI73-105, etc.]

TEXAS PACIFIC OIL CO., INC., ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

NOVEMBER 22, 1972.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto [18 CFR, Chapter I], and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date suspended until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the respondent or by the Commission. Each respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A

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 dockets Nos.
									Rate in effect	Proposed increased rate	
RI73-105	Texas Pacific Oil Co., Inc.	99	8	El Paso Natural Gas Co. (Spraberry, Trend, and Texon W. (Spraberry) Fields, Reagan County, Tex.) (Permian Basin).	$2,500	11-6-72		1-7-73	14.5	15.5	
RI73-106	Gulf Oil Corp	436	3	Transwestern Pipeline Co. (Rock Tank Morrow Field, Eddy County, N. Mex.) (Permain Basin).	249	11-6-72		6-1-73	[1] 30.0	[1] 30.35	RI73-18.
		387	5	Transwestern Pipeline Co., (Halley Field, Winkler County, Tex.) (Permian Basin).	44,470	11-6-72		6-1-73	[2] 22.6628	[2] 24.8863	RI70-790.
RI73-107	Texas Pacific Oil Co., Inc.	19	14	West Texas Gathering Co. (Emperor Devonian, Winkler County, Tex., Permian Basin).	35,262	[3] 11-3-72		1-4-73	18.0675	19.0713	RI69-599.
RI73-108	Hunt Oil Co	61	6	El Paso Natural Gas Co. (Brown Bassett Field, Crockett County, Tex.,) (Permian Basin).	([5])	[4] 10-30-72		1-2-73	[2] 13.5506	[2] 14.5544	
	do	65	8	do	[6] 242	[4] 10-30-72		1-2-73	[2] [6] 10.9884	[2] [6] 11.9938	RI70-520. RI71-121.
				do	[7] 3,140	[4] 10-30-72		1-2-73	[2] [7] 16.9734	[2] [7] 17.9772	RI70-1586.
RI73-109	Hunt Industries	5	7	do	1,254	[4] 10-30-72		1-2-73	[2] 13.5506	[2] 14.5544	
RI73-110	The Superior Oil Co	138	7	Transwestern Pipeline Co. (Bell Lake Unit. Lea County, N. Mex., Permian Basin).	2,517	10-31-72		5-1-73	15.94	21.12	
RI73-111	Marathon Oil Co	101	4	Transwestern Pipeline Co. (Halley Field, Winkler County, Tex.) (Permian Basin).	2,734	10-30-72		6-1-73	20.6025	22.6125	RI70-785.
RI73-112	Suburban Propane Gas Corp.	22	2	Northern Natural Gas Co. (Davidson Ranch Area, Crockett County, Tex., Permian Basin).	6,480	10-30-72		4-30-73	[8] [12] 27.0	[10] 30.0	
RI73-113	Union Oil Company of California.	178	6	El Paso Natural Gas Co. (Brown-Bassett Field, Crockett County, Tex., Permian Basin).	[6] 16,285	10-31-72		1-2-73	[6] 11.3524	[6] 11.9986	RI68-332.
				do	[7] 2,806	[4] 10-31-72		1-2-73	[7] 17.5656	[7] 18.5694	RI70-836.
RI73-114	Texaco, Inc	391	9	Northern Natural Gas Co. (Toro and Hamon Field, Reeves County, Tex.) (Permian Basin).	81,810	10-30-72		1-2-73	17.5656	18.5694	RI68-411.
RI73-115	Mobil Oil Corp	241	[11] 19	El Paso Natural Gas Co. (Brown-Bassett Field, Terrell County, Tex., Permian Basin).		11-13-72	1-1-73	[9] Accepted			
			20	do	174,400	10-31-72		1-2-73	[2] 15.0031	18.4620	RI70-1023

See footnotes at end of table.

APPENDIX A—Continued

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 dockets Nos.
									Rate in effect	Proposed increased rate	
RI73-116	Shell Oil Co	168	9	West Texas Gathering Co. (Emperor Field, Winkler County, Tex., Permian Basin).	132,067	11-6-72		1-7-73	18.0675	19.0713	RI68-412.
	do	351	6	El Paso Natural Gas Co. (Lockridge Field, Ward County, Tex., Permian Basin).	141,454	11-6-72		1-7-73	[13] 18.0048	18.5694	RI71-297.
	do	346	4	El Paso Natural Gas Co. (Toro Field, Reeves County, Tex., Permian Basin).	131,667	11-6-72		1-7-73	17.5656	18.5694	RI71-297.
	do	348	4	El Paso Natural Gas Co. (Gomez Field, Pecos County, Tex., Permian Basin).	38,937	11-6-72		1-7-73	17.5656	18.5694	RI71-297.
	do	334	8	El Paso Natural Gas Co. (Jim & Brown Bassett Fields, Crockett, Terrell & Val Verde Counties, Tex., Permian Basin).	105,141	11-6-72		1-7-73	[14 19] 10.18	[14 19] 12.1701	RI68-412.
	do				727,414	11-6-72		1-7-73	[15 19] 13.34	[15 19] 15.2555	RI68-412.
	do				10,265	11-6-72		1-7-73	[16 19] 16.88	[16 19] 18.5694	RI68-521.
	do				107,968	11-6-72		1-7-73	[17 19] 14.4308	[18 19] 15.2555	
	do	319	6	El Paso Natural Gas Co. (Brown-Bassett Field, Crockett Field, Permian Basin).	4,015	11-6-72		1-7-73	[19] 14.3175	[19] 15.3213	RI70-404.
RI73-117	Sun Oil Co	151	11	El Paso Natural Gas Co. (Brown-Bassett Field, Crockett & Terrell Counties, Tex., Permian Basin).	20,674	[20] 11-3-72		1-4-73	[19] 14.3175	[19] 16.5333	RI70-407.
RI73-118	Mobil Oil Corp	366	3	Colorado Interstate Gas Co. (Patrick Draw Field, Sweetwater County, Wyo.).	8,700	10-26-72		1-2-73	15.616	16.6238	RI68-315.
RI73-119	Marathon Oil Co	87	6	Colorado Interstate Gas Co. (Wamsutter and South Wamsutter areas, Sweetwater County, Wyo.).	4,544	10-30-72		1-2-73	16.12	17.1275	RI70-1190.
	do	104	2		[23]	11-6-72		1-7-73	18.337	19.344	RI70-176.
	do	111	2	Colorado Interstate Gas Co. (East Rock Springs area, Sweetwater County, Wyo.).	746	10-30-72		1-2-73	[1] 15.0	[1] 16.0	
RI73-120	Gulf Oil Corp	174	7	El Paso Natural Gas Co. (Dry Piney area, Sublette County, Wyo.).	828	11-1-72		1-2-73	[24] 19.7925	[21 24] 20.31	RI70-1589.
	do	281	6	Colorado Interstate Gas Co. (Patrick Draw Area, Sweetwater County, Wyo.).	1,511	10-30-72		1-2-73	15.6163	16.6238	RI70-1581.
RI73-121	Humble Oil & Refining Co.	360	5	Colorado Interstate Gas Co. (Patrick Draw Field, Sweetwater County, Wyo.).	[23]	10-30-72		1-2-73	[22] 17.255	[22] 18.270	RI70-469.
RI73-122	American Petrofina Company of Tex.	78	1	El Paso Natural Gas Co. (Rio Arriba County, N. Mex., San Juan Basin).	2,276	10-30-72		4-30-73	[1 24] 24.0	[1 24] 28.0	
RI73-123	Atlantic Richfield Co.	50	22	Northern Utilities, Inc., and Kansas-Nebraska Natural Gas Co., Inc. (Riverton Dome Field, Fremont County, Wyo.).	27,530	10-30-72		1-2-73	[24] 16.12	[24] 17.13	RI70-829.
RI73-124	Texaco, Inc	406	2	Mountain Fuel Supply Co. (West Side Canal Field, Carbon County, Wyo.).	3,030	11-2-72		1-21-73	[22 25] 15.15	[22 25] 16.16	RI70-1113.
RI73-125	Skelly Oil Co	264	1	El Paso Natural Gas Co. (Rio Arriba County, N. Mex., San Juan Basin).	14,400	10-24-72		4-24-73	[1 24] 24.0	[1 24] 28.0	
RI73-126	Amoco Production Co.	472	1	Mountain Fuel Supply Co. (West Side Canal Area, Moffat County, Colo.).	200	11-6-72		1-7-73	[24] 15.0	[24] 16.0	
RI68-326	Champlin Petroleum Co.	111	8	Colorado Interstate Gas Co. (Table Rock Unit Area, Sweetwater County Wyo.).	(3,132)	11-1-72		2-1-72	[24] 17.17	[23] 17.085	RI68-326.
RI68-326	do	113	6	Colorado Interstate Gas Co. (Wamsutter Unit Area, Sweetwater County, Wyo.).	(1,020)	11-1-72		8-1-71	[24] 16.24	[25] 16.12	RI68-326.
RI68-326	do	114	5	Colorado Interstate Gas Co. (Patrick Draw-Desert Springs Area, Sweetwater County, Wyo.).	(7,422)	11-1-72		1-1-72	[24] 15.7325	[25] 15.61625	RI68-326.
RI68-334	do	115	4	Colorado Interstate Gas Co. (Point of Rocks Area, Sweetwater County, Wyo.).	(96)	11-1-72		12-1-71	[24] 16.24	[25] 16.12	RI68-334.
RI69-27	do	116	5	Colorado Interstate Gas Co. (North Desert Springs Area, Sweetwater County, Wyo.).	(1,027)	11-1-72		1-1-71	[24] 18.4730	[25] 18.3365	RI69-27.
RI68-334	do	117	4	Colorado Interstate Gas Co. (Table Rock Field (Deep Zone), Sweetwater County, Wyo.).	(978)	11-1-72		12-1-71	[24] 17.2550	[25] 17.1275	RI68-334.
RI68-326	do	118	6	Colorado Interstate Gas Co. (Table Rock Field, Sweetwater County, Wyo.).	(365)	11-1-72		1-1-72	[24] 17.17	[25] 17.085	RI68-326.
RI70-943	do	119	5	Mountain Fuel Supply Co. (Nitchie Gulch Area, Sweetwater County, Wyo.).	(49)	11-1-72		4-1-72	[24 25] 16.24	[25 25] 16.12	RI70-943.
RI73-127	Terra Resources, Inc.	8	11	El Paso Natural Gas Co. (Bar X Field, Grand County, Utah and Mesa County, Colo.).	3,135	11-2-72		1-3-73	[26 28] 14.0	[26 28] 15.0	RI68-702.

See footnotes at end of table.

APPENDIX A—Continued

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 dockets Nos.
									Rate in effect	Proposed increased rate	
RI73-128..	Kerr-McGee Corp....	104	1	Colorado Interstate Gas Co. (Vilas Field, Baca County, Colo.).	675	11- 9-72	.....	1-10-73	[1] 14.6	[1] 15.6	
RI73-129..	Skelly Oil Co.....	257	2	Natural Gas Pipeline Co. of America (Haley Unit, Lonng and Reeves Counties, Tex., Permian Basin).	322	11- 6-72	.....	5- 7-73	[1] 27.0	[1] 27.4	

*Unless otherwise stated, the pressure base is 14.65 p.s.i.a.
[1] Subject to B.t.u. adjustment.
[2] Includes quality adjustments.
[3] Corrected filing submitted Nov. 16, 1972.
[4] Corrected filing submitted Nov. 13, 1972.
[5] No current deliveries.
[6] Ellenburger gas.
[7] Bromide gas.
[8] Not used.
[9] Subject to B.t.u. adjustment currently at +5.40 cents per Mcf.
[10] Subject to B.t.u. adjustment, currently at +6 cents per Mcf.
[11] Contract agreement.
[12] Initial rate authorized by temporary certificate.
[13] Includes 0.4375 cent per Mcf upward adjustment for quality.
[14] Production from the Brown-Bassett Ellenburger.
[15] Production from the JM Ellenburger.
[16] Production from the Brown Bassett Bromide.
[17] Initial rate for Val Verde County acreage added by Supplement No. 7.
[18] Production from Val Verde County acreage added by Supplement No. 7.
[19] Rate adjusted for quality.
[20] Corrected filing submitted Nov. 10, 1972.
[21] Contract rate is 20.5 cents plus tax reimbursement. Rate fractured to avoid 5 months suspension.
[22] Includes a double amount of contractually due tax reimbursement to recover taxes on past sales of gas.
[23] No current deliveries.
[24] Not used.
[25] Includes only contractually due tax reimbursement for taxes on future sales of gas.
[26] Subject to downward B.t.u. adjustment.
[27] Accepted for filing to be effective on the date shown in the "Effective Date" column.
[28] The pressure base is 15.025 p.s.i.a.

The proposed decreases of Champlin Petroleum Co. reflect decreases in reimbursement of the Wyoming severance tax. Champlin had been collecting a double amount of the contractually due tax reimbursement so as to recover taxes on past sales of gas. Since the back taxes have been recovered, Champlin now proposes to collect only the contractual tax reimbursement on current sales of gas. The proposed decreases are suspended in the existing rate proceedings and are to be effective, subject to refund, on the proposed effective dates.

The proposed increases of Gulf Oil Corp. under its FPC Gas Rate Schedule Nos. 436 and 387, The Superior Oil Co. under its FPC Gas Rate Schedule No. 101, Marathon Oil Co. under its FPC Gas Rate Schedule No. 22, American Petrofina Co. of Texas under its FPC Gas Rate Schedule No. 78, Skelly Oil Co. under its FPC Gas Rate Schedule Nos. 264 and 257, exceed the corresponding rate filing limitation imposed in southern Louisiana and therefore are suspended for 5 months from the expiration of the statutory notice period or the contractual effective date, whichever is later.

The other increases involved here do not exceed the corresponding rate filing limitation imposed in southern Louisiana and therefore are suspended for 1 day from the expiration of the 60-day notice period or the contractual effective date, whichever is later.

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, 2.56).

CERTIFICATION OF ABBREVIATED SUSPENSION

Pursuant to § 300.16(1)(3) of the Price Commission rules and regulations, 6 CFR Part 300 (1972), the Federal Power Commission certifies as to the abbreviated suspension period in this order as follows:

(1) This proceeding involves producer rates which are established on an area rather than company basis. This practice was established by Area Rate Proceeding, Docket No. AR61-1, et al., Opinion No. 468, 34 FPC 159 (1965), and affirmed by the Supreme Court in Permian Basin Area Rate Case, 390 U.S. 774 (1968). In such cases as this, producer rates are approved by this Commission if such rates are contractually authorized and are at or below the area ceiling.

(2) In the instant case, the requested increases do not exceed the ceiling rate for a 1-day suspension.

(3) By Order No. 423 (36 F.R. 3464) issued February 18, 1971, this Commission determined as a matter of general policy that it would suspend for only 1 day a change in rate filed by an independent producer under section 4(d) of the Natural Gas Act [15 U.S.C. 717c(d)] in a situation where the proposed rate exceeds the increased rate ceiling, but does not exceed the ceiling for a 1-day suspension.

(4) In the discharge of our responsibilities under the Natural Gas Act, this Commission has been confronted with conclusive evidence demonstrating a natural gas shortage. (See Opinion Nos. 595, 598, and 607, and Order No. 435.) In these circumstances and for the reasons set forth in Order No. 423 the Commission is of the opinion in this case that the abbreviated suspension authorized herein will be consistent with the letter and intent of the Economic Stabilization Act of 1970, as amended, as well as the rules and regulations of the Price Commission, 6 CFR Part 300 (1972). Specifically, this Commission is of the opinion that the authorized suspension is required to assure continued, adequate and safe service and will assist in providing for necessary expansion to meet present and future requirements of natural gas.

[FR Doc.72-20644 Filed 12-1-72;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST PIEDMONT CORP.

Acquisition of Bank

First Piedmont Corp., Greenville, S.C., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 9.5 percent or more of the voting shares of First Palmetto State Bank & Trust Co., Columbia, S.C. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

First Piedmont Corp., is also engaged in the following nonbank activities: Equipment leasing, data processing services, and travel services. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 26, 1972.

Board of Governors of the Federal Reserve System, November 28, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-20745 Filed 12-1-72;8:51 am]

FIRST COMMERCIAL BANKS, INC.

Order Denying Acquisition of Schenectady Discount Corp.

First Commercial Banks, Inc., Albany, N.Y., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire 95 percent or more of the voting shares of Schenectady Discount Corp., Colonie, N.Y., and thereby all of the shares of Markwood Agency, Inc., Albany, N.Y.; Colonie Adjustment Service, Inc, Albany, N.Y.; Desert Insurance Agency, Apache Junction, Ariz.; and Sunland Adjustment Service Corp., Apache Junction, Ariz., all of which are wholly owned subsidiaries of Schenectady Discount Corp. (Schenectady). The proposed subsidiary and its subsidiaries

engage in the activities of purchasing, from mobile home dealers and others, retail instalment sales contracts deriving from the sale of mobile homes; making direct loans to mobile home dealers to finance inventory; the collection of delinquent loans held by Schenectady Discount Corp.; the sale of group credit life insurance to its debtors; the sale of casualty insurance on the property serving as collateral for the above-described extensions of credit;[1] and the sale of personal effects insurance and rental value insurance to individual borrowers in conjunction with the casualty insurance. Such activities have been determined by the Board to be closely related to banking or managing or controlling banks (12 CFR 225.4(a) (1), (3), and (9)(ii)(a)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (37 F.R. 20200). The time for filing comments and views has expired, and none has been timely received.

Applicant, through its three subsidiary banks, controls approximately $1.1 billion of deposits. (All data are as of December 31, 1971.) Its lead bank, National Commercial Bank and Trust Co., Albany, N.Y. (Bank), is the largest bank in Albany County, its total deposits of $745 million representing approximately 42 percent of deposits in commercial banks in that county. Bank is also the largest bank in New York's Fourth Banking District controlling approximately 27 percent of the district's deposits. Schenectady, with total assets of approximately $22 million, is a sales finance company specializing in the purchase of instalment contracts originated by mobile home dealers. Schenectady maintains its head office in Colonie, N.Y., located approximately 2 miles north of Albany and operates a branch office in Apache Junction, Ariz. Approximately 10 percent of Schenectady's business is transacted at its branch office.

The relevant product market in which the Board analyzes the competitive aspects of the proposed transaction is mobile home sales finance, that is, the purchase of instalment sales contracts from mobile home dealers accompanied by the provision of floor plan loans to finance the inventory of mobile home dealers. Since the high cost of floor plan financing is not usually compensable by interest charges, lenders refrain from providing floor plan credit to a dealer, unless the dealer sells portions of its retail paper to the lender. Due to the existence of a secondary market for mobile home paper and the high risk deriving from the considerable turnover among mobile home manufacturers and dealers, a mobile home sales finance company requires specialized personnel. It is basically this need, as well as the larger amounts and longer maturities of individual mobile home instalment sales contracts, that distinguishes mobile home sales finance from other types of consumer installment sales finance.

Lenders engaged in mobile home sales finance generally deal directly with mobile home dealers. Since the nature of the risks such lenders assume requires frequent visits to the premises of their dealer-customers for inspection of collateral, as well as requiring a knowledge of local credit conditions and frequent sales and inventory adjustments, the relevant geographic markets are local or regional in scope, approximating areas within 50 to 75 miles surrounding major mobile home trading centers.

Schenectady competes principally in the Albany regional market, which is centered around the tricity area of Schenectady, Albany, and Troy and is approximated by Columbia, Greene, Schoharie, Albany, Rensselaer, Montgomery, Schenectady, Saratoga, Washington, and Warren Counties. Schenectady derives approximately 45 percent of its total business from the Albany regional market. Bank also engages in mobile home sales finance in the Albany regional market. That market appears to be the relevant geographical area in which the competitive effects of the proposed transaction are to be judged. There is considerable overlap between the service areas of both institutions, approximately one-third of the retail installment sales contracts purchased by Schenectady from dealers in the Albany regional market deriving from Bank's service area. Conversely, approximately 80 percent of the mobile home paper held by Bank has been purchased from dealers located in Schenectady's service areas. Schenectady appears to be the second largest supplier (and the largest nonbank source) of the approximately 18 suppliers of mobile home financing in the Albany regional market, in terms of dollar amount of mobile home purchase contracts derived from the market (approximately $12 million). Schenectady's approximated market share is substantially greater than that of each of its lesser competitors. Bank appears to be the fifth largest supplier, based on market share, of mobile home financing in the Albany regional market. Consummation of the proposed transaction would have a significant adverse effect on existing competition in the field of mobile home sales finance in the Albany regional market. Since Schenectady and Applicant's banking subsidiaries also compete to a lesser degree in mobile home sales finance markets in the Buffalo, Syracuse, Poughkeepsie, and Plattsburgh regions of New York State, consummation of the proposed transaction would also have adverse effects upon existing competition in those markets.

Applicant's three subsidiary banks are actively engaged in mobile home sales finance and appear to possess both the specialized skills and contacts necessary to compete in that business. In view of Bank's established market position, and Applicant's financial resources and managerial expertise, the Board believes that, even absent approval of this application, Applicant is likely to expand its mobile home sales finance activities. Consummation of the proposed transaction would, therefore, adversely affect the further development of competition in the mobile home sales finance business in the Albany regional market and other regional markets in the State.

Applicant has indicated, as a public benefit to be derived from its affiliation with Schenectady, that it would inject additional capital into Schenectady and thereby enhance future loan expansion by Schenectady. The increased supply of such lendable funds might eventually result in lower borrowing costs to purchasers of mobile homes. However, the same public benefit could be achieved by the investment by Applicant of capital funds into its own mobile home sales finance operations. The identical public benefit being achievable without the anticompetitive effects of the instant proposal, the Board cannot conclude that the public benefit to be derived from consummation of the proposed transaction outweighs the possible adverse effects of the proposal.

Based upon the foregoing and other considerations reflected in the record, the Board has concluded that the public interest factors the Board is required to consider under section 4(c)(8) do not outweigh the possible adverse effects of the proposed affiliation. Accordingly, the application is hereby denied.

By order of the Board of Governors,[2] effective November 24, 1972.

[SEAL] ELIZABETH L. CARMICHAEL,
Assistant Secretary of the Board.

[FR Doc.72-20716 Filed 12-1-72;8:47 am]

[1] This insurance is sold both to direct borrowers from Schenectady and to debtors on the contracts it purchases from mobile home dealers. In that Schenectady purchases retail instalment sales contracts on a continuing basis from the same mobile home dealers, and the interval between the creation of the security interests and their subsequent purchase is minimal, the contracts being delivered by hand or placed in the mail to Schenectady immediately after the signatures have been executed, the Board regards such purchases as extensions of credit under 12 CFR 225.4(a)(9)(ii)(a) as provided in 12 CFR 225.128(c)(4).

FORT WORTH NATIONAL CORP.

Order Approving Acquisition of Bank

The Fort Worth National Corp., Fort Worth, Tex., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to The American National Bank of Amarillo, Amarillo, Tex. (Bank). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares

[2] Voting for this action: Vice Chairman Robertson and Governors Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governors Mitchell and Daane.

of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls four banks [1] located in the Fort Worth area with aggregate deposits of about $594 million, representing 2 percent of total deposits of commercial banks in the State. Applicant, the fourth largest bank holding company and eighth largest banking organization in Texas and the largest in the Fort Worth banking market, controls approximately 29.8 percent of total commercial bank deposits in the Fort Worth area. (All banking data are as of December 31, 1971, and reflect bank holding company acquisitions and formations approved by the Board through October 31, 1972.) In addition, applicant controls between 24.4 and 24.9 percent of the voting shares of two other banks located in the Fort Worth market, holding aggregate deposits of $69.4 million, representing approximately 3.3 percent of commercial bank deposits in the Fort Worth area. Applicant also owns 5 percent of the shares of First National Bank, Paducah, Tex. Upon consummation of the acquisition of Bank ($63.2 million in deposits), applicant's share of commercial bank deposits in the State would increase by 0.2 percentage points and its ranking among banking organizations in the State would be unchanged. Consummation of the proposal herein would constitute applicant's initial entry into the Amarillo banking market.

Bank is located in the central business district of Amarillo and is the third largest of nine banks in the Amarillo banking market, controlling about 14.3 percent of total deposits of commercial banks in that market. Upon consummation of the present proposal, applicant would become the only bank holding company represented in Amarillo.

Applicant's banking operations are about 350 miles southeast of Bank. It appears that no meaningful competition exists between Bank and any of applicant's subsidiary banks. Further, it seems unlikely that meaningful competition would develop in the future between Bank and applicant's subsidiary banks in light of the facts presented, notably, the distances separating these banks and the Texas statutes prohibiting branch banking. While the population per banking office ratio for the Amarillo market is higher than the ratio for the entire State, the population of the city of Amarillo decreased somewhat the past decade; three de novo banks which have opened in this market since 1964 have exhibited slow growth. Accordingly, de novo entry by applicant does not appear very likely. Bank is not regarded as a likely prospect for the formation of a new bank holding company. It appears that acquisition of Bank would not have a significant adverse effect on the remaining banks in the relevant market nor foreclose entry by other bank holding companies into that market, as eight independent banks would remain as potential members of other bank holding companies. Furthermore, entry by applicant may have a procompetitive effect by enabling Bank to compete more effectively with the two larger banks in the Amarillo market which control approximately 69 percent of market deposits. On the basis of the record before it, the Board concludes that consummation of the proposed acquisition would not have an adverse effect on competition in any relevant area.

The financial and managerial resources and future prospects of applicant and its subsidiaries appear satisfactory. As a result of the affiliation of applicant with Bank and applicant's commitment to make a significant contribution of additional capital to Bank, Bank's financial and managerial resources and future prospects are regarded as satisfactory. The expected strengthening of Bank's capital position lends weight to approval of the application.

Although the major banking needs of the relevant area appear adequately served at the present time, applicant proposes to assist Bank in providing increased lending capacity and improvement in the services offered by Bank. Considerations relating to the convenience and needs of the communities to be served appear consistent with approval of the application. It is the Board's judgment that the proposed acquisition is in the public interest and that the application should be approved.

In making its determination herein the Board has relied upon a finding that combining this Bank in the Amarillo area with applicant's existing banking and nonbanking subsidiaries will not have an adverse effect upon the public interest at the present time. However, applicant's banking and nonbanking activities remain subject to Board review and the Board retains the authority to require applicant to modify or terminate its nonbanking activities or holdings if the Board at any time determines that the combination of applicant's banking and nonbanking activities is likely to have adverse effects on the public interest.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[1] effective November 24, 1972.

[SEAL] ELIZABETH L. CARMICHAEL,
Assistant Secretary of the Board.

[FR Doc.72-20713 Filed 12-1-72;8:47 am]

[1] Bank of Fort Worth, Riverside State Bank, and Tarrant State Bank, all located in Fort Worth, are deemed subsidiaries for purposes of the Bank Holding Company Act by virtue of applicant's fiduciary holdings in said banks and section 2(a)(5)(A) of the Act.

MASSACHUSETTS BAY BANCORP., INC.

Order Approving Formation of Bank Holding Company

Massachusetts Bay Bancorp., Inc., Lawrence, Mass., has applied for the Board's prior approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of the formation of a bank holding company through the acquisition of the successor by merger to (1) Bay State National Bank, Lawrence (Bay Bank), and (2) First Bank and Trust Company of Haverhill, Haverhill (First Bank), both located in Massachusetts. The bank into which Bay Bank and First Bank are to be merged is a means to facilitate the acquisition of voting shares of Bay Bank and First Bank. Accordingly, the proposed acquisition is treated herein as the proposed acquisition of the shares of Bay Bank and First Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(c) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Acquisition of Bay Bank (deposits of about $56 million) and of First Bank (deposits of about $5 million) would result in Applicant controlling 0.5 percent of total deposits in commercial banks in Massachusetts and would not result in a significant increase in the concentration of banking resources in the State.[2] Though both Bay Bank and First Bank are located in the Lawrence-Haverhill SMSA, there appears to be little direct competition between the two banks. Moreover, there is little probability of competition increasing in the future between the two since the Comptroller of the Currency has recently turned down a request by Bay Bank to open a branch office in the Haverhill area and First Bank, due to its size and apparent inclination, is not likely to branch. The combination of Bay Bank and First Bank would increase concentration slightly in the Lawrence-Haverhill SMSA. Bay Bank has approximately 17.1 percent of deposits in the area, and First Bank has 1.7

[1] Voting for this action: Vice Chairman Robertson and Governors Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governors Mitchell and Daane.

[2] All banking data are as of Dec. 31, 1971, except for the data relating to the Lawrence-Haverhill Standard Metropolitan Statistical Area ("SMSA"), which is of June 30, 1970.

percent of deposits, so that the resulting bank would have 18.8 percent of deposits of commercial banks in the Lawrence-Haverhill SMSA. However, given the fact that the largest bank in the area has something over 50 percent of deposits, there is little likelihood that the resulting bank would be able to establish any dominant stance in the SMSA. In fact, approval of the application could result in some increase in competition in the Haverhill portion of the SMSA by permitting Bay Bank to compete with the largest organization in that town.

The financial and managerial resources and prospects of Applicant, since it is a recently formed corporation, depend primarily on the prospects of Bay Bank. These prospects are regarded as generally satisfactory. The managerial resources of First Bank should improve through affiliation with Applicant, since Applicant through Bay Bank will be able to provide greater management depth and continuity than First Bank otherwise would be able to provide for itself. For this reason, banking factors lend support for approval of the application. Considerations relating to the convenience and needs of the communities to be served are consistent with approval of the application. The Board finds that the proposed acquisition is in the public interest and should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Boston pursuant to delegated authority.

By order of the Board of Governors,[2] effective November 22, 1972.

[SEAL] ELIZABETH L. CARMICHAEL,
Assistant Secretary of the Board.

[FR Doc.72-20714 Filed 12-1-72;8:47 am]

UNITED MISSOURI BANCSHARES, INC.

Order Approving Acquisition of Bank

United Missouri Bancshares, Inc., Kansas City, Mo., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Wornall Bank, Kansas City, Mo. (Bank).

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the fourth largest bank holding company and the fourth largest banking organization in Missouri on the basis of deposits, has 10 subsidiary banks with aggregate deposits of $576 million, representing 4.54 percent of the total commercial bank deposits in the State. (All banking data are as of December 31, 1971, adjusted to reflect holding company formations and acquisitions approved by the Board through October 31, 1972.) Applicant's lead bank, City National Bank and Trust Co. (City National) ($414 million deposits), is located in downtown Kansas City and, with control of 11.7 percent of the total deposits in commercial banks in the Kansas City Standard Metropolitan Statistical area, is the second largest bank operating in the Kansas City banking market.

Bank ($20.5 million deposits), located in Kansas City approximately 10 miles south of Applicant's lead bank, is one of the smaller banks operating in the Kansas City market, and holds about 0.5 percent of total deposits in the market. While Applicant's lead bank and another of its subsidiary banks[1] operate in the Kansas City market, it does not appear that consummation of the proposal would eliminate any meaningful existing or potential competition. Bank was organized in 1955 by individuals associated with City National and has enjoyed a close working relationship with City National and Applicant. At the present time, stockholders of Applicant own or control more than 80 percent of Bank's stock. On the basis of the facts of record, notably the large number of banks available in the Kansas City market, the common ownership and long standing relationship that has existed between Bank and Applicant's lead bank, and the fact that the close association would likely continue regardless of the Board's action on the present application, the Board concludes that consummation of the proposal would not eliminate any significant existing competition nor foreclose significant potential competition.

Considerations relating to the financial and managerial resources and future prospects of applicant and its present subsidiaries are regarded as satisfactory and consistent with approval of the application. The prospects of bank are regarded as generally satisfactory, and should be enhanced as a result of consummation of the proposal. In addition, as a subsidiary of applicant, bank should be able to offer new and expanded services. Considerations relating to convenience and needs are consistent with approval of the application. It is the Board's judgment that the proposed transaction is in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[2] effective November 24, 1972.

[SEAL] ELIZABETH L. CARMICHAEL,
Assistant Secretary of the Board.

[FR Doc.72-20715 Filed 12-1-72;8:47 am]

[2] Voting for this action: Vice Chairman Robertson, and Governors Mitchell, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governor Daane.

[1] On June 2, 1972, the Board approved the application of Applicant to acquire Manufacturers and Mechanics Bank of Kansas City, Kansas City, Mo. (1972 Federal Reserve Bulletin 655).

[2] Voting for this action: Vice Chairman Robertson and Governors Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governors Mitchell and Daane.

GENERAL SERVICES ADMINISTRATION

ENGLISH DICTIONARIES

Industry Specification Development Conference

Notice is hereby given that the Federal Supply Service, General Services Administration, will hold an Industry Specification Development Conference in connection with Interim Federal Specification G-D-00331C and Amendment-1, Dictionaries, English.

The purpose of the conference is to provide a forum for consideration of suggestions, ideas, or ways and means to improve the specification to: (1) Promote mutual understanding by both the Government and industry of the Government's technical requirements for the items, and (2) enhance the quality of the products shipped to the Government. It will be open to all those in the private sector who have an interest or concern for these matters, and all other Government departments or agencies having an interest therein are also being invited to send their representatives.

The conference will be held on January 9, 1972, at 9:30 a.m., room 1129, Building 4, Crystal Mall, 1941 Jefferson Davis Highway, Arlington, VA. Anyone who wants to attend or desires further information should contact Mr. Ben Ward, General Services Administration, Federal Supply Service, at telephone number 703-557-7850, or write General Services Administration, Federal Supply Service (FMSO), Washington, D.C. 20406.

Issued in Washington, D.C., on November 27, 1972.

M. S. MEEKER,
Commissioner.

[FR Doc.72-20770 Filed 12-1-72;8:47 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 945]

MINNESOTA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of September 1972, because of severe rains and flooding, damage resulted to property located in the State of Minnesota;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act (15 U.S.C. 636(b)) as amended, may be received and considered by the office below indicated from persons or firms whose property situated in or adjacent to St. Louis, Lake, and Pine Counties, Minn., suffered damage or destruction resulting from severe rains and flooding beginning on September 17, 1972, and continuing.

OFFICE

Small Business Administration Disaster Office, Arena Auditorium, 350 South Fifth Avenue W., Duluth, MN 55802.

2. Temporary offices will be established at such areas as are necessary, addresses to be announced locally.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to December 31, 1972.

Dated: September 28, 1972.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.72-20749 Filed 12-1-72;8:49 am]

[Declaration of Disaster Loan Area 942]

VIRGINIA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of September 1972, because of the effects of heavy rainfall, high tides, and winds, damage resulted to property located in the State of Virginia;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act (15 U.S.C. 636 (b)) as amended, may be received and considered by the office below indicated from persons or firms whose property situated in or adjacent to the independent cities of Virginia Beach, Hampton, and Newport News, Va., and Counties of Mathews, Middlesex, and Gloucester, Va., suffered damage or destruction resulting from heavy rainfall, high tides, flooding, and strong winds on September 20 and 21, 1972.

OFFICE

Small Business Administration District Office, Federal Building, Room 3015, 400 North Eighth Street, Post Office Box 10126, Richmond, VA 23240.

2. Temporary offices will be established at such areas as are necessary, addresses to be announced locally.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to December 31, 1972.

Dated: September 26, 1972.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.72-20748 Filed 12-1-72;8:49 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

AMERICAN SOCIETY FOR TESTING AND MATERIALS

Recognition as Producer of National Consensus Standards

On pages 4312 and 4313 of the FEDERAL REGISTER of March 1, 1972, there was published a notice that the American Society for Testing and Materials had submitted a petition to the Assistant Secretary of Labor for Occupational Safety and Health, requesting recognition as a producer of national consensus standards within the meaning of section 3(9) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1591; 29 U.S.C. 652). Interested persons were given 30 days in which to submit written comments as to whether the applicant is a nationally recognized standards-producing organization, and whether its standards have been (1) adopted and promulgated under procedures whereby it can be determined that persons interested and affected by the scope of the provisions of the standards have reached substantial agreement on their adoption, and (2) formulated in a manner which afforded an opportunity for diverse views to be considered. Comments have been received in response to this invitation.

Notice is hereby given that, upon review of all comments received and of the applicant's procedures for the development of its standards, it has been determined that the applicant's standards are national consensus standards within the meaning of section 3(9) of the Williams-Steiger Act.

Signed at Washington, D.C., this 29th day of November 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-20764 Filed 12-1-72;8:49 am]

[V-72-2]

BUILDING TRADES EMPLOYERS' ASSOCIATION

Notice of Application for Variance and Interim Order; Grant of Interim Order

I. *Notice of application.* Notice is hereby given that the Building Trades Employers' Association, 711 Third Avenue, New York, NY 10017, acting on behalf of its members, has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and for an interim order pending a decision on the application for a variance, from the prohibition of solid fuel heaters in buildings and on scaffolds, contained in 29 CFR 1926.154(d) and in 29 CFR 1910.12.

The addresses of the member companies directly affected are as follows:

W. J. Barney Corp., 360 Lexington Avenue New York, NY 10017.
Caristo Construction Co., 26 Court Street, Brooklyn, NY 11201.
Cauldwell-Wingate Co., Inc., 277 Park Avenue, New York, NY 10017.
Cord Meyer Development Co., 111-15 Queens Boulevard, Forest Hills, NY 11375.
Wm. L. Crow Construction Co., 250 Park Avenue, New York, NY 10017.
John T. Brady & Co., Inc., 92 North Avenue, New Rochelle, NY 10802.
Castagna & Son, Inc., 2110 Northern Boulevard, Manhasset, Long Island, NY 11030.
Conforti & Eiselle, Inc., 234 East 40th Street, New York, NY 10016.
William Crawford, Inc., 475 Fifth Avenue, New York, NY 10017.
Cuzzi Brothers & Singer, Inc., 22 West First Street, Mount Vernon, NY 10550.
Leon D. DeMatteis Construction Corp., 820 Elmont Road, Elmont, Long Island, NY 11003.
Depot Construction Corp., 300 East 44th Street, New York, NY 10017.
George F. Driscoll Co., 529 Fifth Avenue, New York, NY 10017.
George A. Fuller Co., Inc., 595 Madison Avenue, New York, NY 10022.
Glick Construction Corp., 3000 Marcus Avenue, Lake Success, NY 11040.
HRH Construction Corp., 515 Madison Avenue, New York, NY 10022.
Iorio Construction Co., Inc., 22 West First Street, Mount Vernon, NY 10550.
M. Melnick & Co., Inc., 225 Willow Avenue, Bronx, NY 10454.

Rheinstein Construction Co., Inc., 21 East 40th Street, New York, NY 10016.
John Thatcher & Son, 172 Duffield Street, Brooklyn, NY 11201.
Waldom Construction Co., Inc., 3036 East Tremont Avenue, New York, NY 10461.
Leon D. DeMatteis and Sons, Inc., 820 Elmont Road, Elmont, Long Island, NY 11003.
Diesel Construction, a division of Carl A. Morse, Inc., 1133 Avenue of the Americas, New York, NY 10036.
H. L. Fischer, Inc., 1 Park Avenue, New York, NY 10036.
Gilbane Building Co., 90 Calverley Street, Providence, RI 02904.
Grove, Shepherd, Wilson, and Kruge, Inc., 400 Madison Avenue, New York, NY 10017.
H. M. Hughes Co., Inc., 295 Madison Avenue, New York, NY 10017.
John Lowry, Inc., 52 Vanderbilt Avenue, New York, NY 10017.
Psaty & Fuhrman, Inc., 369 Lexington Avenue, New York, NY 10017.
Starrett Brothers and Eken, Inc., 301 East 57th Street, New York, NY 10022.
Turner Construction Co., 150 East 42d Street, New York, NY 10017.
Walsh Construction Co., Inc., 711 Third Avenue, New York, NY 10017.
White Construction Co., Inc., 305 East 45th Street, New York, NY 10017.
Barnaby Concrete Corp., 300 East 44th Street, New York, NY 10017.
Carl Buhr, Inc., 56 Harrison Street, New Rochelle, NY 10801.
Case Construction Corp., 91–30 181st Street, Hollis, NY 11423.
Central Cement Finishing Co., Inc., 101 Park Avenue, New York, NY 10017.
Corbetta Construction Co., Inc., 220 East 42d Street, New York, NY 10017.
The Dic Concrete Corp., 820 Elmont Road, Elmont, Long Island, NY 11003.
S. DiGiacomo & Son, Inc., 101 Park Avenue, New York, NY 10017.
Forbes Fireproofing Corp., 101 Park Avenue, New York, NY 10017.
Humphreys & Harding, Inc., 420 Lexington Avenue, New York, NY 10017.
Moccia Construction Corp., 529 Fifth Avenue, New York, NY 10017.
B & F Construction Corp., Post Office Box J, 92 North Avenue, New Rochelle, NY 10802.
Brennan & Sloan, Inc., 15 Kensett Road, Manhasset, NY 11030.
Carlin-Atlas, 140 Huguenot Street, New Rochelle, NY 10801.
Cedar Park Concrete Corp., 66 West Merrick Road, Valley Stream, NY 11580.
Chesebro-Whitman Co., Division of Patent Scaffolding Co., Harsco Corp., 38–21 12th Street, Long Island City, NY 11101.
Costello Construction Co., Inc., 370 Lexington Avenue, New York, NY 10017.
The Dic Construction Corp., 820 Elmont Road, Elmont, Long Island, NY 11003.
Eureka Concrete Corp., 1339 Atlantic Avenue, Brooklyn, NY 11216.
Robert Glenn, Inc., 101 Park Avenue, New York, NY 10017.
Walter Kidde Constructors, Inc., 19 Rector Street, New York, NY 10006.
Julius Nasso Concrete Corp., 142 East 39th Street, New York, NY 10016.
Gene F. Palmieri, Inc., 3 Grandview Avenue, Mount Vernon, NY 10553.
Rissil Concrete, Inc., 708 Third Avenue, New York, NY 10017.
SGB Steel Scaffolding and Shoring Co., Inc., 1601 West Edgar Road, Linden, NJ 07036.
Underhill Construction Corp., 212–02 41st Avenue, Bayside, NY 11361.
Alcoa Residences, Inc., 200 Park Avenue, New York, NY 10017.
Cooper-Bregstein Realty Co., 1212 Avenue of the Americas, New York, NY 10036.
Fisher Brothers, 299 Park Avenue, New York, NY 10017.
Glenwood Management Corp., 1200 Union Turnpike, New Hyde Park, NY 11040.
William Kaufman Organization, 437 Madison Avenue, New York, NY 10022.
Sylvan Lawrence Co., Inc., 90 William Street, New York, NY 10038.
Sam Minskoff & Sons, Inc., 1350 Avenue of the Americas, New York, NY 10019.
Jack Resnick & Sons, Inc., 110 East 59th Street, New York, NY 10022.
Pavarini Construction Co., Inc., 270 Madison Avenue, New York, NY 10016.
Rissil Construction Associates, Inc., 708 Third Avenue, New York, NY 10017.
Triangle-Rebar, Inc., c/o Tully & DiNapoli, 127–50 Northern Boulevard, Flushing, NY 11368.
C. E. Youngdahl & Co., Inc., 16 Briarwood Drive, Castleton, NY 12033.
Sol G. Atlas and John P. McGrath, 185 Great Neck Road, Great Neck, NY 11022.
The Durst Organization, 1133 Avenue of the Americas, New York, NY 10036.
Galbreath-Ruffin Corp., 150 East 42d Street, New York, NY 10017.
Jackson Management Corp., 595 Madison Avenue, New York, NY 10022.
Kibel Co., 2727 Palisade Avenue, Riverdale, NY 10463.
Milstein Associates, 4377 Bronx Boulevard, Bronx, NY 10466.
Oestreicher Realty, 444 Madison Avenue, New York, NY 10022.
Rose Associates, 529 Fifth Avenue, New York, NY 10017.
Rosedale Engineering Corp., 1740 Broadway, New York, NY 10019.
Schnurmacher Brothers, Inc., 1114 First Avenue, New York, NY 10021.
A. Sommer Construction Co., 250 West 57th Street, New York, NY 10019.
Sprain Construction, Inc., 209 East 56th Street, New York, NY 10022.
Swig, Weiler & Arnow Management Co., Inc., 437 Madison Avenue, New York, NY 10022.
Tishman Realty & Construction Co., Inc., 666 Fifth Avenue, New York, NY.
Godfrey M. Weinstein & Co., Inc., 630 Third Avenue, New York, NY 10017.
Rudin Management Co., Inc., 345 Park Avenue, New York, NY 10022.
Senville Buildings Corp., 360 Lexington Avenue, New York, NY 10017.
Sigmund Sommer, 280 Park Avenue, New York, NY 10017.
Stahl Equities Corp., 277 Park Avenue, New York, NY 10017.
Tandy & Allen Realty Corp., 511 Fifth Avenue, New York, NY 10017.
Uris Buildings Corp., 850 Third Avenue, New York, NY 10022.
Jonathan Woodner Co., 660 Madison Avenue, New York, NY 10021.

The places of employment directly affected by the application are all in the city of New York.

The applicant states that a summary of the application has been posted where notices to all employees who would be affected by the variance are normally posted, that the notice informs employees of their right to request a hearing, and, that copies of the application have been sent to the authorized employee representatives at the following union offices:

Asbestos Workers No. 12 Union, 799 Broadway, New York City, NY.
Bricklayers Executive Committee, 178 East 85th Street, New York City, NY.
Mason Tenders District Council, 215 Park Avenue South, New York City, NY.
Mason Tenders No. 23, 220 Park Avenue South, New York City, NY.
Mason Tenders No. 33, 314 East Kingsbridge Road, Bronx, NY.
Mason Tenders No. 46, 92–06 95th Avenue, Ozone Park, Long Island, NY.
Mason Tenders No. 47, 1306 70th Street, Brooklyn, NY.
Mason Tenders Union 51, 544 Vanderbilt Avenue, Staten Island, NY.
Mason Tenders Local 59, Bricklayers Tenders Union Local 59, 2114 Williamsbridge Road, Bronx, NY.
Carpenters District Council, 204 East 23d Street, New York City, NY.
Cement Masons No. 780, 178 East 85th Street, New York City, NY.
Concrete Workers District Council, 425 Park Avenue South, New York City, NY.
Cement and Concrete Workers No. 6–A, 37 Union Square, New York City, NY.
Cement and Concrete Workers No. 18–A, 321 East 73d Street, New York City, NY.
Cement and Concrete Workers No. 20, 207 East 84th Street, New York City, NY.
Electrical Workers No. 3, 158–11 Jewel Avenue, Flushing, NY.
Elevator Constructors No. 1, 136 East 58th Street, New York City, NY.
Engineers No. 14—14–B, 336 East 15th Street, New York City, NY.
Engineers No. 15 and 15–A, 265 West 14th Street, New York City, NY.
Iron Workers District Council, 265 West 14th Street, New York City, NY.
Iron Workers No. 40, 432 Park Avenue S., New York City, NY.
Iron Workers No. 361, 220–24 Jamaica Avenue, Queens Village, NY.
Iron Workers No. 580, 265 West 14th Street, New York City, NY.
Lath Hoisters No. 838, 137 East Second Street, New York City, NY.
Lathers, Metallic Local No. 46, 1322 Third Avenue, New York City, NY.
Plumbers No. 1, 23 Flatbush Avenue, Brooklyn, NY.
Plumbers No. 2, 220 Park Avenue S., New York City, NY.
Plumbers No. 371, 94 Wright Avenue, Staten Island, NY.
Sheet Metal Workers No. 28, 350 Broadway, New York City, NY.
Society of Construction Superintendents, 150 Nassau Street, New York City, NY.
Steam Fitters No. 638, 841 Broadway, New York City, NY.

Regarding the merits of the application, the applicant states that some kind of heating device is needed in temperatures below 50° Fahrenheit in order that poured concrete may be properly cured. Its member companies use coke-fired salamanders in accordance with ANSI standard A10.10–1970, section 4. The applicant argues that the hazards of fire are less with the use of solid fuel salamanders than with the use of liquid fuel salamanders. It further states that under the conditions and practices currently being followed, the use of coke-fired salamanders will provide employment and places of employment which will be safer than those permitted by the standard from which the variance is sought. The applicant provides written statements supporting the use of solid fuel salamanders, from the Fire Commissioner of the city of New York, the Cement League, the Public Service Commission, and others.

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, Room 500, 400 First Street

NW., Washington, DC 20210, and at the following regional, area, and district offices:

REGION II

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), New York, NY 10036.

AREA OFFICES

U.S. Department of Labor, Occupational Safety and Health Administration, 90 Church Street, Room 1405, New York, NY 10007.

U.S. Department of Labor, Occupational Safety and Health Administration, 370 Old Country Road, Garden City, Long Island, NY 11530.

REGION I

U.S. Department of Labor, Occupational Safety and Health Administration, John F. Kennedy Federal Building, Government Center, Room E308, Boston, MA 02203.

DISTRICT OFFICE

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, U.S. Courthouse, Room 503A, Providence, R.I. 02903.

Interested persons, including affected employers and employees, are invited to submit written data, views, and arguments, regarding the application for a variance within 30 days following the publication of this notice in the FEDERAL REGISTER. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application for a variance within 30 days after the publication of this notice in the FEDERAL REGISTER, in conformity with the requirements of 29 CFR 1905.15. Submissions of written comments and requests for a hearing should be in quadruplicate and shall be addressed to the Office of Standards at the above address.

II. *Interim order.* It appears from the application for a variance and interim order, and supporting data, filed by the Building Trades Employers' Association, that by using solid fuel salamanders the applicant's member companies could provide employment and places of employment as safe and healthful as those which would prevail if they were to use liquid fuel salamanders. It further appears from the application, that an interim variance is necessary to prevent undue hardships to the affected employers and employees and to prevent unnecessary interruptions of the employers' operations in the coming winter months. *Therefore, it is ordered,* Pursuant to the authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, 29 CFR 1926.2, and 29 CFR 1905.11(c) that the member companies of the Building Trades Employers' Association, which are named above, be, and they are hereby, authorized to use solid fuel salamanders at their jobsites in the city of New York notwithstanding the prohibition in 29 CFR 1926.154(d) and 29 CFR 1910.12, subject to the following conditions:

(a) *Coverage.* Solid fuel salamanders may be used only as temporary heating devices for the curing of concrete in the construction of multistoried fireproof structures.

(b) *General requirements.*

(1) All solid fuel salamanders shall be designed and constructed for use with solid fuel, that is, coal or coke.

(2) Solid fuel salamanders shall be equipped with a cover designed as part of the unit, to prevent spillage of burning material in case of tipover.

(3) Salamanders shall be assembled in accordance with the instructions issued by the manufacturer.

(4) The safeguards engineered into the product shall be maintained and any replacement shall be equivalent thereto.

(5) Salamanders shall be stored in such a manner as to prevent deterioration or damage to the unit.

(c) *Operation.* (1) Manufacturers' instructions shall be followed by the user.

(2) Each time a salamander is placed in operation it shall be checked to insure that it is functioning properly. Its operation shall be checked periodically thereafter.

(3) When concentrations of carbon monoxide attain quantities greater than 50 parts per million (0.005 percent) to air volume at employee breathing levels the salamander shall be extinguished, unless additional natural or mechanical ventilation is provided to reduce the carbon monoxide content to permissible limits.

(4) Tests for presence of carbon monoxide shall be made by a qualified person within 1 hour after the start of each shift and at least every 3 hours thereafter. If concentrations of carbon monoxide reach 30 parts per million to air volume, tests shall be made more frequently to determine if there is a continuing increase of carbon monoxide concentration.

(5) Records of all tests, including the date, time, results obtained, and person making tests, shall be maintained.

(6) No persons shall be permitted to be within the area being heated by the salamanders except under the following circumstances: When tending the salamanders; when testing the atmosphere; or in emergency situations.

(7) No employee shall be permitted to enter the heated area until notification is given to another person located outside. Periodic checks shall be made to insure the health and safety of employees entering the heated area.

(8) When a salamander is being used, the responsibility for its operation and maintenance shall be assigned to a qualified employee.

(9) Salamanders shall not be moved, handled, or serviced while hot or burning, or while component parts are hot to the touch.

(10) Salamanders, when in use, shall be set level with the horizontal unless otherwise permitted by the manufacturer's markings. Salamanders shall be designed so as not to tip over when placed on a surface inclined 25° to the horizontal.

(11) If equivalent protection and safety is afforded by alternative design, the 25° limitation may be reduced.

(12) Salamanders not suitable for use on wood floors shall not be set directly upon them or other combustible materials. When such salamanders are used they shall rest on suitable heat insulating material or at least 1-inch concrete or equivalent. The insulating material shall extend beyond the salamander 2 feet or more in all directions.

(13) Salamanders used in the vicinity of tarpaulins, canvas, or similar coverings shall be located a safe distance from coverings and other combustible materials. The coverings shall be securely fastened to prevent ignition of the covering or upsetting of the salamanders due to wind action on the covering or other material.

(14) Salamanders in use shall be protected to prevent flame extinguishment.

(d) *Ventilation.* (1) Fresh air shall be supplied in sufficient quantities to maintain the health and safety of employees. Where natural means for fresh air supply is inadequate, mechanical ventilation shall be provided. Particular attention shall be given to confined spaces and pockets where heat and fumes may accumulate and employees may be present (roof areas, peaks, basement).

(2) When salamanders are used in confined spaces, special care shall be taken to provide sufficient ventilation in order to assure proper combustion, maintain the health and safety of employees, and limit temperature rise in the area.

(e) *Fueling.* (1) Salamanders shall be refueled only by a person trained in such operations.

(2) Only a 1 day's supply of heater fuel shall be stored inside a building in the vicinity of the salamander. General fuel storage shall be outside the structure.

(3) All fuel storage shall be maintained a minimum of 25 feet from source of ignition.

(f) *Maintenance.* (1) The user shall comply with the maintenance instructions as provided by the manufacturer.

(2) Equipment showing evidence of deterioration or damage that constitutes a safety or health hazard shall be removed from service.

(3) Salamander repairs shall be performed in accordance with the manufacturer's recommendations, and replacement parts shall be equal to, the equivalent of, or the same as the original salamander equipment.

Every member company of Building Trades Employers' Association, listed above, shall give notice of this interim order to its affected employees by the same means required to be used to inform them of the application for the variance.

Effective date. This interim order shall be effective as of December 2, 1972, and shall remain in effect until a decision is rendered on the application for variance.

Signed at Washington, D.C., this 29th day of November 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-20767 Filed 12-1-72;8:50 am]

INTERSTATE COMMERCE COMMISSION

[Notice 128]

ASSIGNMENT OF HEARINGS

NOVEMBER 29, 1972.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No amendments will be entertained after the date of this publication.

MC 107818 Sub 61, Greenstein Trucking Co., now being assigned hearing February 1, 1973 (2 days), at Omaha, Nebr., in a hearing room to be later designated.

MC 119657 Sub 16, George Transit Line, Inc., now being assigned hearing January 24, 1973 (2 days), at Kansas City, Mo., in a hearing room to be later designated.

MC 136052 Sub 2, Security Carriers, Inc., Contract Carrier Application, now being assigned hearing January 26, 1973 (1 day), at Kansas City, Mo., in a hearing room to be later designated.

MC 107515 Sub 799, Refrigerated Transport Co., Inc., now assigned January 22, 1973, at New York, N.Y., will be held at the Warwick, 54th Street and Avenue of the Americas.

MC 123004 Sub 2, The Luper Transportation Co., now assigned January 24, 1973, at Kansas City, Mo., is postponed indefinitely.

MC-6143 Sub 2, Dunbar Transfer & Storage, Inc., is continued to January 8, 1973, at the Holiday Inn (Patio Room), 504 South Court Street, Florence, AL.

MC 108587 Sub 15, Schuster's Express, Inc., now assigned January 17, 1973, at Boston, Mass., hearing is postponed to March 5, 1973, at Boston, Mass., in a hearing room to be later designated.

MC-F-10196, Overnite Transportation Co.—Purchase (portion)—Alabama Highway Express, Inc., and MC 109533 Sub 36, Overnite Transportation Co., now being assigned hearing January 15, 1973 (1 week), at Birmingham, Ala., in a hearing room to be later designated.

MC-C-7840, The Millenburg Tours, Inc., V. Lillian Hofmeister, now being assigned hearing January 17, 1973 (1 day), at Baltimore, Md., in a hearing room to be later designated.

MC 136602 Sub 2, Arizona Western Transport, Inc., now being assigned hearing February 21, 1973 (3 days), at Phoenix, Ariz., in a hearing room to be later designated.

MC-F-11445, Ashworth Transfer, Inc.—Purchase—Westates Transportation Co., and MC 1872 Sub 78, Ashworth Transfer, Inc., now being assigned hearing February 26, 1973 (1 week), at Phoenix, Ariz., in a hearing room to be later designated.

MC 108053 Sub 113, Little Audrey's Transportation Co., Inc., now being assigned hearing March 5, 1973 (1 week), at Seattle, Wash., in a hearing room to be later designated.

MC 1263 Sub 16, McCarthy Truck Line, Inc., now being assigned hearing January 29, 1973 (2 weeks), at Kansas City, Mo., in a hearing room to be later designated.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.72-20751 Filed 12-1-72;8:51 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 29, 1972.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42577—*Grain and related articles to points in Arkansas.* Filed by Southwestern Freight Bureau, agent (No. B-364), for interested rail carriers. Rates on corn and grain sorghums, and related articles, in carloads, as described in the application, form points in Iowa, Kansas, Missouri, and Nebraska, to Pocahontas and Shannon, Ark.

Grounds for relief—Rate relationship.

Tariff—Supplement 59 to Southwestern Freight Bureau, agent, tariff ICC 4971. Rates are published to become effective on January 3, 1973.

FSA No. 42578—*Joint water-rail container rates—Sea-Land Service, Inc.* Filed by Sea-Land Service, Inc. (No. 72), for itself and interested rail carriers. Rates on general commodities, from Singapore, to rail carriers' terminals at Baltimore, Md., Boston, Mass., Houston, Tex., New Orleans, La., Norfolk, Va., Port of New York, N.Y., and Philadelphia, Pa.

Grounds for relief—Water competition.

Tariff—Sea-Land Service, Inc., tariff ICC No. 80. Rates are published to become effective November 28, 1972.

FSA No. 42579—*Joint water-rail container rates—Japan Line, Ltd.* Filed by Japan Line, Ltd. (No. 3), for itself and interested rail carriers. Rates on general commodities, between ports in Japan and Peoples Republic of China, on the one hand, and rail stations on the U.S. Atlantic and Gulf seaboard, on the other.

Grounds for relief—Water competition.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.72-20752 Filed 12-1-72;8:51 am]

[Notice 160]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 28, 1972.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 117565 R (Sub-No. 27 TA), filed October 26, 1972. Applicant: MOTOR SERVICE COMPANY, INC., Post Office Box 448, Route 3, Coshocton, OH 43812. Applicant's representative: John R. Hafner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor homes*, in driveaway service, from the plantsite of Skyline Corp., near Thomasville, Ga., to points in Alabama, Arkansas, Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, West Virginia, and Virginia, for 180 days. Supporting shipper: Skyline Corp., Escapade Motor Homes Division, 2520 Bypass Road, Elkhart, IN 46514. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 255 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 121306 (Sub-No. 6 TA), filed November 2, 1972. Applicant: SUPERIOR MOTOR EXPRESS, INC., Post Office Box 98, Gold Hill, NC 28071. Applicant's representative: Francis J. Ortman, 1100 17th Street NW., Suite 613, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel pipe, tubing, and conduit*, from Wheatland, Pa., to points in South Carolina, Georgia, and Florida, for 180 days. Supporting shipper: Wheatland Tube Co., Philadelphia, Pa. 19106. Send protests to: Frank H. Wait, Jr., Interstate Commerce Commission, Bureau of Operations, Suite 417, BSR Building, 316 East Morehead Street, Charlotte, NC 28202.

[1] Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 123050 (Sub-No. 4 TA) (Correction), filed September 26, 1972, published in the FEDERAL REGISTER issue of October 1, 1972, corrected and republished as corrected this issue. Applicant: MICHEL TRANSPORT, INC., 4 Union Street, Arthabaska, PQ, Canada. Applicant's representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from ports of entry on the international boundary line between the United States and Canada located in Maine, New Hampshire, Vermont, and New York, to points in Maine, New Hampshire, Vermont, and New York. Restriction: The authority is to be restricted to traffic originating at plants in Arthabaska County, Quebec, Canada, for 180 days. Supporting shipper: Weyerhaeuser Quebec Ltd., Post Office Box 670, Princeville, PQ. Send protests to: District Supervisor Ross J. Seymour, Bureau of Operations, Interstate Commerce Commission, 424 Federal Building, Concord, N.H. 03301. NOTE: The purpose of this republication is to redescribe the restriction.

No. MC 124004 (Sub-No. 22 TA), filed November 6, 1972. Applicant: RICHARD DAHN, INC., 620 West Mountain Road, Sparata, NJ 07871. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry meat and bone meal*, in bulk, from Avoca, Pa., to Buffalo and Dunkirk, N.Y., for 180 days. Supporting shipper: By-Products, Inc., Post Office Box 1411, Wilmington, DE 19899. Send protests to: District Supervisor Robert E. Johnston, Interstate Commerce Commission, Bureau of Operations, 970 Broad Street, Newark, NJ 07102.

No. MC 125168 (Sub-No. 25 TA), filed November 9, 1972. Applicant: OIL TANK LINES, INC., Box 190, Hook Road and Darby Creek, Darby, Pa. 19023. Applicant's representative: R. H. Davis (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (excluding petrochemicals), in bulk, in tank vehicles, from Falling Rock, W. Va., to points in New Jersey and New York, for 180 days. Supporting shipper: Pennzoil Co., Drake Building, Oil City, Pa. 16301. Send protests to: Peter R. Guman, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 126372 (Sub-No. 13 TA), filed November 9, 1972. Applicant: SURE-FINE TRANSPORTATION COMPANY, (a California corporation), 1925 East Vernon Avenue, Los Angeles, CA 90058. Applicant's representative: Irving C. Fein (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and household furnishings*, blanket wrapped and uncrated, from Albuquerque, N. Mex., to points in California, Arizona, Nevada, Utah, and Colorado, the above items to be *returned when damaged, or for credit, or defective*, for 180 days. NOTE: Applicant states that it does intend to tack with the authority in MC 126372 Sub-No. 3. Supporting shipper: Shatto's Mediterranean Galleries, 420 Granite NW., Albuquerque, NM 87102. Send protests to: John E. Nance, Officer-in-Charge, Interstate Commerce Commission, Bureau of Operations, Room 7708 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 126956 (Sub-No. 1 TA), filed November 8, 1972. Applicant: NORTHLAND TRANSPORT, INC., 1803 42d Avenue E., Superior, WI 54880. Applicant's representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from plantsite and warehouses of Jeno's, Inc., Duluth, Minn., to points in Ohio, West Virginia, Virginia, Maryland, Delaware, New Jersey, Pennsylvania, New York, Connecticut, District of Columbia, Massachusetts, Vermont, New Hampshire, Maine, and Rhode Island, for 180 days. Supporting shipper: Jeno's, Inc., Duluth, Minn. Send protests to: District Supervisor Raymond T. Jones, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 127840 (Sub-No. 33 TA), filed November 10, 1972. Applicant: MONTGOMERY TANK LINES, INC., 612 Maple Avenue, Willow Springs, IL 60480. Applicant's representative: William H. Towle, 127 North Dearborn Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hog mucosa*, in bulk, in tank vehicles, from West Point, Miss., to North Chicago, Ill., for 180 days. Supporting shipper: Abbott Laboratories, 1400 Sheridan Road, North Chicago, IL 60480. Send protests to: R. G. Anderson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 128896 (Sub-No. 1 TA), filed November 6, 1972. Applicant: ANDRESBELL CONSTRUCTION LIMITED, Box 133, Virgil, ON, Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boats*, between ports of entry on the international boundary line between the United States and Canada located on the Detroit, St. Clair, and St. Lawrence Rivers, on the one hand, and, on the other, points in the United States (excluding Alaska and Hawaii). Restriction: Restricted to shipments originating in, or destined to, the Province of Ontario, Canada, for 180 days. Supporting shippers: John Bruce Boat Co., 445 Sandlewood Road, Oakville, ON; C & C Yachts Manufacturing Ltd., 526 Regent Street, Box 970, Niagara-on-the-Lake, ON; Juhlke Thuro Ltd., Box 999, Beamsville, ON; Haakon Boats Ltd., 1768 Richfield Avenue, Highland Park, IL 60035; Burr Sailboat Sales, Inc., 24030 East Jefferson, St. Clair Shores, MI 48080; Sheperd Boats Ltd., Post Office Box 640, Niagara-on-the-Lake, ON. Send protests to: District Supervisor George M. Parker, Interstate Commerce Commission, Bureau of Operations, 612 Federal Building, 111 West Huron Street, Buffalo, NY 14202.

No. MC 129863 (Sub-No. 8 TA), filed November 10, 1972. Applicant: FREDERICK L. BULTMAN, INC., 11144 West Silver Spring Drive, Milwaukee, WI 53225. Applicant's representative: William C. Dineen, 412 Empire Building, 710 North Plankinton Avenue, Milwaukee, WI 53203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fabricated sheet metal products*, in shipper-owned trailers, from Milwaukee, Wis., to points in Michigan, Illinois, Iowa, and Minnesota, for the account of Ajax Products, for 180 days. Supporting shipper: Ajax Metal Products, Inc., 5070 West State Street, Milwaukee, WI 53208 (Fred C. Engler, President). Send protests to: District Supervisor John E. Ryden, Bureau of Operations, Interstate Commerce Commission, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 129870 (Sub-No. 9 TA), filed November 6, 1972. Applicant: GAS INCORPORATED, 95 East Merrimack Street, Lowell, MA 01853. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid methane*, in bulk, from Philadelphia, Pa., to McKee City, N.J., under continuing contract with South Jersey Gas Co., for 180 days. Supporting shipper: South Jersey Gas Co., 1 South Jersey Plaza, Route 54, Folsom, N.J. 08037. Send protests to: James F. Martin, Jr., Assistant Regional Director, Bureau of Operations, Interstate Commerce Commission, JFK Federal Building, Government Center, Boston, Mass. 02203.

No. MC 133231 (Sub-No. 9 TA), filed November 6, 1972. Applicant: ROBERT A. BRINKER, INC., 21 Diaz Street, Iselin, NJ 08830. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles, moulds, urethane*, between Corry, Pa., on the one hand, and, on the other, Linden, N.J., under contract with Magnus Organ Corp., Linden, N.J., for 180 days. Supporting shipper: Magnus Organ Corp., 1600 West Edgar Road, Route 1, Linden, NJ 07036. Send protests to: District Supervisor Robert S. H. Vance, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 133913 (Sub-No. 2 TA), filed November 2, 1972. Applicant: FROST

TRUCKING CO., INC., 677 Washington Street, New York, NY 10014. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Books, and equipment, materials, and supplies* used in the composition printing and binding of books (except commodities in bulk), between points in New York, New Jersey, and Connecticut, and Brattleboro, Vt., Miller's Falls, Mass., and Philadelphia, Pa., for 180 days. Supporting shipper: The Book Press, 9 East 41st Street, New York, NY 10017. Send protests to: Paul W. Assenza, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 133977 (Sub-No. 15 TA), filed October 31, 1972. Applicant: GENE'S, INC., 10115 Brookville Salem Road, Clayton, OH 45315. Applicant's representative: Gene Cox (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lenses or reflectors, glass*, from Greenville, Ohio, to ports of entry on the international boundary line between the United States and Canada located in Michigan; and (2) *returned shipments of the commodities' packing materials* used in shipping the commodities described above, from the ports of entry on the international boundary line between the United States and Canada located in Michigan and Greenville, Ohio, for 180 days. Supporting shipper: Corning Glass Works, Corning, N.Y. 14830. Send protests to: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5514–B Federal Building, 550 Main Street, Cincinnati, OH 45202.

No. MC 134323 (Sub-No. 32 TA), filed November 3, 1972. Applicant: JAY LINES, INC., 720 N. Grand Street, Mailing: Post Office Box 4146, Amarillo, TX 79105. Applicant's representative: Clayton J. Logan (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Compressors, electric motors, and other materials, parts, and supplies* used in the manufacturing and production of household appliances, furnaces, air cleaners and conditioners, humidifiers, dehumidifiers, and related items, from Elkton and Frederick, Md., and Trenton, N.J., to Effingham and Herrin, Ill., for 180 days. Supporting shipper: Robert C. McArthur, General Traffic Manager, Fedders Corp., Edison, N.J. 08817. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H–4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 134599 (Sub-No. 63 TA), filed November 8, 1972. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, Mail: Post Office Box 748, (Office: 265 West 27th South Street 84115), Salt Lake City, UT 84110. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crated office furniture and parts thereof, and related advertising sales and promotional materials*, from Grand Rapids, Mich., to Tustin, Calif., for 180 days. Supporting shipper: Steelcase, Inc., 1120 36th Street SE., Box 1967, Grand Rapids, MI 49508, Phillip T. Catalano, Manager, Traffic Department. Send protest to: District Supervisor Lyle D. Helfer, Bureau of Operations, Interstate Commerce Commission, 5239 Federal Building, 125 South State Street, Salt Lake City, UT 84111.

No. MC 135936 (Sub-No. 11 TA), filed November 3, 1972. Applicant: LIEBMANN TRANSPORTATION CO., INC. Office: U.S. Highway 65 North, Post Office Box 1022, Iowa Falls, IA 50126. Applicant's representative: C. H. Rogers (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, except hides and commodities in bulk, from Mankato, Kans., to points in Pennsylvania, New York, New Jersey, Virginia, West Virginia, Connecticut, Rhode Island, Delaware, Vermont, New Hampshire, Massachusetts, Maine, Maryland, North Carolina, South Carolina, Georgia, and the District of Columbia, for 180 days. Supporting shipper: Dubuque Packing Co., Post Office Box 4225, Wichita, KS 67204. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 135949 (Sub-No. 2 TA), filed October 25, 1972. Applicant: O. H. BALDRIDGE AND SONS, INC., Box 289, Highway 161 E, Centralia, IL 62801. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Prestressed and precast concrete products*, from Centralia, Ill., to St. Louis, Mo., for 180 days. Supporting shipper: David B. Horning, Plant Manager, Nelson Concrete Products, Inc., Post Office Drawer 743, Centralia, IL 62801. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 518 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

No. MC 136724 (Sub-No. 2 TA), filed November 6, 1972. Applicant: HUTT TRANSPORTATION CO., 5280 West 161st Street, Cleveland, OH 44135. Applicant's representative: S. Harrison Kahn, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those items of unusual value, and explosives having a prior or subsequent movement by air, in an express service, between Cleveland Hopkins International Airport, Cleveland, Ohio, and Detroit Metropolitan Airport, Wayne County, Mich., for 180 days. Supporting shippers: World Air Shipping, Inc., 190101 Five Points Road, Cleveland, OH 44142; Seaboard World Airlines, Post Office Box 81222, Cleveland Hopkins International Airport, Cleveland, OH 44181; All-Airtransport, Inc., 5280 West 161st Street, Cleveland, OH. Send protests to: Franklin D. Bail, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Building, 12400 East Ninth Street, Cleveland, OH 44199.

No. MC 138089 (Sub-No. 1 TA), filed November 3, 1972. Applicant: DON SAYERS, 701 Yale, Butte, MT 59701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metal*, from Butte, Mont., to the United States-Canada international boundary line located at or near Sweetgrass, Mont., for 180 days. Supporting shipper: McCracken Metals, Inc., 631 East Aluminum Street, Butte, MT 59701. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 251 U.S. Post Office Building, Billings, Mont. 59101.

No. MC 138152 (Sub-No. 1 TA), filed November 3, 1972. Applicant: TROPICAL DISTRIBUTION INTERNATIONAL, INC., 1201 Northeast 45th Street, Oakland Park, FL 33308. Applicant's representative: Richard B. Austin, 5720 Southwest 17th Street, Miami, FL 33155. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicle parts, components, and accessories*, from, to, and between points in Dade, Broward, Palm Beach, Monroe, Lee, and Collier Counties, Fla., and the city of Clewiston, Fla., and its commercial zone, for 180 days. Supported by: There are approximately 10 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor Joseph B. Teichert, Bureau of Operations, Interstate Commerce Commission, 5720 Southwest 17th Street, Room 105, Miami, FL 33155.

No. MC 138162 TA, filed October 31, 1972. Applictant: SEATON MOVING & STORAGE CO., 618 South Kansas, Olathe, KS 66061. Applicant's representative: F. Neil Aschemeyer, Suite 1230, Boatmen's Bank Building, St. Louis, Mo. 63102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Household goods, including hold baggage*, under Pack and Crate Contract with the U.S. Military, between the Richards-Gebaur AFB, Mo., and Bates County, Mo., and

points within a 30-mile radius of Richards-Gebaur AFB, within the counties of Cass, Clay, and Jackson, Mo., and Johnson, Wyandotte, and Miami, Kans., for 180 days. Supporting shipper: Department of the Army, Office of the Judge Advocate General, Washington, D.C. 20310. Send protests to: John V. Barry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1100 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.72-20753 Filed 12-1-72;8:51 am]

[Notice 170]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice, any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73835. By order of November 15, 1972, the Motor Carrier Board approved the transfer to Walthill Transportation Co., a corporation, Walthill, Nebr., of the operation rights in Permit No. MC-133531 issued March 18, 1972, to Dennis L. Smith, doing business as Smith Transportation Co., Rosalie, Nebr., authorizing the transportation of farm equipment (except self-propelled equipment), from the plantsite or warehouse facilities of Campbell Manufacturing Co., Inc., at or near Walthill, Nebr., to points in the United States (except Hawaii and Alaska; and materials, equipment, and supplies used in the manufacture of farm equipment (except self-propelled equipment), from points in the United States (except Alaska and Hawaii), to the plant or warehouse facilities of Campbell Manufacturing Co., Inc., at or near Walthill, Nebr. Earl H. Scudder, Jr., 605 South 14th Street, Post Office Box 82028, Lincoln, NE 68501, attorney for applicants.

No. MC-FC-74001. By order of November 13, 1972, the Motor Carrier Board approved the transfer to Edward P. Ruff and Thomas E. Brooks, a partnership, doing business as Brooks Transportation Co., Sterling, Colo., of the operating rights in Certificates Nos. MC-73639 and MC-73639 (Sub-No. 1), issued April 2, 1964, and April 3, 1967, respectively, to Edward P. Ruff and Barbara A. Ruff, a partnership, doing business as Brooks Transportation Co., Sterling, Colo., authorizing the transportation of general commodities, with usual exceptions, between Sterling, Colo., and Ogallala, Nebr., serving all intermediate points; between Holyoke, Colo., and McCook, Nebr., serving all intermediate points, and between Grant, Nebr., and Imperial, Nebr. Arthur R. Hauver and Thomas J. Burke, Jr., 420 Denver Club Building, Denver, Colo. 80202, attorneys for applicants.

No. MC-FC-74016. By order of November 13, 1972, the Motor Carrier Board approved the transfer to Marion Transfer, Inc., Wauwatosa, Wis., of Permit No. MC-134890 issued January 24, 1972, to Delbert N. DeYoung, doing business as Cupery & DeYoung Transit, Friesland, Wis., authorizing the transportation of: Suede and patent leather and suede and patent leather products, from Milwaukee, Wis., to Akron and Canton, Ohio, and points in Connecticut, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Texas, Vermont, and West Virginia, with returned shipments and materials, supplies, and equipment used in the manufacture or distribution of the commodities described above (except in bulk), from the destination points to Milwaukee, Wis. Dennis G. Lindner, Peck, Brigden, Petajan, Lindner, Honzik & Peck, S.C., 700 North Water Street, Milwaukee, WI 53202.

No. MC-FC-74020. By order of November 13, 1972, the Motor Carrier Board approved the transfer to Edward D. Pohutsky, doing business as Edward Pohutsky Movers, 104 Handley Street, Eynon, PA, of a portion of Certificate No. MC-60478 issued February 26, 1969, to William Land, Inc., 350 Depot Street, Scranton, PA, authorizing the transportation of: Household goods, as defined by the Commission, between Scranton, Pa., and 15 miles thereof, on the one hand, and, on the other, points in Massachusetts, Connecticut, New York, New Jersey, Maryland, Delaware, Ohio, and the District of Columbia.

No. MC-FC-74033. By order of November 13, 1972, the Motor Carrier Board approved the transfer to Bryce H. Harrison, doing business as Ruse Transfer, Tabor, Iowa, of the operating rights in Certificate No. MC-52851 issued June 8, 1959, to Olony Ruse, doing business as Ruse Transfer & Oil Co., Tabor, Iowa, authorizing the transportation of various commodities from and to specified points in Iowa and Nebraska.

No. MC-FC-74037. By order of November 13, 1972, the Motor Carrier Board approved the transfer to Harrison W. Wood and Carl Rosenbaum, a partnership, doing business as Coal Transport Co., Little Rock, Ark., of the operating rights in Certificate No. MC-135885 (Sub-No. 1), issued July 24, 1972, to Coal Haulers, Inc., North Little Rock, Ark., authorizing the transportation of coal between points in Franklin, Johnson, Logan, and Pope Counties, Ark., and from the above-mentioned counties to Fort Smith and Van Buren, Ark. Donald T. Jack, Jr., 1550 Tower Building, Little Rock, Ark. 72201, attorney for applicants.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.72-20754 Filed 12-1-72;8:51 am]

[Notice 159]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 24, 1972.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 111545 (Sub-No. 176 TA), filed October 2, 1972. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road, SE., Post Office Box 6426, Station A, Marietta, GA 30060. Applicant's representative: Robert E. Born (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, in initial movements; and buildings, in sections, moving on undercarriages, from points in Henderson County, Tenn., to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: Skyline Corp., Elkhart, Ind. Send protests to: William L. Scroggs, District Supervisor, Bureau of

[1] Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

Operations, Interstate Commerce Commission, 1252 West Peachtree Street, NW., Room 309, Atlanta, GA 30309.

No. MC 113382 (Sub-No. 16 TA), filed November 3, 1972. Applicant: NELSEN BROS., INC., Post Office Box 613, Nebraska City, NE 68410. Applicant's representative: Patrick E. Quinn, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products, products produced or distributed by manufacturers and converters of paper and paper products;* and (2) *materials and supplies* used in the manufacture and distribution of the commodities described in (1) above (except commodities in bulk, and commodities which because of size or weight require the use of special equipment), from St. Paul and Minneapolis, Minn., to Sioux Falls, S. Dak., and Lincoln, Nebr., for 180 days. Supporting shipper: R. C. Nelson, Transportation Manager, Container Division, Hoerner Waldorf Corporation, 2250 Wabash Avenue, Box 3260, St. Paul, MN 55165. Send protests to: Max H. Johnston, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 320 Federal Building and Courthouse, Lincoln, NE 68508. NOTE: Restriction. The authority sought hereinabove is restricted to traffic originating at the plantsites or warehouse facilities utilized by Hoerner Waldorf Corp. at St. Paul and Minneapolis, Minn.

No. MC 113908 (Sub-No. 244 TA), filed November 8, 1972. Applicant: ERICKSON TRANSPORT CORP., 2105 East Dale Street, Post Office Box 3180, Springfield, MO 65804. Applicant's representative: B. B. Whitehead (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Alkaline etching compounds, cleaning compounds and chemicals* n.o.i., in bulk, in tank and hopper type vehicles, from Dallas, Tex., to Colorado Springs, and Loveland, Colo., Joplin and Springfield, Mo., and Salt Lake City, Utah; and (2) *"spent" commodities* above, from above destination points to Dallas and Houston, Tex., for 180 days. Supporting shipper: Davies Supply & Manufacturing Co., Subsidiary of MacDermid, Inc., 228 West Fourth Street, Kansas City, MO 64105. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 115311 (Sub-No. 141 TA), filed October 2, 1972. Applicant: J & M TRANSPORTATION CO., INC., Post Office Box 488, Milledgeville, GA 31061. Applicant's representative: Alan E. Serby, 1600 First Federal Building, Atlanta, GA 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, in pneumatic tank trailers, from the plantsite of Atlantic Cement Co., Inc., on Hutchinson Island (Chatham County), Ga., to points in Jasper County, S.C., for 150 days. Supporting shipper: Atlantic Cement Co., Inc., Post Office Box 30, Stamford, CT 06904. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1252 West Peachtree Street, Room 309, Atlanta, GA 30309.

No. MC 116077 (Sub-No. 333 TA), filed November 6, 1972. Applicant: ROBERTSON TANK LINES, INC., 2000 West Loop South, Suite 1800, Houston, TX 77027. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chromic sulfuric solutions and etchants*, in bulk, in tank vehicles, from Garland, Tex., to Reisterstown, Md.; and (2) *spent etchants*, in bulk, in tank vehicles, from Reisterstown, Md., to Garland, Tex., for 180 days. Supporting shipper: Southern California Chemical Co., Inc., 1000 Profit Drive, Garland, TX 75040. Send protests to: John C. Redus, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 61212, Houston, TX 77061.

No. MC 116077 (Sub-No. 334 TA), filed November 7, 1972. Applicant: ROBERTSON TANK LINES, INC., 2000 West Loop South, Suite 1800, Houston, TX 77027. Applicant's representative: J. C. Browder (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cupric chloride*, in bulk, in tank vehicles, from Oklahoma City, Okla., to Garland, Tex., for 180 days. Supporting shipper: Southern California Chemical Co., Inc., 1000 Profit Drive, Garland, TX 75040. Send protests to: John C. Redus, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Post Office Box 61212, Houston, TX 77061.

No. MC 117565 (Sub-No. 71 TA), filed October 26, 1972. Applicant: MOTOR SERVICE COMPANY, INC., Post Office Box 448, Off: Route 3, Coshocton, OH 43812. Applicant's representative: John R. Hafner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor homes*, in driveaway service, from the plantsite of Skyline Corp., near McMinnville, Oreg., to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, Washington, and Wyoming, for 180 days. Supporting shipper: Skyline Corp., Escapade Motor Homes Division, 2520 Bypass Road, Elkhart, IN 46514. Send protests to: Frank L. Calvary, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 118159 (Sub-No. 127 TA), filed November 6, 1972. Applicant: EVERETT LOWRANCE, INC., 1925 National Plaza, Tulsa, OK 74151. Applicant's representative: Jack R. Anderson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potatoes and potato products*, from Grand Forks, N. Dak., to Irving, Tex., Nashville and Chattanooga, Tenn., Atlanta and Columbus, Ga., Montgomery, Ala., Little Rock, Ark.; Lawton, Okla., New Orleans, La., and St. Louis, Mo., for 180 days. Supporting shipper: Potato Service, Inc., W. J. Feeleman, Director of Transportation, Roslyn Heights, NY 11577. Send protests to: C. L. Phillips, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 240—Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 118178 (Sub-No. 13 TA), filed November 3, 1972. Applicant: BILL MEEKER, 1632 North Mosley, Wichita, KS 67202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates* 61 M.C.C. 209 and 766, except hides and commodities in bulk, from plantsite of Dubuque Packing Co., at or near Mankato, Kans., to points in Iowa, Wisconsin, Illinois, Ohio, Indiana, Kentucky, Missouri, Tennessee, South Carolina, North Carolina, Georgia, Florida, Alabama, Louisiana, Mississippi, and Virginia, for 180 days. Supporting shipper: Dubuque Packing Co., Mankato, Kans. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Building, Wichita, KS 67202.

No. MC 119789 (Sub-No. 129 TA), filed November 9, 1972. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188, 1612 East Irving Boulevard, Dallas, TX 75222. Applicant's representative: James N. Wenchester (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Playground apparatus, recreational equipment, and sporting goods*, from Bossier City, La., to points in North Carolina, South Carolina, Georgia, Florida, Virginia, Alabama, and Mississippi, for 180 days. NOTE: Applicant does not intend to tack authority. Supporting shipper: Gym-Dandy, Inc., Post Office Box 5637, Bossier City, LA 71010. Send protests to: District Supervisor E. K. Willis, Jr., Bureau of Operations, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75202.

No. MC 123048 (Sub-No. 236 TA), filed November 6, 1972. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, WI 53401. Applicant's representative: Carl S. Pope (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Truck tractors, parts and attachments and accessories* (restricted

to truck tractors which are transported on trailers and which weigh less than 15,000 pounds each), from Bowling Green, Ohio, to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: Daybrook-Ottawa Division, Gulf & Western Metals Forming Co., 1175 North Main Street, Bowling Green, OH 43402 (James E. Flagg, controller). Send protests to: District Supervisor John E. Ryden, Bureau of Operations, Interstate Commerce Commission, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 124083 (Sub-No. 45 TA), filed November 1, 1972. Applicant: SKINNER MOTOR EXPRESS, INC., 1035 South Keystone Avenue, Indianapolis, IN 46203. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Building, Indianapolis, IN. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ferrous sulphate crystals*, by dump trucks, from Indianapolis, Ind., to points in St. Clair County, Ill., St. Louis County, Mo., and St. Louis, Mo., for 180 days. Supporting shipper: Vertex Chemical Corp., Post Office Box 275, Dupo, IL 62239. Send protests to: District Supervisor James W. Habermehl. Bureau of Operations, Interstate Commerce Commission, 802 Century Building, 36 South Pennsylvania Street, Indianapolis, IN 46204.

No. MC 124221 (Sub-No. 38 TA), filed November 8, 1972. Applicant: HOWARD BAER, Route 98 West, Post Office Box 27, Morton, IL 61550. Applicant's representative: Robert W. Loser, 1009 Chamber Commerce Building, Indianapolis, IN 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats*, other than suspended meats, such as are used in the manufacture of wieners, lunch meats, and sausage products, from Aurora, Bradley, Chicago, and Peoria, Ill.; Indianapolis, South Bend, and Logansport, Ind.; Storm Lake, Iowa; Wichita, Kans.; Albert Lea, Minn.; St. Louis, Mo.; Amarillo, Dallas, and El Paso, Tex.; Green Bay, Wis.; New Orleans, La.; Memphis, Tenn.; Louisville, Ky.; Pittsburgh, Pa.; Roanoke, Va.; and Atlanta, Ga. To the Kroger Co. sausage plant facility located in Springdale, Ohio, and the storage facilities for this plant at Cincinnati, Ohio, for 180 days. Supporting shipper: The Kroger Co., Processed Foods Division. Send protests to: Richard K. Shullaw, District Supervisor, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 127660 (Sub-No. 3 TA), filed November 8, 1972. Applicant: KENNETH L. EBY, 10208 South East French Road, Vancouver, WA 98664. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boats*, between points in Oregon, Washington, and California, for 180 days. NOTE: Applicant states it does intend to tack with the authority in MC 127660. Supporting shippers: Warren Jensen, Cruise-A-Home, Everett, Wash.; Jim Carlson, 919 Northeast Marine Drive, Portland, OR 97211; Jim Lafferty, 1130 North Jantzer Drive, Portland, OR 97217. Send protests to: District Supervisor W. J. Huetig, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, 319 Southwest Pine Street, Portland, OR 97204.

No. MC 128988 (Sub-No. 22 TA), filed November 7, 1972. Applicant: JO/KEL, INC., 15055 East Salt Lake Avenue, Post Office Box 1249, City of Industry, CA 91749. Applicant's representative: Louis C. Currier, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Air conditioning, camping, heating, recreational, and mobile home equipment, and equipment, materials, and supplies* utilized in the manufacture, distribution, and sale of air conditioning, camping, heating, mobile home and recreational equipment for the account of the Coleman Co., from Santa Fe Springs, Calif., to points in Elkhart, Kosciusko, La Grange, La Port, Marshall, Noble, and St. Joseph Counties, Ind., and Berrien, Calhoun, Cass, Lenawee, St. Joseph, and Shiawassee Counties, Mich. Restriction: The authority sought herein is to be restricted against the transporation of commodities in bulk or those which by reason of size or weight require the use of special equipment, for 180 days. Supporting shipper: The Coleman Co., Inc., General Offices: Wichita, Kans. 67201. Send protests to: John E. Nance, Officer-In-Charge, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 134601 (Sub-No. 3 TA), filed November 8, 1972. Applicant: GOOSE CREEK TRANSPORT, INC., Rural Delivery No. 1, Ashville, N.Y. 14710. Applicant's representative: Kenneth T. Johnson, Bankers Trust of Jamestown Building, Jamestown, N.Y. 14701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, dairy products and articles distributed by meat packinghouses* (except hides and commodities in bulk) as described in sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carriers Certificates*, 61 M.C.C. 209 and 766, under a continuing contract with Fairbank Farms, Inc., from the town of Harmony (Chautauqua County), N.Y., to points in the counties of Adams, Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Columbia, Elk, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Lycoming, Mercer, Mifflin, Montour, Northumberland, Perry, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Washington, Westmoreland, and Wyoming, Pa., and to points in the counties of Ashtabula, Columbiana, Mahoning, and Trumbull, Ohio, for 180 days. Supporting shipper: Fairbank Farms, Inc., Rural Delivery No. 1, Ashville, N.Y. 14710. Send protests to: District Supervisor George M. Parker, Interstate Commerce Commission, Bureau of Operations, 612 Federal Building, 111 Huron Street, Buffalo, NY 14202.

No. MC 134915 (Sub-No. 3 TA), filed November 6, 1972. Applicant: SOUTHWEST REFRIGERATED DIST., INC., doing business as, REFRIGERATED DISTRIBUTING, 600 Prescott Avenue, St. Louis, MO 63147. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat packinghouse products and commodities* used by packing houses, set forth in Appendix I to *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, except abrasives, detergents, soap, soap stock, soap products, and frozen foods, between points in the East St. Louis, Ill., commercial zone, on the one hand, and, on the other, that part of Missouri bound on the north by Missouri Highway 72, beginning at the junction of Missouri Highways 72 and 19 at or near Salem, Mo., thence over Missouri Highway 72 to its junction with U.S. Highway 61 at or near Scott City, Mo., thence over U.S. Highway 61 to the Mississippi River, thence south along the Mississippi River to the Missouri-Arkansas State line, thence west along the Missouri-Arkansas State line to Missouri Highway 19, thence north over Missouri Highway 19 to the point of beginning, for 180 days. Supporting shippers: Oscar Mayer & Co., Inc., Madison, Wis. 53701; Hormel, Post Office Box 800, Austin, MN 55912; Swift Processed Meats Co., 115 West Jackson, Chicago, IL 60604; the Rath Packing Co., Post Office Box 330, Waterloo, IA 50704; Wetterau Foods, Inc., Scott City, Mo. 63780. Send protests to: District Supervisor J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

No. MC 135197 (Sub-No. 4 TA), filed November 8, 1972. Applicant: LEESER TRANSPORTATION, INC., Post Office Box 545, Palmyra, MO 63461. Applicant's representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Ammonium chloride*, in packages, from Solvay, N.Y., and Wyandotte, Mich., to the plantsite of American Cyanamid Co., at South River, Mo. (Marion County); (2) *ammonium sulphate*, in packages, from Philadelphia, Pa., and Buffalo, N.Y., to the plantsite of American Cyanamid Co., at South River, Mo. (Marion County); (3) *boric acid*, in packages, from Des Plaines, Ill., to the plantsite of American Cyanamid Co., at South River, Mo. (Marion County); (4) *casein*, in packages, from Tyler, Tex., to the plantsite of American Cyanamid Co., at South River, Mo. (Marion County); (5) *corn flour*, in packages, from Indianapolis, Ind., to the

plantsite of American Cyanamid Co., at South River, Mo. (Marion County); (6) *corn starch*, in packages, from Agro, Ill., Muscatine, Iowa; and East St. Louis, Ill., to the plantsite of American Cyanamid Co., at South River, Mo. (Marion County); (7) *diammonium phosphate*, in packages, from Trenton, Mich., to the plantsite of American Cyanamid Co., at South River, Mo. (Marion County); (8) *lime and limestone*, in packages, and in bulk, from Tate, Ga., Quincy and Thornton, Ill., to the plantsite of American Cyanamid Co., at South River, Mo. (Marion County); and (9) *perlite*, in packages, from Crawfordsville, Ind., and Antonito, Colo., to the plantsite of American Cyanamid Co., at South River, Mo. (Marion County), for 180 days. Supporting shipper: American Cyanamid Co., Post Office Box 400, Princeton, NJ 08540. Send protests to: Vernon V. Coble, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1100 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 138090 (Sub-No. 1 TA), filed November 9, 1972. Applicant: L & M PRODUCE AND TRUCK LINES, 51 Luverne Avenue, Downsview, ON, Canada. Applicant's representative: Robert D. Gunderman, Statler Hilton, Suite 1708, Buffalo, N.Y. 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crated and uncrated office and stacking chairs, and replacement parts*, in mixed loads, from ports of entry on the international boundary line between the United States and Canada at the Detroit and Niagara Rivers to Jacksonville, Tampa, and Miami, Fla., Atlanta, Ga., Birmingham and Mobile, Ala., New Orleans, La., and Dallas, Tex., for 180 days. Restriction: Restricted to traffic originating at the plantsite or storage facility of Global Upholstery Co., Ltd., Downsview, Ontario, Canada. Send protests to: District Supervisor George M. Parker, Interstate Commerce Commission, Bureau of Operations, 612 Federal Building, 111 West Huron Street, Buffalo, NY 14202.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-20690 Filed 11-30-72;8:53 am]

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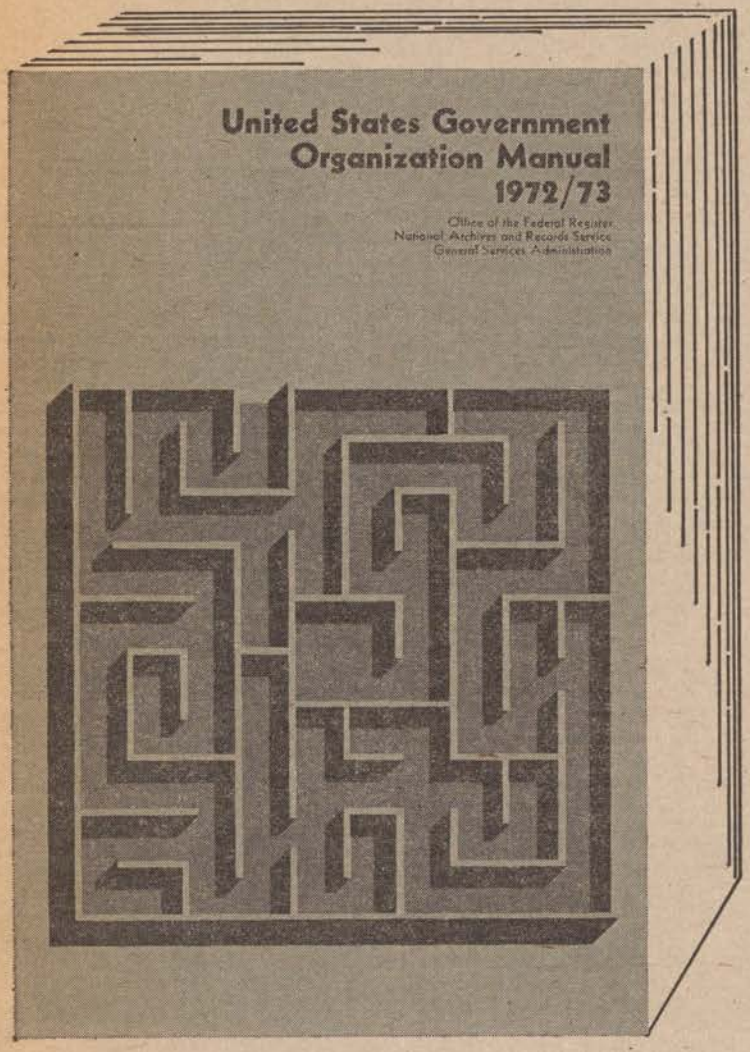

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