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Part I

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Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of Defense

Section 213.3306 is amended to show that one position of Confidential Assistant to the Assistant Secretary of Defense (Systems Analysis) is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (38) is added under paragraph (a) of § 213.3306 as set out below.

§ 213.3306 Department of Defense.

(a) *Office of the Secretary.* * * *

(38) One Confidential Assistant to the Assistant Secretary (Systems Analysis).

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70–17138; Filed, Dec. 18, 1970; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Department of Commerce

Section 213.3314 is amended to show that one additional position of Special Assistant to the Maritime Administrator is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (1) of paragraph (j) of § 213.3314 is amended as set out below.

§ 213.3314 Department of Commerce.

* * * * *

(j) *Maritime Administration.* (1) Two Special Assistants and one Confidential Assistant to the Administrator.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70–17137; Filed, Dec. 18, 1970; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Department of Commerce

Section 213.3314 is amended to show that one position of Deputy Assistant Secretary for Tourism is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (2) of paragraph (l) of § 213.3314 is amended as set out below.

§ 213.3314 Department of Commerce.

* * * * *

(l) *U.S. Travel Service.* * * *

(2) One Deputy Assistant Secretary for Tourism.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70–17136; Filed, Dec. 18, 1970; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that the position of Deputy Assistant Secretary for Legislation (Welfare) is no longer excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (8) of paragraph (f) of § 213.3316 is revoked as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(f) *Office of the Assistant Secretary for Legislation.* * * *

(8) [Revoked]

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70–17141; Filed, Dec. 18, 1970; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Environmental Protection Agency

Section 213.3318 is added to show that two positions of Special Assistant to the Administrator, two positions of Secretary to the Administrator, and one position of Secretary to the Deputy Administrator are excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, § 213.3318 is added as set out below.

§ 213.3318 Environmental Protection Agency.

(a) Two Special Assistants to the Administrator.

(b) Two Secretaries to the Administrator.

(c) One Secretary to the Deputy Administrator.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70–17139; Filed, Dec. 18, 1970; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Agency for International Development

Section 213.3368 is amended to show that one position of Confidential Assistant to the Special Asistant to the Assistant Administrator for Administration is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, paragraph (f) is added under § 213.3368 as set out below.

§ 213.3368 Agency for International Development.

* * * * *

(f) *Office of the Assistant Administrator for Administration.* (1) One Confidential Assistant to the Special Assistant to the Assistant Administrator.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70–17135; Filed, Dec 18, 1970; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Office of Economic Opportunity

Section 213.3373 is amended to show that one additional position of Confidenthe Staff Assistant to the Assistant Director for VISTA is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (3) of paragraph (f) of § 213.3373 is amended as set out below.

§ 213.3373 Office of Economic Opportunity.

* * * * *

(f) *Volunteers in Service to America.* * * *

(3) Two Confidential Staff Assistants to the Assistant Director for VISTA.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70–17142; Filed, Dec. 18, 1970; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Equal Employment Opportunity Commission

Section 213.3377 is amended to show that one position of Special Assistant to a Member of the Commission is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, paragraph (f) is added to § 213.3377 as set out below.

§ 213.3377 Equal Employment Opportunity Commission.

* * * * *

(f) One Special Assistant to a Member of the Commission.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70–17140; Filed, Dec. 18, 1970; 8:47 a.m.]

Chapter III—Office of Management and Budget

PART 1300—STANDARDS OF CONDUCT

Change in Title

DECEMBER 14, 1970.

The title and all other references in Chapter III of Title 5 of the Code of Federal Regulations to "Bureau of the Budget" are hereby amended to read "Office of Management and Budget"; and all references in that chapter to "Bureau" are hereby amended to read "Office".

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[F.R. Doc. 70–17134; Filed, Dec. 18, 1970; 8:47 a.m.]

Title 12—BANKS AND BANKING

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

[No. 70–545]

PART 522—ORGANIZATION OF THE BANKS

Selection of Officers and Employees

DECEMBER 15, 1970.

Resolved that the Federal Home Loan Bank Board considers it advisable to amend § 522.70 of the regulations for the Federal Home Loan Bank System (12 CFR 522.70) for the purpose of allowing Federal Home Loan Bank employees to act as employees of the Federal Home Loan Mortgage Corporation. Accordingly, on the basis of such consideration, the Federal Home Loan Bank Board hereby amends said § 522.70 by revising it to read as follows, effective December 19, 1970:

§ 522.70 Selection.

The election or appointment of the officers, legal counsel, and employees of a Bank shall be in accordance with the bylaws of such Bank. No full-time officer or employee of any Bank shall act in any capacity for any member, other than the Federal Home Loan Mortgage Corporation, or for any institution which is insured by the Federal Savings and Loan Insurance Corporation under any understanding providing for continuous or repeated services nor act in any capacity for any such institution in connection with any petition, application, or matter in which any action is required by the Bank or any of its officers, whether the Bank or such person will be acting for the Bank or as agent of the Board, or the Federal Savings and Loan Insurance Corporation, except when employed by, or with the consent of, the Federal Savings and Loan Insurance Corporation in cases involving payment of insurance, loans, purchases of assets or contributions by said Insurance Corporation under section 405 or 406 of the National Housing Act, as amended. The prohibitions as to employment set forth in the preceding sentence shall apply to the counsel and attorneys of any Bank, whether employed on a salary, fee, retainer, or other basis, except that, with the prior consent of the Board, and to the extent of such consent, any such person may act as counsel or attorney for any institution in connection with any matters covered by such prohibitions.

(Sec. 17, 47, Stat. 736, as amended; 12 U.S.C. 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

Resolved further that, since the above amendment relates to the internal affairs of the Federal Home Loan Banks, the Board finds that notice and public procedure on said amendment are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and the Board also finds, for the same reason, that publication for a 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553 (d) prior to the effective date of the amendment is unnecessary; and the Board hereby provides that the amendment shall become effective as hereinbefore set forth.

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[F.R. Doc. 70–17129; Filed, Dec. 18, 1970; 8:47 a.m.]

Title 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation

PART 1—ADMINISTRATION OF FEDERAL AID FOR HIGHWAYS

Relocation Assistance and Payments; Interim Operating Procedures

Section 1.32 of Title 23 of the Code of Federal Regulations provides in the last sentence that "Selected orders and memorandums are contained in Appendix A to this part." On October 30, 1970, the Federal Highway Administration issued Instructional Memorandum 80–2–70, entitled "Relocation Assistance and Payments Interim Operating Procedures."

Accordingly, Part 1 of Title 23 of the Code of Federal Regulations is amended as follows:

1. The title of Appendix A of Part 1 is amended by adding the words "and Instructional" between the words "Procedure" and "Memoranda" so as to read "Policy and Procedure and Instructional Memoranda."

2. The first sentence of Appendix A of Part 1 is amended by inserting the words "and Instructional" between the words "Procedure" and "Memorandum" and by deleting the words "Bureau of Public Roads" and inserting in lieu thereof the words "Federal Highway Administration"; so as to read "This appendix contains selected Policy and Procedure and Instructional Memoranda issued by the Federal Highway Administration."

Appendix A of Part 1 is amended by adding the following Instructional Memorandum at the end of Appendix A.

(23 U.S.C. 315; delegation of authority in § 1.48(b) of the regulations of the Office of the Secretary, 35 F.R. 4959 (1970))

Issued: December 16, 1970.

F. C. TURNER,
Federal Highway Administrator.

INSTRUCTIONAL MEMORANDUM 80–2–70

RELOCATION ASSISTANCE AND PAYMENTS; INTERIM OPERATING PROCEDURES

Par.

1. *Purpose*—a. *General.* The purpose of this memorandum is to insure to the maximum extent possible the prompt and equitable relocation and reestablishment of persons, businesses, farmers and nonprofit organizations displaced as a result of Federal and Federal-aid highway construction. The rules, policies and procedures contained in this memorandum are intended to establish a means of providing relocation services and of making moving cost payments, replacement housing cost payments and incidental expense payments so that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

b. *Implementation.* This memorandum requires the Federal Highway Administration and the State highway departments to follow the rules, policies and procedures set forth herein so that every individual displaced because of Federal or Federal-aid highway programs will have, or will have been offered an adequate, decent, safe and sanitary dwelling to move into upon being required to vacate the dwelling acquired. It also requires that relocation services be furnished and that payments be made to those who are required to relocate to cover in whole or in part costs incurred for moving, replacement housing and certain incidental expenses. In addition, it provides for hearing and appeal procedures to encourage amicable resolution of controversies that may arise.

2. *Authority.* The provisions of this memorandum are issued under 23 U.S.C. 315 and 501 et seq.; section 6, Department of Transportation Act (49 U.S.C. 1655); delegation of authority by the Secretary of Transportation in 49 CFR 1.4(c); and Department of Transportation Order 5620.1 dated June 24, 1970.

3. *Effective date.* The provisions of this memorandum shall be effective no later than 90 days after date of issuance. At the option of the State, this memorandum may be made effective at an earlier date.

4. *Definitions.* For the purposes of this memorandum the following terms are defined:

a. Person: The term "person" means:

(1) Any individual, partnership, corporation, or association which is the owner of a business;

(2) Any owner, part owner, tenant, or sharecropper who operates a farm;

(3) An individual who is the head of a family; or

(4) An individual not a member of a family.

b. Family: The term "family" means two or more individuals living together in the same dwelling who are related to each other by blood, marriage, adoption or legal guardianship.

c. Displaced person: The term "displaced person" means any person who moves from real property as result of the acquisition or reasonable expectation of acquisition of such real property, which is subsequently acquired, in whole or in part, for a Federal or Federal-aid highway, or as the result of the acquisition for a Federal or Federal-aid highway of other real property on which such person conducts a business or farm operation.

d. Relocatee: The term "relocatee" means any person who meets the definition of a displaced person.

e. Moves in reasonable expectation: A person who moves from real property subsequently acquired for a Federal or Federal-aid highway as a result of the "reasonable expectation of acquisition of such real property" is one who is in occupancy on the date of the initiation of negotiations for the project and meets the occupancy requirements. The occupancy requirements must be computed from the date of his move.

f. Initiation of negotiations for the project: The term "initiation of negotiations" for a project means the date the acquiring agency makes the first personal contact with the owner of any property on the project or his representative where price is discussed except where such contact is made solely for protective buying or because of hardship. The control date thus established shall be documented in the project file of the acquiring agency.

g. Moves as a result of protective buying or hardship: A person who moves from real property which is acquired for a Federal or Federal-aid highway by protective buying or because of hardship prior to the initiation of negotiations for the project is one who is in occupancy on the date of the initiation of the negotiations for the parcel and meets the occupancy requirements. The occupancy requirements must be computed from the date of initiation of negotiations for the parcel.

h. Moves as result of displacement: A person who moves from real property subsequently acquired for a Federal or Federal-aid highway as a result of being displaced by the highway project is one who is in occupancy on the date of initiation of negotiations for the parcel and meets the occupancy requirements. The occupancy requirements must be computed from the date of initiation of negotiations for the parcel.

i. Comparable dwelling: A comparable dwelling is one which when compared with the dwelling being taken is:

(1) Decent, safe, and sanitary;

(2) Functionally equivalent and substantially the same with respect to:

(a) Number of rooms;

(b) Area of living space;

(c) Type of construction;

(d) Age; and

(e) State of repair.

(3) Fair housing—open to all persons regardless of race, color, religion, sex or national origin and consistent with the requirements of title VIII of the Civil Rights Act of 1968;

(4) In areas not generally less desirable than the dwelling to be acquired in regard to:

(a) Public utilities; and

(b) Public and commercial facilities.

(5) Reasonably accessible to the relocatee's place of employment;

(6) Adequate to accommodate the relocatee;

(7) In an equal or better neighborhood; and

(8) Available on the market.

j. Adequate replacement housing: The term "adequate replacement housing" means a dwelling which is:

(1) Decent, safe and sanitary;

(2) Fair housing—open to all persons regardless of race, color, religion, sex or national origin and consistent with the requirements of title VIII of the Civil Rights Act of 1968;

(3) In areas not generally less desirable than the dwelling to be acquired in regard to:

(a) Public utilities; and

(b) Public and commercial facilities.

(4) Available at rents or prices within the financial means of the individuals and families relocated;

(5) Reasonably accessible to the relocatee's place of employment; and

(6) Adequate to accommodate the relocatee.

k. Required to move: The term "required to move" means the date the relocatee is given in the 90-day notice or such subsequently extended date that he is required to vacate the property, or the date that he actually moves from the acquired property, whichever is the later.

l. Business: The term "business" means any lawful activity conducted primarily:

(1) For the purchase and resale, manufacture, processing or marketing of products, commodities, or any other personal property;

(2) For the sale of services to the public; or

(3) By a nonprofit organization.

m. Nonprofit organization: The term "nonprofit organization" means a corporation, partnership, individual or other public or private entity, engaged in a business, professional or instructional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession or institution on the premises.

n. Farm operation: The term "farm operation" means any activity conducted solely or primarily for the production of one or more

[1] Attachments 1 and 2 filed as part of original document.

agricultural products or commodities for sale and home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support. The term "contributing materially" used in this definition means that the farm operation contributes at least one-third of the operator's income, however, in instances where such operation is obviously a farm operation it need not contribute one-third to the operator's income for him to be eligible for relocation payments.

o. Federal Agency: The term "Federal Agency" means any department, agency, or instrumentality in the executive branch of the Government and any corporation wholly owned by the Federal Government.

p. State Agency: The term "State Agency" means a State highway department or any agency designated by a State highway department to administer the relocation assistance program authorized by chapter 5, title 23, United States Code

q. Moving expense: The term "moving expense" includes the necessary cost of dismantling, disconnecting, crating, loading, insuring, temporary storage, transporting, unloading, reinstalling of personal property, including service and utility charges in connection with effecting such reinstalling, exclusive of the cost of any additions, improvements, alterations or other physical changes in or to any structure in connection therewith. In addition the necessary reasonable temporary lodging and transportation costs of eligible persons are also considered eligible moving expenses.

r. Owner: The term "owner" means an individual (or individuals):

(1) Owning, legally or equitably, the fee simple estate, a life estate, a 99-year lease or other proprietary interest in the property;

(2) The contract purchaser of any of the foregoing estates or interests; or

(3) Who has succeeded to any of the foregoing interest by devise, bequest, inheritance or operation of law. For the purposes of this memorandum in the event of acquisition of ownership by any of the foregoing methods in this subparagraph (3), the tenure of the succeeding owner shall include the tenure of the preceding owner.

s. Existing patronage: The term "existing patronage" is the annual average dollar volume of business transacted during the 2 taxable years immediately preceding the taxable year in which the business is relocated.

t. A "condominium or cooperative apartment" is considered a dwelling for the purposes of this memorandum.

5. *Standards for decent, safe and sanitary housing*—a. *Minimum requirements.* A decent, safe and sanitary dwelling is one which meets all of the following minimum requirements:

(1) *Conforms to State and local housing codes and ordinances.* Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations.

(2) *Water.* Has a continuing and adequate supply of potable safe water.

(3) *Kitchen requirements.* Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and an adequate disposal system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. When these facilities are not so required by local codes, ordinances or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.

(4) *Heating system.* Has an adequate heating system in good working order which will maintain a minimum temperature of 70° in the living area under local outdoor design temperature conditions. A heating system will not be required in those geographical areas where such is not normally included in new housing. Bedrooms are not included in the "living area" as referred to in this paragraph.

(5) *Bathroom facilities.* Has a bathroom, well lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system.

(6) *Lighting.* Has provision for artificial lighting for each room.

(7) *Structurally sound.* Is structurally sound, in good repair and adequately maintained.

(8) *Egress.* Each building used for dwelling purposes shall have a safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multidwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level. In buildings of three stories or more, the common corridor on each story must have at least two means of egress.

(9) *Habitable floor space.* Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet (70 square feet for mobile home) of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking or dining purposes and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries and unfurnished attics, foyers, storage spaces, cellars, utility rooms, and similar spaces.

b. *Rental of sleeping rooms.* The standards for decent, safe and sanitary housing as applied to rental of sleeping rooms shall include the minimum requirements contained in paragraph 5a (1), (4), (6), (7), and (8) and the following:

(1) *Habitable floor space.* At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant.

(2) *Bathroom facilities.* Lavatory and toilet facilities that provide privacy including a door that can be locked if such facilities are separate from the room.

c. *Approval of local code.* In those instances where a local housing code does not meet all the standards listed in this paragraph but is reasonably comparable, the agency providing relocation assistance may submit such code to the Regional Federal Highway Administrator for approval or disapproval as acceptable standards for decent, safe and sanitary housing.

d. *Exceptions.* Exceptions may be granted to decent, safe and sanitary standards but requests should be limited to items and circumstances that are beyond the reasonable control of the relocatee to adhere to the standards. Approved exceptions shall not affect the computation of the replacement housing payment.

(1) *Exceptions for parcels.* In case of extreme hardship or other similar extenuating circumstances, an exception to the decent, safe and sanitary characteristics of replacement housing may be permitted in a particular case with the written concurrence of the Regional Federal Highway Administrator thereby qualifying the relocated individual or family for a payment under this paragraph. For example, it is recognized that exceptional problems may arise with regard to large families meeting floor space requirements. In instances of this kind it would be appropriate to waive the square footage requirement on a parcel basis provided there is satisfactory bedroom space based on the age and sex of the occupants.

(2) *Exceptions for project or area.* The Associate Administrator for Right-of-way and Environment may approve exceptions to the standards in this paragraph on a project or areawide basis where unusual conditions exist.

6. *Applicability*—a. *Federal and Federal-aid projects.* The provisions of this memorandum are applicable to the following:

(1) All Federal and Federal-aid highway projects authorized on or after the effective date of this memorandum, involving right-of-way which is occupied by individuals, families, businesses, farm operations, or nonprofit organizations.

(2) All Federal and Federal-aid highway projects authorized before the effective date of this memorandum, on which individuals, families, businessses, farm operations and nonprofit organizations have not been relocated.

(3) All rights-of-way acquired without Federal participation upon which the State intends to construct a Federal or Federal-aid project from which as of the effective date of this memorandum, individuals, families, businesses, farm operations, and nonprofit organizations have not been relocated.

(4) Other highway projects financed in whole or in part with Federal-aid highway funds or other Federal funds from which as of the effective date of this memorandum, individuals, families, businesses, farm operations and nonprofit organizations have not been relocated.

b. *Property acquired by any agency.* Any Federal agency which acquires property for highway projects authorized under chapters 1 and 2 of title 23, United States Code, shall provide the relocation services and payments described in this memorandum. When real property is acquired by a State or local governmental agency for such a Federal project, the acquisition shall be deemed to be an acquisition by the Federal agency having authority over such project.

7. *Assurances of adequate relocation assistance program*—a. *Statewide assurances.* No State highway department shall be authorized to proceed with any phase of any project which will cause the relocation of any person, or proceed with any construction project concerning any right-of-way acquired by the State without Federal participation and coming within the provisions of paragraph 6a(3) of this memorandum until it has furnished satisfactory assurances on a statewide basis that:

(1) *Relocation payments and services.* Were or will be provided as set forth in this memorandum.

(2) *Public adequately informed.* As set forth in paragraph 12 of this memorandum, the public was or will be adequately informed of the relocation payments and services which will be available.

(3) *90-Day notice.* To the greatest extent practicable no person lawfully occupying the real property shall be required to move from his dwelling or farm location without written notice that he shall have at least 90 days before he is required to vacate the property.

b. *Project assurances.* No State highway department shall be authorized to proceed with right-of-way negotiations on any project, except projects previously authorized on the basis of statewide assurances, which will cause the relocation of any person until it has submitted specific written assurances that:

(1) *Adequate replacement housing.* Adequate replacement housing will be available or provided for (built if necessary). Such assurance shall be accompanied by an analysis of the relocation problems involved and a specific plan to resolve such problems. This analysis shall, in the opinion of the division engineer, fully support the written assurance as provided by paragraph 15b of this memorandum. Where right-of-way is acquired in hardship cases and for protective buying the required assurance shall be provided separately for each parcel.

(2) *Adequate relocation program.* The State relocation program is realistic and is adequate to provide orderly, timely and efficient relocation of displaced individuals and families to decent, safe, and sanitary housing available to persons without regard to race, color, religion, or national origin with minimum hardship on those affected.

8. *90-Day notice.* No person lawfully occupying real property shall be required to move from his dwelling, business, or farm location without at least 90 days written notice of the intended vacation date from the State agency having responsibility for such acquisition. This provision shall be carried out to the greatest extent practicable and exceptions should be made only in the case of very unusual conditions.

a. The 90-day notice shall not be given until such time as the State has control of the property.

b. The written notice shall give a firm specific date by which the relocatee must vacate the property. This date may be extended when conditions warrant, but any extension must be in writing and must give another specific date by which the property must be vacated.

c. A notice is not required if an occupant moves on his own volition prior to the time the State gives the 90-day written notice.

9. *Eligibility for participation of Federal-aid funds.*—a. *Reimbursement requirements.* Federal funds will participate in relocation payments to eligible persons when all of the following conditions have been met:

(1) *Program approval and authorization.* When there has been approval of a Federal-aid program or project and authorization to proceed has been issued; costs incurred at the conceptual stage may be charged to either preliminary engineering or right-of-way depending upon State procedures.

(2) *Person relocated.* When in fact a person has been or will be relocated by the project or from the right-of-way approved for such project.

(3) *Lawful costs.* When relocation costs are incurred in accordance with law.

(4) *Costs recorded as liability.* When relocation costs are recognized and recorded as a liability of the State in accounts of the State highway department.

(5) *Project agreement executed.* After the project agreement has been executed for the particular project involved.

b. *Interest acquired.* The type of interest acquired does not affect the eligibility of relocation costs for reimbursement provided the interest acquired is sufficient to cause displacement. In like manner, the terms under which a tenant is occupying property do not affect eligibility for Federal participation provided the tenant is actually displaced by the project and the occupancy is lawful.

c. *Losses due to negligence.* Losses due to negligence of the relocated person are not eligible for Federal participation.

d. *Federal share*—(1) *Dislocation or acquisition prior to July 1, 1970.* Where eligible persons are relocated, or the property acquired, prior to July 1, 1970, the first $25,000 of relocation payments made are 100 percent reimbursable from Federal funds whether such payments are made prior to or subsequent to July 1, 1970.

(2) *Dislocation and acquisition on or after July 1, 1970.* Where both the dislocation and property acquisition occur on or after July 1, 1970, the regular Federal-aid pro rata participation shall apply to all payments.

e. *Administrative costs.* Only those costs directly chargeable to the highway project are eligible for Federal participation. The administrative and central office expenses of the State and any political subdivision or local public authorities under contract to perform certain phases of relocation services, payments or surveys are not eligible for Federal participation. The policies and procedures governing reimbursement for employment of public employees on Federal-aid projects are contained in PPM 30-5.

f. *Refusal of assistance.* A relocatee can refuse relocation services and still be eligible for payments. There is no requirement that he accept the services if he wants to relocate on his own. However, it would be necessary that he meet the decent, safe and sanitary requirements and make application within the time limits to qualify for replacement housing payments.

g. *Property not incorporated into right-of-way.* If a relocation is made necessary by an acquisition for the project, even though the property acquired is not incorporated within the final right-of-way, Federal funds may participate in relocation payments.

10. *Organization requirements for administration of relocation assistance programs*—a. *State organization and procedures.* Each State highway department shall have an individual whose primary responsibility is the administration of the State's relocation assistance program. The organization and procedures of the State agency which administers the relocation program shall provide as a minimum that:

(1) *Responsibility assigned on project basis.* Each right-of-way project, where relocations will occur, shall have assigned to it one or more individuals whose primary responsibility is to provide relocation assistance. These individuals may have responsibility for more than one project where reasonable.

(2) *Local relocation office.* A local relocation office shall be established which is reasonably convenient to public transportation or within walking distance of each project when the State determines that the volume of work or the needs of the displaced persons are such as to justify the establishment of such an office. The determination whether or not to establish a local relocation office shall be made on an individual project basis and submitted to the division engineer for his approval or disapproval. These offices shall be open during hours convenient to the persons to be relocated, including evening hours when necessary. Consideration should be given to the employment of people in the local relocation office who are familar with the problems of the area.

(3) *Information to be maintained on a project basis.* The following shall be maintained and provided for each project:

(a) Lists of replacement dwellings available to persons without regard to race, color, religion, or national origin drawn from various sources, suitable in price, size, and condition for displaced persons to the extent they are available;

(b) Current data for such costs as security deposits, closing costs, typical downpayments, interest rates, and terms;

(c) Maps showing the location of schools, parks, playgrounds, shopping, and public transportation routes in the area where applicable;

(d) Schedules and costs of public transportation where applicable;

(e) Copies of the State's brochure explaining its relocation program, local ordinances pertaining to housing, building codes, open housing, consumer education literature on housing, shelter costs, and family budgeting; and

(f) Subscriptions for apartment directory services, neighborhood and metropolitan newspapers, etc. In addition, multiple listing services shall be maintained where available.

(4) *Contact with and exchange of information with other agencies.* Relocation officials shall maintain personal contact with and shall exchange information with other agencies providing services useful to persons who will be relocated.

(a) Such agencies may include but not be limited to social welfare agencies, urban renewal agencies, redevelopment authorities, public housing authorities, the Federal Housing Administration, Veterans Administration, and Small Business Administration.

(b) Personal contact shall also be maintained with local sources of information on private replacement properties, including real estate brokers, real estate boards, property managers, apartment owners and operators, and home building contractors.

(c) The Federal Housing Administration and Veterans Administration procedures which provide for making properties acquired by them available for direct sale to persons to be relocated as a result of governmental action.

(d) It is expected that in the application of these programs, to specific projects, the State will coordinate their actions with the local agencies responsible for administering these and other Federal programs.

b. *State policy and procedure statement or manual*—(1) *Policy and procedure statement.* The State highway department shall provide and submit, under Point 31 of its policy and procedural statement, or in a manual form that accomplishes the same objective, the following information:

(a) *Organization.* The office in the State highway department which has statewide responsibility for implementing the relocation program, the director of that office and the State agency which will administer the relocation program.

(b) *Number of personnel and job titles.* The estimated number and job titles of personnel having responsibilities for providing relocation payments and services in the central office and field offices as applicable. Indicate the title of the district office relocation assistance supervisor and show to whom he reports and his relationship to the district engineer and to the central office.

(c) *Job descriptions and qualifications.* In the submission the State highway department shall attach as exhibits the job descriptions and qualifications for each job title for both supervisory and field personnel unless otherwise submitted. The job classifications should provide a career ladder so that as an employee gains experience and training advancement can be made.

(2) *Contracts with other agencies.* The State highway department shall indicate to what extent it expects to contract with other Federal, State, or local agencies to carry out the requirements of this memorandum.

(3) *Relocation assistance and payments procedures.* The State highway department shall submit a complete description of the procedures followed for furnishing relocation services and for making relocation payments. The procedures, as a minimum, should include a description or explanation of the following items:

(a) Citation and effective date of the applicable law or laws.

(b) The explanation should also include a statement of the State's understanding as to the applicability of chapter 5, title 23, United States Code, to Federal and Federal-aid projects and to those projects on which right-of-way if financed with State funds but on which the State intends to request Federal funds in construction.

(c) Indicate the standards for accessibility of the relocatees to the relocation assistance offices, their office hours and the type of lists, maps and other information to be maintained. Indicate the extent to which project or field offices will be used.

(d) Indicate when and by whom personal contacts with owner-relocatees and tenants will be made.

(e) Indicate the personnel, timing, methods and procedures to be used for the preliminary investigations of approximate number of relocatees, availability of decent, safe and sanitary replacement housing and the procedures for reporting the findings to the Federal Highway Administration.

(f) Indicate the personnel, methods, timing and procedures to be used (prior to proceeding with right-of-way negotiations) for obtaining an inventory of available housing; for correlating the needs of the relocatees with available housing; and for developing a relocation plan for the specific project.

(g) Describe the procedures to be used by the State in providing public information through brochures, public hearings, newspapers, radio, television and written descriptions of available assistance and payments for owners, tenants, businesses, farms, and nonprofit organizations. Attach a copy of brochures used by the State.

(h) Describe the moving cost payments to which both owners and tenants are entitled and the methods employed in determining the amount of entitlement. Attach fixed schedules as exhibits, where applicable.

(i) Describe the procedures that will be followed in making replacement housing payments to owner-occupants and tenants. Indicate who is responsible for determining replacement housing payments. Explain eligibility requirements. Indicate time limits and methods of applying for payments.

(j) Describe the incidental transfer expenses that are payable. Attach a copy of a typical closing statement indicating such payments.

(k) Indicate procedures utilized to assure that to the greatest extent practicable owners and tenants are not required to move without at least 90 days written notice.

(l) Describe appeal procedures available to relocatees.

(m) Attach a copy of the assurances required by paragraph 7a of this memorandum.

(n) Attach a copy of all forms developed for carrying out the relocation program.

(4) *Duplicate payments under State eminent domain law prohibited.* The State highway department shall submit citation of applicable State legislation if, under the State law of eminent domain, the relocatee is entitled to receive a replacement housing payment designed to have substantially the same general purpose and effect as the payments described in this memorandum and for which Federal reimbursement is otherwise available. The Federal Highway Administrator's determination as to the purpose and effect of a State law shall govern Federal participation in such costs.

11. *Relocation contract procedures*—a. *Relocation functions performed by another agency.* In order to prevent unnecessary expenses and duplication of functions, the State highway department may have the functions described in this memorandum carried out by utilizing the facilities, personnel, and services of any other Federal, State, local governmental or private agency having an established organization for conducting relocation assistance programs.

b. *Agencies providing relocation assistance.* The State highway department shall furnish the following information concerning the agency or agencies, if other than the State highway department, which will provide the relocation assistance required by this memorandum.

(1) *Name.* The name and location of the agency or agencies.

(2) *Qualifications.* An analysis of the agencies present workload and of its ability to perform the requirements of this memorandum.

(3) *Personnel.* The estimated number and the job titles of relocation personnel of the agency that will provide the relocation assistance for the project.

c. *Contracting procedures.* Where a State highway department elects to have the relocation services and payments required under this memorandum administered by another Federal, State, local governmental, or private agency, it shall enter into a written contract or agreement to that effect with the agency it selects. The contract or agreement shall be approved by the division engineer and shall conform with the following:

(1) *Perform services and make payments.* Obligate the agency to perform the services and make the relocation payments in accordance with chapter 5 of title 23, United States Code, and the regulations and procedures of the Federal Highway Administration.

(2) *Retention of records.* Provide that the records required by paragraph 39 of this memorandum will be retained by the agency administering the relocation program or turned over to the State highway department. The records shall be retained for a period of not less than 3 years after payment of the final voucher on each project, regardless of which agency retains them.

(3) *Available for inspection.* The records shall be available for inspection by representatives of the Federal Government at any reasonable hour.

(4) *Specify financial responsibilities.* Where the contract is with a public agency administering another Federal grant program, the contract shall specify the financial responsibilities of each to finance the relocation program required by this memorandum.

(5) *Administrative costs.* Only those costs directly chargeable to the highway project are eligible for Federal participation.

(6) *Civil rights.* The clauses set forth in Appendix A of the Civil Rights Assurances and the requirements of 49 CFR, Part 21.

(7) *Changes.* Provisions that would permit the negotiations for mutual acceptance of major changes in the scope, character, or estimated total cost of the work to be performed if such changes become necessary.

(8) *Revision or amendment of existing agreements or contracts.* Agreements or contracts in existence with local agencies on the effective date of this memorandum must be revised or amended to include the additional requirements set forth herein and to provide for all the services and payments required by this memorandum. If the terms of the existing agreement or contract do not permit such revision or amendment, supplementary contracts shall be executed to provide such requirements.

(9) *Adequate staff.* The division engineer in reviewing any such contract or agreement for approval shall give special attention to ascertain if the agency does in fact have a staff to adequately and properly perform the functions required by the contract or agreement.

d. *Lands acquired by local public agency.* The provisions of this paragraph govern the application of relocation procedures where lands are acquired by a local public agency.

(1) *Lands acquired prior to location of highway.* Where lands are acquired by the local public agency prior to the receipt of written advice from the State highway department concerning the location of a proposed highway or a request for reservation or conveyance for highway purposes, the provisions of this memorandum will not apply. In such cases, relocations would be handled under the LPA procedures and Federal participation would be limited to the applicable pro rata amount of the fair market value as determined by mutually acceptable appraisal of the bare land or cost to the LPA as applicable under paragraphs 6a (1) and (2) of PPM 80-1. Authorizations by the Federal Highway Administration to acquire the right-of-way from the LPA should not be given until the applicable public hearing requirements have been met. Where work is undertaken under the TOPICS program which requires the relocation of any person, the provisions of this memorandum shall apply.

(2) *Lands acquired subsequent to location of highway.* Where lands are acquired by the local public agency subsequent to its receipt of written advice from a State highway department giving the location of the proposed highway or a request for reservation or conveyance for highway purposes, relocations shall be handled under the provisions of this memorandum. Federal participation would be at the applicable pro rata amount of the cost to the LPA. Since the Federal Highway Administration cannot authorize right-of-way acquisition until after the design hearing with the exception of those instances provided for in IM 20-1-69, there should be no overall agreement with the LPA until after the design hearing. A limited agreement could be entered into with the LPA to allow it to acquire parcels permitted under the provisions of IM 20-1-69 and handle relocations under the provisions of this memorandum.

12. *Public information*—a. *General requirements.* In order to assure that the public has adequate knowledge of the relocation program the State highway department shall present information and provide opportunity for discussion of relocation services and payments at public hearings, prepare a relocation brochure and give full and adequate public notice of the relocation assistance program.

b. *Corridor public hearings.* The discussion shall include but not necessarily be limited to the following:

(1) the availability of relocation assistance and services, eligibility requirements and payment procedures;

(2) the estimated number of individuals, families, businesses, farm, and nonprofit organizations that are to be relocated by each of the alternatives under consideration at the hearing; and

(3) the studies that have been or will be made and the methods that will be followed to assure that housing needs of the relocatees will be met.

c. *Highway design public hearings.* The discussion shall include but not necessarily be limited to the following:

(1) The eligibility requirements and payment procedures including:

(a) Eligibility requirements and payment limits for moving costs;

(b) Replacement housing payment eligibility requirements and payment limits;

(c) Payment of expenses incidental to transfer of property; and

(d) Appeal procedures.

(2) How the relocation assistance and services will be provided. The address and telephone number of the local office and the name of the relocation officer in charge.

(3) The cooperating agencies by name, if any.

(4) An estimate of number of individuals or families to be relocated.

(5) The estimated number of dwelling units presently available that meet the replacement housing requirements.

(6) An estimate of the time necessary for relocation and of the number of dwelling

units meeting the replacement housing requirements that will become available during that period.

(7) The depth of presentation would be influenced by the comprehensiveness of the brochure. If the brochure covers the particular item in sufficient detail, it would be satisfactory to highlight what the brochure contains without going into any great detail. If a particular item is not applicable to the project it would not be necessary to discuss the item beyond the mere mention that the law makes provision for such item.

d. *Brochure.* The State shall prepare a brochure adequately describing its relocation program including replacement housing payment information and distribute the same without cost at all public hearings and to all other individuals and organizations as appropriate. The brochure shall state where copies of any State regulations implementing the relocation assistance program can be obtained. In order to give proper information and assistance to relocatees every effort should be made to communicate with them in their language. For example, in areas where a language other than English is predominate it might be well to also publish the brochure in such language.

e. *Public announcements.* In addition to the public hearing notices required by PPM 20–8, paragraph 7a(2), the State shall provide public announcements of the relocation services to be rendered, payments that can be made and where the State's brochure describing the relocation program can be obtained. Such public announcements shall consist of the utilization of any combination of mass media which will fulfill the requirement of full and adequate public notice. The mass media used could be: local newspaper, radio, television, local meeting, posted notices for the dissimination of news releases and advertisements. Federal funds may participate in such expenditures but the length of such advertisements and spot announcements should be reasonable. Particular emphasis should be given to utilizing the media that is read, looked at or listened to the most by residents on the project.

f. *Public eligibility notice.* Within 15 days after establishment of the date of initiation of negotiations for the project the State shall post notices in reasonably adequate numbers and in places accessible to occupants of dwellings to be taken for the project. In addition a reasonably adequate number of newspaper advertisements shall be run in newspapers that would normally be read by occupants of dwellings to be taken for the project. The posted notices and newspaper advertisements shall:

(1) State the date of initiation of negotiations established for the project;

(2) Define the area of the project;

(3) Advise occupants of such area of their eligibility for and the requirements to receive moving and replacement housing payments when they move on and after the established date;

(4) Advise that any occupant contemplating moving should, to insure eligibility for moving and replacement housing payments, notify the State before moving;

(5) Advise the owner-occupants in order to be eligible for relocation benefits must sell to the State; and

(6) State where the State's brochure describing the relocation program can be obtained.

g. *Department of Transportation order on replacement housing.* The replacement housing policy contained in the Department of Transportation Order 5620.1 dated June 24, 1970, shall be:

(1) Discussed at highway design public hearings under paragraph 12c;

(2) Described in the State's brochure required by paragraph 12d;

(3) Included in public announcements required by paragraph 12e;

(4) Included in the public eligibility notice as provided under paragraph 12f.

13. *Presentation of relocation information*—a. *Information furnished.* The State shall furnish the following information to relocatees:

(1) A brochure explaining the relocation program to each individual, family, business, and farm operator to be relocated;

(2) A notice stating the eligibility factors for replacement housing payments to each owner and tenant-occupant to be relocated if such information is not included in the brochure; and

(3) A written statement setting forth the amount of the replacement housing payment to which each owner and tenant-occupant is entitled.

b. *Brochure.* The brochure and the information required by paragraph 13a shall be furnished by means of personal contact with persons to be relocated unless alternative methods are approved by the division engineer.

(1) *Owners.* The brochure shall be furnished to owner-occupants not later than the initiation of negotiations for the parcel.

(2) *Tenants.* The brochure shall be furnished to tenants no later than 30 days after the date of initiation of negotiations for the purchase of the property has been started or at the option of the acquiring agency the notice may be delayed until not less than 90 days prior to the date possession is required. If the notice to tenants is delayed, as herein authorized, care must be taken to avoid creating undue hardships on tenants as a result of such delayed notice and to assure that payment of moving and replacement housing costs are made to the proper tenants.

c. *Replacement housing payment information.* The determination that a relocatee is eligible for a replacement housing payment shall be presented in writing to the relocatee. For owners the notification of the amount of the replacement housing payment along with his option to rent and the eligibility requirements for a rental replacement housing payment shall be given simultaneously with the fair market value offer. For tenants the notification of the amount of the rental replacement housing payment along with his option to buy and the eligibility requirements for a down payment replacement housing payment shall be given within 30 days after the initiation of negotiations for acquisition of the property or may be delayed until not less than 90 days prior to the date possession is required. The above information shall be given in writing.

d. *Right of appeal.* All relocatees eligible for a replacement housing payment shall be notified of their right of appeal as provided in paragraph 38 of this memorandum.

14. *Relocation program plan at conceptual stage*—a. *General requirements.* A project will be considered to be in this stage until such time as the final location is approved. The cost incurred in connection with securing the information described in paragraph 14b is chargeable to either preliminary engineering or right-of-way. Prior to the completion of this stage and prior to the corridor public hearing, the State shall make preliminary investigations which will furnish the necessary information to meet the corridor public hearing requirements as provided in paragraph 12b.

b. *Information to be obtained.* The information to be developed at this time would be in the form of an estimate to determine:

(1) The approximate number of individuals, families, businesses, farms, and nonprofit organizations that would be relocated.

(2) The probable availability of decent, safe, and sanitary replacement housing within the financial means of the individuals and families affected.

The basis upon which the above findings were made and a statement relative to the relocation problems involved in each location along with possible solutions shall be submitted by the State to the Federal Highway Administration prior to the corridor public hearing.

15. *Relocation program at right-of-way stage*—a. *General requirements.* The division engineer shall not authorize the State to proceed with negotiations on any project which will cause the relocation of any person until the State has submitted and he has approved the project assurances as provided for in paragraph 7b of this memorandum and the relocation plan required by subparagraph "b" below.

b. *Relocation plan*—(1) *Inventory of individual needs.* The State shall prepare an inventory of the characteristics and needs of individuals and families to be displaced based on the standard of comparable replacement housing. This inventory may be based upon a sampling survey process rather than a complete occupancy survey. However, any sampling survey process must be to the depth necessary to be fully representative of the characteristics and needs of the relocatees.

(2) *Inventory of available housing.* The State shall develop a reliable estimate of currently available comparable replacement housing. The estimate shall set forth the type of buildings, state of repair, number of rooms, adequacy of such housing as related to the needs of the persons or families to be relocated (based on standards outlined in paragraph 5) type of neighborhood, proximity of public transportation and commercial shopping areas, and distance to any pertinent social institutions, such as church, community facilities, etc. The use of maps, plats, charts, etc., would be useful at this stage. This estimate should be developed to the extent necessary to assure that the relocation plan can be expeditiously and fully implemented.

(3) *Analysis of inventories.* The State shall prepare an analysis and correlation of the above information so as to develop a relocation plan which will:

(a) Outline the various relocation problems;

(b) Provide an analysis of Federal, State, and community programs affecting the availability of housing currently in operation in the project area;

(c) Provide detailed information on concurrent displacement and relocation by other governmental agencies or private concerns;

(d) Provide an analysis of the problems involved and the method of operation to resolve and relocate the relocatees; and

(e) Estimate the amount of leadtime required and demonstrate its adequacy to carry out a timely, orderly and humane relocation program.

16. *Relocation program at construction stage*—a. *Authorization for construction.* (1) To comply with the Department of Transportation Order 5620.1, dated June 24, 1970, the division engineer shall verify the fact that adequate replacement housing is in place and has been made available to relocatees prior to authorizing advertising for physical construction bids.

(2) The division engineer shall not authorize advertising for physical construction bids unless all of the applicable provisions of this memorandum have been complied with.

(3) Construction as defined in the order includes right-of-way clearance of any residential unit, regardless of how performed, except through owner retention. To comply with the order, the State shall not clear the right-of-way of any residential unit, except through owner retention, without prior authorization by the division engineer and

the division engineer shall verify the fact that adequate replacement housing is in place and has been made available to relocatees prior to authorizing clearance of the right-of-way.

b. *Available replacement housing.* "Made available" shall mean that the affected person has either by himself obtained and has the right of possession of replacement housing or the State has offered him decent, safe and sanitary replacement housing which is available for immediate occupancy. A State will be in compliance with the offer requirement when it can be shown that it has:

(1) Determined that decent, safe and sanitary housing that is in an area not less desirable in regard to public utilities and public and commercial facilities, in the same general area from which he is being displaced and reasonably accessible to the relocatee's place of employment and adequate to accommodate the relocatee is available and has informed the relocatee of its availability and location;

(2) Informed the relocatee of the amount, if any, of supplemental payments available to him. In hardship cases, assured the relocatee that an advance of funds will be made should it become necessary;

(3) Provided the relocatee sufficient time to negotiate for and obtain possession of the housing;

(4) Determined that the available housing is within the financial means of the relocatee; and

(5) Determined that the replacement housing offer is fair housing—open to all persons regardless of race, color, religion, sex or national origin.

c. *Verification of adequate replacement housing.* The verification that adequate replacement housing is in place and has been made available to displacees will be accomplished by spot check field reviews to the depth necessary to provide conclusive evidence that there has been full compliance with the order. The verification with respect to the adequacy and availability of housing as required by the order is applicable to all dwelling units for which negotiations have not been initiated even though construction including right-of-way clearance had been previously authorized.

17. *Moving payments—General provisions for all relocated individuals, families, businesses, farm operations, and nonprofit organizations*—a. *Eligibility.* Any individual, family, business, farm operation or nonprofit organization relocated by a Federal-aid highway project is eligible to receive a payment for actual reasonable moving expenses. There is no occupancy time limit for eligibility to moving expenses. Where it is shown to be in the public interest the division engineer may give prior approval to more than one move of a relocated person. After ownership of the property passes to the State, Federal funds will not participate in moving costs of subsequent rental occupants. The State should provide a clause in the rental agreement that moving costs will not be paid.

b. *Claims.* In order to obtain a moving expense payment, a relocated person must file a written claim with the State agency on a form provided by the agency for that purpose within a reasonable time limit determined by the State. The moving expense payment should be made only after the move has been accomplished except as noted in "c" below.

c. *Hardship.* In hardship cases arrangements may be made for payment of moving expenses in advance.

d. *Direct payment to mover.* By written prearrangement between the State, the relocatee, and the mover, the relocatee may present an unpaid moving bill to the State for direct payment.

e. *Contract with movers.* A State may enter into a contract with independent movers on a schedule basis and furnish a relocatee with a list of movers he may choose from to move his property. In such instances the State would pay the mover.

f. *Distance of move.* There is no limitation on the distance a relocatee moves either interstate or intrastate. Federal participation is limited to moving expenses not to exceed a 50-mile move either interstate or intrastate.

g. *Owner retention.* When an owner retains his dwelling, the cost of moving it onto remainder or replacement land is not eligible for reimbursement as a part of the cost of moving personal property. However, if he chooses to use his dwelling as a means of moving personal property the cost of moving personal property may be considered eligible for Federal participation. Payment in these cases would be on a fixed schedule basis.

h. *Where moved to.* Federal funds may participate in a payment for relocating personal property of a relocatee that is moved onto remaining or other lands owned by the relocatee or his landlord.

i. *Cost of moving bids.* The expenses incurred by the State of obtaining bids or estimates of moving expenses are reimbursable, not to exceed two bids per relocation.

j. *Storage.* When an actual expense basis is used and it is necessary for a relocated person to store his personal property for a reasonable time, not to exceed one year, the cost of such storage shall be eligible for Federal participation as a part of the moving expenses. Storage of personal property on the property being acquired or on other property owned by the relocatee is not eligible for Federal participation.

k. *Moving of personal property.* Whenever it is necessary to move personal property located within the acquired right-of-way as the result of a highway taking, Federal funds may participate in such cost.

l. *Delivery of payment checks.* The person or persons who establish the moving cost payment shall not deliver the payment to the relocatee. This also is applicable to situations where such payments and services are being administered by another Federal, State or local agency under authority of a contract or agreement.

18. *Moving payments to individuals and families*—a. *General.* A relocated individual or family is eligible to receive a payment for moving his personal property, himself, and his family. The payment shall be determined by the State using one of the two methods listed below. The relocatee has the option of selecting:

b. *Actual moving expenses.* A relocated individual or family is eligible to receive a payment for actual reasonable moving expenses. Payment of actual moving expenses must be supported by receipted bills or other evidence of expenses incurred. The State may contract with independent movers on a schedule basis and furnish a relocatee with a list of movers he may choose from to move his property. In such instances the State would pay the mover.

c. *Moving expense schedule.* A relocated individual or family is eligible to receive a moving expense allowance, not to exceed $200, determined according to a schedule recommended by the State and established by the Federal Highway Administrator plus a dislocation allowance of $100. The schedule may be prepared for statewide application and shall, to the greatest extent practicable, conform to similar schedules used by other Federal, State, or local agencies making moving expense payments. The schedule shall be graduated in relation to the size of the quarters taken for the project, or some other uniform equitable basis, such as number of rooms in dwellings and the square footage area in mobile homes and house trailers. The schedule shall cover four types of occupants: (1) occupants of unfurnished dwelling units, (2) occupants of furnished dwelling units (including sleeping room tenants), (3) occupants of mobile homes who move the mobile home and the personal property, and (4) occupants of mobile homes who move only the personal property.

19. *Moving payments to businesses*—a. *General.* The owner of a discontinued or relocated business is eligible to receive an actual reasonable moving expense payment for his business or may elect to receive a payment in lieu of actual reasonable moving expenses. The amount of the payment shall be determined by the State using one of the methods listed below.

b. *Actual reasonable moving expenses*—(1) *Receipted bills.* The owner of a discontinued or relocated business is eligible to receive actual reasonable moving expenses. Such expenses must be supported by receipted bills or other evidence of expenses incurred.

(2) *Estimated costs.* The estimated cost of a move may be used as the basis of payment as follows:

(a) *Self moves.* In the case of a self move the business may be paid actual reasonable moving expenses under paragraph 19b(1) or may be paid an amount to be negotiated between the State and the business not to exceed the lower of two firm bids or estimates obtained by the State or prepared by qualified State estimators other than the employee handling the claim.

(b) *Moving expense finding.* A State may adopt a procedure by which a qualified State employee, other than the employee handling the claim, makes a moving expense finding, not to exceed $500.

c. *In lieu of actual moving expenses.* An owner of a discontinued or relocated business may be eligible to receive a payment equal to the average annual net earnings of the business or $5,000, whichever is the lesser providing the following requirements are met.

(1) *State must determine.* For the owner of a business to be entitled to this payment, the State must determine that:

(a) The business cannot be relocated without a substantial loss of its existing patronage. Substantial loss of existing patronage would be based on an evaluation made by the State on the basis of the best information available in the particular case; and

(b) The business is not part of a commercial enterprise having at least one other establishment which is not being acquired by the State or the United States and which is engaged in the same or similar business.

(2) *Payment determination.* The term "average annual net earnings" means one-half of any net earnings of the business before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which the business is relocated. "Average annual net earnings" includes any compensation paid by the business to the owner, his spouse, or his dependents during the 2-year period. Such earnings and compensation may be established by Federal income tax returns filed by the business and its owner, his spouse and his dependents during the 2-year period. In the case of a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership stock held by a husband, his wife and their dependent children shall be treated as one unit.

(3) *In business less than two years.* If the business affected can show that it was in business 12 consecutive months during the two taxable years prior to the taxable year in which it is required to relocate, had income during such period and is otherwise eligible, the owner of a business is eligible to receive the in lieu of payment. Where the business was in operation for 12 consecutive months or more but was not in operation during the entire two preceding taxable years, the payment shall be computed by dividing the net earnings by the number of months the business was operated and multiplying by 12. A taxable year is defined as any 12-month period used by the business in filing income tax returns.

(4) *Owner must provide information.* For the owner of a business to be entitled to his payment, the business must provide information to support its net earnings. City, county, State, or Federal tax returns for the tax years in question are the best source of this information and would be accepted as evidence of earnings. Any commonly acceptable method could be accepted such as certified financial statements or an affidavit from the owner stating his net earnings, providing it grants the State the right to review the records and accounts of the business. The owner's statement alone would not be sufficient.

20. *Moving payments to farm operators*—a. *General.* The owner of a discontinued or relocated farm operation is eligible to receive an actual reasonable moving expense payment for his farm operation or may elect to receive a payment in lieu of actual reasonable moving expenses. The amount of the payment shall be determined by the State using one of the methods listed below.

b. *Actual reasonable moving expenses*—(1) *Receipted bills.* The owner of a discontinued or relocated farm operation is eligible to receive actual reasonable moving expenses. Such expenses must be supported by receipted bills or other evidence of expenses incurred.

(2) *Estimated cost.* The estimated cost of a move may be used as the basis of payment as follows:

(a) *Self moves.* In the case of a self move the farm operator may be paid actual reasonable moving expenses under paragraph 20b(1) or may be paid an amount to be negotiated between the State and the farm operator not to exceed the lower of two firm bids or estimates obtained by the State or prepared by qualified State estimators other than the employee handling the claim.

(b) *Moving expense finding.* A State may adopt a procedure by which a qualified State employee, other than the employee handling the claim, makes a moving expense finding not to exceed $500.

c. *In lieu of actual moving expenses.* An owner of a discontinued or relocated farm operation is eligible to receive a payment equal to the average annual net earnings of the farm or $5,000, whichever is the lesser.

(1) *State must determine.* For the owner of a relocated or discontinued farm operation to be entitled to this payment, the State must determine that:

(a) The farm operator has discontinued his farm operation at the present location; or

(b) The entire farm operation has been relocated to a new location as a result of the acquisition of real property.

(2) *Payment determination.* The term "average annual net earnings" means one-half of any net earnings of the farm before Federal, State, and local income taxes, excluding income not normal to the farm operation during the 2 taxable years immediately preceding the taxable year in which the farm is relocated. "Average annual net earnings" includes any compensation paid by the farm to the owner, his spouse or his dependents during the 2-year period. In the case of a corporate owner of a farm operation, earnings, shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by a husband, his wife and their children shall be treated as one unit.

(3) *In operation less than 2 years.* If the farm operation affected can show that it was in business for 12 consecutive months during the 2 taxable years prior to the taxable year in which it is required to relocate, had income during such period and is otherwise eligible, the owner of the farm is eligible to receive the in lieu of payment. Where the farm was in operation for 12 consecutive months or more but was not in operation during the entire 2 preceding years, the payment shall be computed by dividing the net earnings by the number of months the farm was operated and multiplying by 12.

(4) *Owner must provide information.* The farm operator must provide information to support his earnings if he elects to accept the in lieu of payment. Such earnings and compensation may be established by county, State or Federal income tax returns filed by the farm operator, his spouse and his dependents during the 2-year period. In addition, any commonly acceptable method could be accepted such as certified financial statements or an affidavit from the owner stating his net earnings, providing it grants the State the right to review the records and accounts of the farm operation. The operator's statement alone would not be sufficient.

21. *Moving payments—nonprofit organizations*—a. *General.* A relocated or discontinued nonprofit organization is eligible for actual reasonable moving expenses. The State shall determine the amount of the payment by one of the methods listed below.

b. *Actual reasonable moving expenses*—(1) *Receipted bills.* A relocated or discontinued nonprofit organization is eligible for actual reasonable moving expenses. Such payments must be supported by receipted bills or other evidence of expenses incurred.

(2) *Estimated cost.* The estimated cost of a move may be used as the basis of payment as follows:

(a) *Self moves.* In the case of a self move, the nonprofit organization may be paid actual reasonable moving expenses under paragraph 21b(1) or may be paid an amount to be negotiated between the State and the organization, not to exceed the lower of two firm bids or estimates obtained by the State or prepared by qualified State estimators other than the employee handling the claim.

(b) *Moving expense finding.* A State may adopt a procedure by which a qualified State employee, other than the employee handling the claim, makes a moving expense finding not to exceed $500.

22. *Advertising signs*—a. *General.* The following policies should be followed in determining payments to be made for the moving of advertising signs.

b. *Real property.* If under State law, the sign is considered to be a part of real property, Federal-aid funds may participate in payments made to the owner of real property for his right, title and interest in the sign; or for the removal and relocation of the sign. Removal and relocation payments shall be made to a sign owner only in mitigation of costs on a cost-to-cure basis and shall not exceed the cost to acquire the right, title and interest in said sign, less salvage value.

c. *Personal property.* Where the sign is, under State law, considered to be personal property and is within the highway taking, the actual cost of dismantling, transportation (not to exceed 50 miles) and reerection is eligible for Federal fund participation. There will be instances where the cost of moving a sign which is considered personal property would exceed its value. In such cases if the owner is agreeable, he may be paid a negotiated amount not to exceed the value of the sign in place less salvage value, if any. The owner of the sign could then remove it or abandon it at his election. In determining the negotiated payment, consideration should be given to the cost of disposal if the sign is to be abandoned by the owner. No payment should actually be made to the sign owner for the value of the sign in place until the sign has been actually removed or the sign owner's payment has been adjusted to reflect the State's anticipated cost of removing the sign. The State shall document the record to show that the settlement does actually result in a savings over the actual moving costs as set forth in paragraph 19b(2) of this memorandum. The settlement cost for the value in place of the sign should not exceed the cost of moving the sign to the nearest available comparable site where a sign may legally be located or the owner's place of business, with the maximum moving costs being limited to the cost of moving a distance of 50 miles.

d. *In lieu of actual moving expenses.* A relocated sign generally will not qualify for the optional payment under the provisions of title 23, United States Code, section 505(c). Special situations where it is felt this provision of law would be applicable should be submitted to the Chief Counsel for an opinion.

23. *Replacement housing payments—General*—a. *General provisions.* In addition to other payments authorized by this memorandum, individuals and families relocated from dwellings, including condominium or cooperative apartments, on real property acquired for a Federal or Federal-aid project are entitled to replacement housing payments in accordance with this memorandum.

b. *State inspection for decent, safe, and sanitary.* Before making payment to the relocatee the State must have inspected the replacement dwelling and determined that it meets the standards for decent, safe and sanitary housing. The State may utilize the services of any public agency ordinarily engaged in housing inspection to make the inspection. Such determination by the State that a dwelling meets the standards for decent, safe and sanitary housing is made solely for the purpose of determining the eligibility of relocated individuals and families for payments under this memorandum and is not a representation for any other purpose.

c. *Statement of eligibility to lending agency.* Where a relocatee otherwise qualifies for a replacement housing payment except that he has not yet purchased or occupied a suitable replacement dwelling, the State, after inspecting the proposed dwelling and finding that it meets the standards set forth in paragraph 5 of this memorandum for decent, safe, and sanitary dwellings, shall upon the purchaser's request, state to any interested party, financial institution or lending agency, that the relocatee will be eligible for the payment of a specific sum provided he purchases and occupies the inspected dwelling by a specified date, which shall be within 1 year from the date on which the purchaser was required to move from the dwelling taken for the highway project.

d. *Application for replacement housing payments*—(1) *General requirements.* Application for replacement housing payments shall be in writing on a form provided by the State. The application shall be filed with the appropriate office within the time limit provided by the State law or regulation. In the absence of State law or regulation the application shall be filed no later than either

18 months after the date on which the displaced individual or family was required to move from the dwelling taken for the project, or 6 months after final adjudication of a condemnation case, whichever is later.

(2) *Decent, safe and sanitary.* In the application, the individual or family must indicate that, to the best of their knowledge and belief, the replacement dwelling meets the standards for decent, safe and sanitary housing established in paragraph 5 of this memorandum and that they are eligible for the payment requested. Before any such payment is made to the relocatee the State must have made the determination that the dwelling is decent, safe, and sanitary as required by paragraph 23b of this memorandum.

(3) *To whom payment made.* The payment described in this paragraph may be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, directly to the lessor for rent or the seller for use towards the purchase of a decent, safe and sanitary dwelling. In cases where an applicant otherwise qualifies for a replacement housing payment, and upon his specific request in the application, the State may make payments into escrow prior to the relocatee's moving.

e. *Advance replacement housing payment in condemnation cases.* No property owner should be deprived of the earliest possible benefits of a replacement housing payment to which he is rightfully due. An advance replacement housing payment can be computed and paid to a property owner if the determination of the State's acquisition price will be delayed pending the outcome of condemnation proceedings. Since the amount of the replacement housing payment cannot be determined due to the pending condemnation proceeding, a provisional replacement housing payment may be calculated by deeming the State's maximum offer for the property as the acquisition price. Payment of such amount may be made upon the owner-occupant's agreement that (1) upon final determination of the condemnation proceeding the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the average price required to acquire a comparable decent, safe and sanitary dwelling; and (2) if the amount awarded in the condemnation proceeding as the fair market value of the property acquired plus the amount of the recomputed replacement housing payment exceeds the cost of an average comparable dwelling, he will refund to the State highway department, from his judgment, an amount equal to the amount of the excess. However, in no event, shall he be required to refund more than the amount of the replacement housing payment advanced. If the property owner does not agree to such adjustment, the replacement housing payment shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

f. *Ownership of replacement dwelling prior to displacement.* Any eligible person that has obtained legal ownership of a replacement dwelling before he is displaced and occupies the replacement dwelling within 1 year from the date he is required to move is eligible for the replacement housing payment if the dwelling meets the requirements of paragraph 5 of this memorandum or is improved to meet those requirements within the 1-year period.

g. *Partial take.* (1) Where a dwelling is located on a tract normal for residential use in the area, the replacement housing payment shall be determined by subtracting the "before value" of the property from the estimated selling price of a comparable dwelling on a lot typical for the area.

(2) Where a dwelling is located on a tract larger than normal for residential use in the area, the replacement housing payment shall be determined by estimating the value of the dwelling at the present location on a homesite typical in size for the area and deducting this amount from the average selling price of a comparable dwelling on a site typical for the area.

(3) Where a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, the replacement housing payment shall be determined by estimating the value of the dwelling at the present location on a homesite typical for the area and zoned for residential use and deducting this amount from the average selling price of a comparable dwelling on a typical residential homesite for the area.

h. *Multiple occupancy of same dwelling unit.* If two or more eligible relocatees occupy the same dwelling unit, they should be treated as a single unit in computing the amount of the replacement housing payment due. In order to receive payment, such relocatees would not be required to relocate together but all relocatees must move to decent, safe and sanitary housing. The payment should be made to them jointly with the apportionment to be made by the relocatees.

i. *Joint residential and business use.* Where displaced individuals or families occupy living quarters on the same premises as a displaced business, farm or nonprofit organization, such individuals or families are separate displaced persons for purposes of determining entitlement to relocation payments.

j. *Delivery of payment checks.* The person or persons who establish the estimate of value of replacement housing payment shall not negotiate for the parcel nor deliver the payment to the relocatee. This also is applicable to situations where such payments and services are being administered by another Federal, State, or local agency under authority of a contract or agreement.

24. *Replacement housing payment to owner-occupant for 1 year or more who purchases*—a. *Replacement housing payment.* A displaced owner-occupant of a one-, two-, or three-family dwelling is eligible for a replacement housing payment not to exceed $5,000, which when added to the amount for which the State acquired his dwelling equals the average price of a comparable dwelling if:

(1) He actually owned and occupied the acquired dwelling for not less than 1 year prior to the initiation of negotiations for such property, or if he moves in "reasonable expectation" he must own and occupy the acquired dwelling for not less than 1 year prior to the date of his move;

(2) The property was acquired from him by the State; and

(3) He purchases and occupies decent, safe and sanitary replacement housing.

b. *Requirements to receive payment.* To receive a replacement housing payment an otherwise eligible owner-occupant must have purchased and occupied decent, safe and sanitary housing (not necessarily comparable) not later than 1 year subsequent to the date on which he was required to move from the dwelling unit acquired for the project.

c. *Methods of establishing average price.* The average price of a comparable dwelling shall be established by one of the following methods:

(1) *Three comparables.* The State may determine the average price of a comparable dwelling by selecting at least three comparable dwellings representative of the dwelling unit to be acquired, which are available on the private market and meet the criteria in paragraph 4i of this memorandum. Selection of comparables must be by a qualified State employee who is familiar with real property values and real estate transactions. The selected comparables must be the most nearly comparable and equal to or better than the subject property.

(a) *Adjustment.* Since the asking price on the market typically exceeds the actual selling price, the asking price of the selected comparable usually will require a downward adjustment. The amount of the adjustment shall be determined by comparing the asking prices and actual selling prices of recent sales. After such adjustment has been made to the selected comparables the probable selling price of the comparables shall be arithmetically averaged. The amount by which the arithmetic average of the probable selling price of the comparables as described herein exceeds the acquisition payment, up to a maximum of $5,000, will be the basis upon which payment for replacement housing shall be made. If this method is used the State shall develop from the market a factor or percentage representing the average difference between the asking price and the actual selling price of recent sales. This factor or percentage shall be kept current.

(b) *Less than three comparables.* Based upon justification from the State and prior approval of the division engineer, on a parcel basis, less than three comparables may be used when they meet the criteria of paragraph 4h of this memorandum.

(2) *Locality-wide study.* In lieu of the above method, the State may make a locality-wide study which will develop the probable average selling price of various classes of dwelling units available on the market. In large urban areas this survey may be confined to one area of the city or may cover several different areas if they are comparable and equally accessible to public services and places of employment. In order to assure the greatest comparability of dwellings in any locality-wide study to the dwelling being acquired, the study shall be divided into classifications as to the type of construction, number of rooms and price ranges. Adequate classifications shall be established so that the average prices derived therefrom will provide a meaningful and proper basis for establishing a schedule of fixed payments to owner-occupants.

(3) *Alternate method.* As an alternate to (1) and (2) above the State may develop a different method of determining the average price of a comparable dwelling and submit it to the division engineer for his prior approval. Upon acceptance by the division engineer the State may use such procedure in lieu of the alternate listed above.

d. *Where comparable replacement dwellings not available.* Where it is not possible to establish the average price of a "comparable" dwelling by the methods set forth in paragraph 24c above, one of the following methods in the order listed would be acceptable upon prior approval of the division engineer.

(1) If other housing is available in the area (that is comparable except that it is not decent, safe and sanitary), the supplementary payment may be determined by estimating the cost to correct the decent, safe and sanitary deficiencies, adding this amount to the selling price of the replacement housing which is not decent, safe and sanitary, and comparing this amount with the amount paid the relocatee for his dwelling on an area of land typical in size for a homesite in the general area.

(2) When there is no other housing available in the area and the owner elects to retain and move his dwelling which is not decent, safe and sanitary, the replacement housing payment may be determined by estimating the amount paid for the dwelling at the present location on an area of land

typical in size for a homesite in the general area and deducting this amount from the estimated selling price of the dwelling, corrected to decent, safe and sanitary standards on a comparable site.

(3) Where there is no housing available for comparison and the owner elects to retain and move a decent, safe and sanitary dwelling, the replacement housing payment may be determined by estimating the amount paid for the dwelling at the present location on an area of land typical in size for a homesite in the general area and deducting this amount from the estimated selling price of the dwelling relocated on a comparable homesite.

(4) This method may only be used when the cost of replacement housing determined by (1), (2), and (3) above exceeds the acquisition cost, plus the $5,000 replacement housing limit. The replacement housing payment in these cases may be determined by estimating the amount paid for the dwelling at the present location on an area of land typical in size for a homesite in the general area and deducting this amount from the estimated selling price of a new comparable, decent, safe, and sanitary dwelling on a comparable homesite.

e. *Combined payments not to exceed $5,000.* If an owner-occupant is otherwise qualified for a payment under this paragraph but has previously received a payment under paragraph 25, the amount of such payment received under paragraph 25 shall be deducted from the amount to which he is entitled under this subparagraph. In no event may the combined payments exceed $5,000.

25. *Replacement housing payments to owner-occupants for 1 year or more who rents*—a. *Replacement housing payment.* A displaced owner-occupant of a one-, two- or three-family dwelling who has elected not to purchase a replacement dwelling under paragraph 24 but wishes to rent is eligible for a replacement housing payment not to exceed $1,500, if:

(1) He actually owned and occupied the acquired dwelling for not less than 1 year prior to the initiation of negotiations for such property, or if he moves in "reasonable expectation" he must have owned and occupied the acquired dwelling for not less than 1 year prior to the date of his move;

(2) The property was acquired from him by the State; and

(3) He rents and occupies decent, safe and sanitary replacement housing.

b. *Computation of payment.* The payment shall be the lesser of the following amounts not to exceed $1,500:

(1) *Twelve percent of acquisition price.* A sum equal to the difference, if any, between the cost of renting a comparable dwelling for the next 2 years and 12 percent of the acquisition price of the property taken; or

(2) *Amount under "Purchase" Eligibility.* The amount which the owner-occupant would have received had he elected to receive a replacement housing payment under paragraph 24.

c. *Requirements to receive payment.* To receive this payment an otherwise eligible owner-occupant must have rented and occupied a decent, safe, and sanitary replacement dwelling not later than one year subsequent to the date on which he was required to move from the dwelling unit acquired for the project.

26. *Replacement housing payment to owner-occupant for less than 1 year but not less than 90 days who purchases*—a. *Replacement housing payment.* A displaced owner-occupant of a one-, two-, or three-family dwelling who does not qualify for a replacement housing payment under paragraph 24 is eligible for an amount not to exceed $1,500 if:

(1) He actually owned and occupied the acquired dwelling for less than 1 year but not less than 90 days prior to the initiation of negotiations for such property, or if he moves in "reasonable expectation" he must have owned and occupied the acquired dwelling not less than 90 days prior to the date of his move;

(2) The property was subsequently purchased by the State; and

(3) He purchases and occupies decent, safe and sanitary replacement housing.

b. *Computation of payment.* The payment, not to exceed $1,500 is the amoun, if any, which is necessary to make a downpayment on a replacement dwelling.

(1) *Determination of amount necessary.* The determination of the amount necessary for a downpayment shall be based on the amount a relocatee would have had to pay if the purchase of a comparable dwelling was financed with a conventional loan.

(2) *Payment not to exceed.* This payment shall not exceed the amount which the owner-occupant would have received had he been eligible for a payment under paragraph 24 of this memorandum.

c. *Payment must be applied to downpayment.* The full amount of the replacement housing payment (or its equivalent) must be applied to the downpayment, including closing costs.

d. *Requirement to receive payment.* To receive a replacement housing payment an otherwise eligible owner-occupant must purchase and occupy a decent, safe and sanitary replacement dwelling (not necessarily comparable) not later than 1 year subsequent to the date on which he was required to move from the dwelling unit acquired for the project.

e. *Combined payment not to exceed $1,500.* If an owner-occupant is otherwise qualified for payment under this paragraph but has previously received a payment under paragraph 27, the amount of such payment previously received shall be deducted from the amount he is entitled to under this paragraph. In no event shall the combined total payment exceed $1,500.

27. *Replacement housing payment to owner-occupant for less than 1 year but not less than 90 days who rents*—a. *Replacement housing payment.* A displaced owner-occupant of a one-, two- or three-family dwelling who does not qualify for payment under paragraph 24 and who has elected to rent shall be eligible for a replacement housing payment not to exceed $1,500 if:

(1) He actually owned and occupied the acquired dwelling for less than 1 year but not less than 90 days prior to the initiation of negotiations for such property, or if he moves in "reasonable expectation" he must have owned and occupied the acquired dwelling for not less than 90 days prior to the date of his move;

(2) The property was acquired from him by the State; and

(3) He rents and occupies decent, safe and sanitary replacement housing.

b. *Computation of payment.* The payment, not to exceed, $1,500, shall be the lesser of:

(1) *Difference between rent and 12 percent.* A sum equal to the difference, if any, between that cost of renting a comparable dwelling for the next 2 years and 12 percent of the acquisition price of the property taken.

(2) *Amount under eligibility to purchase.* The amount which the owner-occupant would have received had he been eligible for a payment under paragraph 24.

c. *Requirement to receive payment.* To receive a replacement housing payment an otherwise eligible owner-occupant must have rented and occupied a decent, safe and sanitary replacement dwelling not later than 1 year subsequent to the date on which he was required to move from the dwelling unit taken for the project.

28. *Replacement housing payment to tenant-occupant for not less than 90 days who rents*—a. *Replacement housing payment.* A displaced tenant is eligible for a replacement housing payment not to exceed $1,500 if:

(1) He has been in occupancy for not less than 90 days prior to the initiation of negotiations for the dwelling, or if he moves in "reasonable expectation" he must have been in occupancy for not less than 90 days prior to the date of his move;

(2) The property was subsequently purchased by the State; and

(3) He rents and occupies decent, safe, and sanitary replacement housing.

b. *Computation of payment.* The payment, not to exceed $1,500 shall be determined by subtracting from the amount necessary to rent a comparable dwelling for the next 2 years the following amount:

(1) 24 times the average monthly rental paid by the relocated individual or family during the last 6 months if such rental is reasonable, or the average rent, if reasonable, during the time of occupancy if such occupancy is less than 6 months, prior to being required to move, or if such rent is not reasonable.

(2) 24 times the economic rent established by the State for the dwelling unit.

c. *Requirement to receive payment.* To receive a replacement housing payment an otherwise eligible tenant must have rented and occupied a decent, safe, and sanitary replacement dwelling not later than 1 year subsequent to the date on which he was required to move from the dwelling unit acquired for the project.

29. *Replacement housing payment to tenant-occupant for not less than 90 days who purchases*—a. *Replacement housing payment.* A displaced tenant is eligible for a replacement housing payment not to exceed $1,500 if:

(1) He has been in occupancy for not less than 90 days prior to the initiation of negotiations for the property, or if he moves in "reasonable expectation" he must have been in occupancy for not less than 90 days prior to the date of his move;

(2) The property was subsequently acquired by the State; and

(3) He purchases and occupies decent, safe and sanitary replacement housing.

b. *Computation of payment.* The payment, not to exceed $1,500, shall be the amount necessary to make a downpayment on a comparable dwelling. Determination of the amount "necessary" for such downpayment shall be based on the amount that the relocatee would have had to pay if the purchase of a comparable dwelling was financed by a conventional loan.

c. *Replacement housing payment applied to downpayment.* The full amount of the replacement housing payment (or its equivalent) must be applied to the downpayment, including closing costs.

d. *Combined payment not to exceed $1,500.* If a tenant who otherwise qualifies for a payment under this paragraph has previously received a payment under paragraph 28, the amount of such prior payment shall be deducted from the amount he is otherwise eligible for under this paragraph.

e. *Requirement to receive payment.* To receive a replacement housing payment an otherwise eligible tenant must have purchased and occupied a decent, safe and sanitary replacement dwelling not later than 1 year subsequent to the date on which he was required to move from the dwelling unit acquired for the project.

30. *Replacement housing payment to tenant of sleeping room who rents.*—a. *Replacement housing payment.* A displaced tenant of a sleeping room who rents replacement

housing is eligible for a replacement housing payment not to exceed $1,500 if:

(1) He has been in occupancy for not less than 90 days prior to the initiation of negotiations for the property, or if he moves in "reasonable expectation" he must have been in occupancy for not less 90 days prior to the date of his move;

(2) The property was subsequently acquired by the State; and

(3) He rents and occupies decent, safe and sanitary replacement housing.

b. *Computation of payment.* The payment, not to exceed $1,500 shall be determined by subtracting from the amount necessary to rent a comparable room for the next 2 years the following amount:

(1) 24 times the average monthly rental paid by the relocated individual or family during the last 6 months if such rental is reasonable, or the average rent, if reasonable, during the time of occupancy if such occupancy is less than 6 months, prior to being required to move; or if such rent is not reasonable

(2) 24 times the economic rent established by the State for the dwelling unit.

c. *Requirement to receive payment.* To receive a replacement housing payment an otherwise eligible tenant must have rented and occupied decent, safe, and sanitary replacement housing not later than 1 year subsequent to the date on which he was required to move from the dwelling unit acquired for the project.

31. *Mobile homes—General*—a. *Federal participation—Real property.* Federal funds will be eligible for participation in the cost of acquiring a mobile home when they are considered realty under State law.

b. *Federal participation—Personal property acquired.* Federal funds will be eligible for participation in the cost of acquiring a mobile home when they are considered personalty under State law under the following conditions:

(1) The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost; or

(2) The mobile home is not considered to be a decent, safe, and sanitary dwelling unit. A mobile home is to be considered to be decent, safe, and sanitary if it meets the standards set forth in paragraph 5 of this memorandum except that the space requirements are reduced to a minimum of 150 square feet of habitable floor space for the first occupant and a minimum of 70 square feet of habitable floor space for each additional occupant and that one means of egress is acceptable.

c. *Occupancy requirements.* The 1-year and 90-day occupancy requirements shall be calculated on the basis of the time the owner or tenant has occupied the mobile home on the site from which he is relocated.

d. *Moving expenses.* The cost of moving a mobile home on an actual cost or moving cost finding may include the cost of detaching and reattaching fixtures and appurtenances where applicable. Where a schedule is used the cost of detaching and reattaching is not separately reimbursable but considered part of the moving allowance.

e. *Partial acquisition of mobile home park.* Where the State determines that a sufficient portion of a mobile home park is taken to justify the operator of such park to move his business or go out of business the owners and occupants of the mobile home dwellings not within the actual taking but who are forced to move would be eligible to receive the same payments as though their dwellings were within the actual taking.

f. *Mobile homes as replacement dwellings.* (1) A mobile home may be considered a replacement dwelling provided it substantially meets applicable State and Federal requirements for decent, safe, and sanitary dwellings.

(2) Any State which maintains that mobile homes cannot be considered as replacement housing under State law should be requested to submit an opinion from the chief legal advisor of the highway department in support of that position. The opinion should then be forwarded by the division through the region for Washington office review and advice.

g. *Compuation on next highest type.* When a comparable mobile home dwelling is not available it will be necessary to calculate the replacement housing payment on the basis of the next highest type of dwelling that is available and meets the applicable requirements and standards, i.e., a higher type mobile home or a conventional dwelling.

32. *Relocation payments—owner-occupant of both the mobile home and site*—a. *Acquisition of both mobile home and site.* Upon acquisition of both mobile home and site, the owner of both the mobile home and the site upon which it is located would be entitled to the following payments:

(1) The fair market value of the mobile home and the site. The mobile home will be considered to include any attachments and auxiliary buildings on the site;

(2) Reasonable and necessary expenses incidental to the transfer of the property acquired;

(3) Moving costs of personal property on the following basis, at the owner's election:

(a) Actual cost; or

(b) Schedule plus $100.

(4) *Replacement housing payment.* (a) If the 1-year residency requirement is met, and the owner purchases and occupies a replacement dwelling, the replacement housing payment would be computed on the basis of the difference between the amount paid for the mobile home and site and the estimated cost of acquiring a comparable mobile home and site but in no event to exceed $5,000; or

(b) If the 1-year residency requirement is met, and the owner elects to rent a replacement dwelling, the replacement housing payment would be calculated in accordance with paragraph 25; or

(c) If the 1-year residency requirement is not met but the 90-day residency requirement is met, and the owner elects to rent a replacement dwelling, the replacement housing payment would be calculated in accordance with paragraph 27; or

(d) If the 1-year residency requirement is not met but the 90-day residency requirement is met and the owner elects to purchase a replacement dwelling, the replacement housing payment would be computed on the basis of the amount necessary to make a downpayment on a comparable mobile home and site not to exceed $1,500 or the amount which the owner-occupant would have received had he been eligible for a payment under subparagraph (4)(a) above, whichever is the lesser. The full amount of replacement housing payment (or its equivalent) must be applied to the downpayment, including closing costs.

b. *Acquisition of site only.* Upon acquisition of the site, but not the mobile home situated upon the site and the mobile home is required to be moved, an owner of the mobile home and the site would be entitled to the following payments:

(1) The fair market value of the site;

(2) Reasonable and necessary expenses incidential to the transfer of the site to the State;

(3) The cost of moving the mobile home and personal property, if any, which cannot be moved with the mobile home on the following basis, at the owner's election:

(a) Actual cost, or

(b) Schedule plus $100.

(4) *Replacement housing payment.* (a) If the 1-year residency requirement is met, and the owner purchases and occupies a replacement site, a payment based on the difference between the amount paid for the site and the estimated cost of acquiring a comparable site, but in no event shall the payments under subparagraph (3) and (4)(a) exceed $5,000; or

(b) If the 1-year residency requirement is met, and the owner elects to rent a replacement site, a payment based on a sum equal to the difference, if any, between the cost of renting a comparable site for the next 2 years and 12 percent of the acquisition price of the site acquired not to exceed $1,500; or

(c) If the 1-year residency requirement is not met but the 90-day residency requirement is met, and the owner elects to rent a replacement site, a payment based on the difference between the cost of renting a comparable site for the next 2 years and 12 percent of the acquisition price of the site acquired; or

(d) If the 1-year residency requirement is not met but the 90-day residency requirement is met and the owner elects to purchase a replacement site, he is eligible to receive the amount necessary for a downpayment on a replacement site not to exceed $1,500 or the amount which the owner-occupant would have received had he been eligible for a payment under section (4) above, whichever is the lesser. The full amount of the replacement housing payment (or its equivalent) must be applied to the downpayment, including closing costs.

33. *Relocation payments—Owner of both mobile home and site—Tenant occupied*—a. *Acquisition of both mobile home and site.* Upon acquisition of both mobile home and site, the owner of the mobile home and the site upon which it is located would be entitled to the following payments:

(1) The fair market value of the mobile home and site. The mobile home will be considered to include any attachments and auxiliary buildings on the site.

(2) Reasonable and necessary expenses incidental to the transfer of the property acquired.

(3) Actual moving costs of owner's personal property, if any, not acquired as a part of the mobile home.

b. *Acquisition of site only.* Upon the acquisition of the site, but not the mobile home situated upon the site and the mobile home is required to be moved, an owner of the mobile home and the site would be entitled to the following payments:

(1) The fair market value of the site;

(2) The reasonable and necessary expenses incidental to the transfer of the site to the State;

(3) The actual cost of moving the mobile home.

(4) Actual moving costs of owner's personal property, if any, which cannot be moved with the mobile home.

34. *Relocation payments—Owner of mobile home but not site—Owner occupied*—a. *Acquisition of mobile home.* Upon the acquisition of the mobile home, the owner of the mobile home would be entitled to the following payments:

(1) The fair market value of the mobile home. The mobile home will be considered to include any attachments and auxiliary buildings owned by the mobile homeowner on the site.

(2) Reasonable and necessary expenses incidental to the transfer of the mobile home to the State;

(3) Moving costs of personal property on the following basis at the owner's election:

(a) Actual cost,

(b) Schedule plus $100.

(4) *Replacement housing payment.* (a) If the 1-year residency requirement is met and he purchases and occupies a replacement dwelling, the replacement housing payment would be computed on the basis of the

difference between the amount paid for the mobile home and the estimated cost of acquiring a comparable mobile home plus 24 times the difference between the site rental currently being paid and the estimated site rental that would have to be paid to obtain a comparable site for the next 24-month period. In no event shall the payment exceed $5,000; or

(b) If the 1-year residency requirement is met, and election is made to rent a replacement dwelling, the replacement housing payment would be calculated in accordance with paragraph 25; or

(c) If the 1-year residency requirement is not met but the 90-day residency requirement is met, and election is made to rent a replacement dwelling, the replacement housing payment would be calculated in accordance with paragraph 27; or

(d) If the 1-year residency requirement is not met but the 90-day residency requirement is met and he elects to purchase a replacement dwelling, he is entitled to the amount necessary to make the downpayment up to $1,500 or the amount which the owner-occupant would have received had he been eligible for a payment under subparagraph (4)(a) above, whichever is the lesser. The full amount of the replacement housing payment (or its equivalent) must be applied to the downpayment including closing costs.

b. *Mobile home moved.* If the mobile home is not acquired but is required to be moved, the owner of the mobile home would be entitled to the following payments:

(1) The cost of moving the mobile home and personal property, if any, which cannot be moved with the mobile home on the following basis, at the owner's election:

(a) Actual cost,

(b) Schedule plus $100.

(2) *Replacement housing payment.* (a) If he met the 90-day residency requirement he would be entitled to receive a replacement housing payment computed on the basis of 24 times the difference between the amount of the monthly rent paid for the mobile home site and the estimated site rental that would have to be paid for a comparable site for the next 24-month period but such payment shall not exceed $1,500.

(b) If he met the 90-day residency requirement he would be eligible to receive the amount necessary for a downpayment on a replacement site subject to the following limitation. The downpayment on a replacement site shall not exceed $1,500 or the amount which the owner-occupant would have received had he been eligible for a payment under Paragraph 24, whichever is the lesser. The full amount of the replacement housing payment (or its equivalent) must be applied to the downpayment, including closing costs.

35. *Relocation payments—owner of mobile home only—Tenant occupied*—a. *Acquisition of mobile home.* Upon the acquisition of the mobile home, the owner of the mobile home would be entitled to the following payments:

(1) The fair market value of the mobile home. The mobile home will be considered to include any attachments and auxiliary buildings owned by the owner of the mobile home on the site.

(2) Reasonable and necessary expenses incidental to the transfer of the mobile home to the State.

(3) Actual moving costs of an owner's personal property, if any, not acquired as a part of the mobile home.

b. *Mobile home moved.* If the mobile home is not acquired but is required to be moved, the owner of the mobile home would be entitled to the following payments:

(1) The actual cost of moving the mobile home.

(2) Actual moving costs of owner's personal property, if any, which cannot be moved with the mobile home.

36. *Relocation payments for mobile home tenants.* A displaced tenant of a mobile home would be entitled to receive the following payments:

a. Moving expenses of personal property on the basis of actual expense, or a schedule plus $100, at tenant's election.

b. Replacement housing payment calculated in accordance with paragraph 28 or 29 of this memorandum.

37. *Incidental expenses on transfer of real property.* In addition to any other amounts authorized under this memorandum, owners of real property acquired for a Federal-aid highway project are entitled to receive payments for the reasonable and necessary expenses in transferring such property to the State. Such expenses may include:

a. *Recording fees, transfer fees and similar expenses.* Recording fees, transfer taxes, and any similar expenses incidental to conveying such property. The following are examples of reimbursable expenses:

(1) If the property owner would normally have to pay a charge by the lending agency for the execution of a release of mortgage or preparation of a deed, it would be eligible for reimbursement.

(2) Normally, the property owner's attorney fee is not eligible. It would be borne by the property owner. If, however, this charge were to fall into the category of escrow agent, it may be eligible. Where it is necessary to go into court in order to complete the transaction, as where a minor or incompetent is involved, reasonable costs for such services would be eligible.

b. *Mortgage prepayment penalty.* Penalty costs for prepayment of any mortgage entered into in good faith encumbering such real property if such mortgage is on record or has been filed for record under applicable State law on the date of final approval by the State of the location of such project. The loss of favorable mortgage interest rates is not a reimbursable cost item in the repurchase of a dwelling under the law.

c. *Real estate taxes.* The pro rata portion of real property taxes paid by the owner which are allocable to a period subsequent to the date of vesting of title in the State, or the effective date of possession by the State, whichever is earlier. The following should be used as guidelines in determining eligibility:

(1) All real property taxes paid by the owner are eligible for Federal participation on a pro rata basis. This rule would apply even though the State, county, and/or city taxable year began at different times of the year.

(2) Federal funds may not participate in the payment of real property taxes levied on or after the date title passes to the State even though the highway department may be required by State law to pay such taxes.

(3) The proration of taxes on partial takes would be done on a calendar year basis and on a before and after value bases.

(4) The owner would not be eligible for higher tax assessments for replacement housing since such charge is not included in the law.

38. *Appeals*—a. *Notification of appeal rights.* A relocatee shall be informed of his right to appeal and the procedures for making such appeal if he is dissatisfied with a determination as to his eligibility for a payment or of an amount of a payment offered under this memorandum. If such procedures are adequately covered by the brochure, this may be used as the means of notification.

b. *State to establish procedures.* The head of the State agency shall establish procedures, consistent with applicable State law, for his review of appeals under this memorandum. Such procedures shall provide, at the minimum, that any person taking such an appeal shall be given a full opportunity to be heard and a prompt decision giving reasons in support of the result reached. The procedures should provide for possible resolution of an appeal at an echlon below the head of the State agency with the final appeal to the head of the State agency.

39. *Records*—a. *Relocation records—general.* The State agency shall maintain relocation records showing:

(1) State and Federal project and parcel identification.

(2) Names and addresses of displaced persons and their complete original and new addresses and telephone numbers (if available after reasonable effort to obtain where relocatee moved without assistance).

(3) Personal contacts made with each relocated person, including for each relocated person:

(a) Date of notification of availability of relocation payments and services;

(b) Name of the official offering or providing relocation assistance;

(c) Whether the offer of assistance in locating or obtaining replacement housing was declined or accepted and the name of the individual accepting or declining the offer;

(d) Dates and substance of subsequent follow-up contacts;

(e) Date on which the relocated person was required to move from the property acquired for the project;

(f) Date on which actual relocation occurred and whether relocation was accomplished with the assistance of the State agency, referrals to other agencies, or without assistance. If the latter, an approximate date for actual relocation is acceptable; and

(g) Type of tenure before and after relocation.

(4) For displacements from dwelling:

(a) Number in family;

(b) Type of property (single detached, multifamily, etc.);

(c) Value, or monthly rent;

(d) Number of rooms occupied.

(5) For relocated businesses:

(a) Type of business;

(b) Whether continued or terminated;

(c) If relocated, distance moved (estimate acceptable).

b. *Moving expense records.* The State agency shall maintain records containing the following information regarding moving expense payments:

(1) The date the removal of personal property was accomplished;

(2) The location from which and to which the personal property was moved;

(3) If the personal property was stored temporarily, the location where the property was stored, the duration of such storage, and justification for the storage and the storage charges;

(4) Itemized statement of the costs incurred supported by receipted bills or other evidence of expense;

(5) Amount of reimbursement claimed, amount allowed and an explanation of any differences;

(6) Data supporting any determination that a business cannot be relocated without a substantial loss of its existing patronage and that it is not part of a commercial enterprise having at least one other establishment not being acquired by the State or the United States;

(7) When the payment to a business or farm operation is based on its average annual net earnings or $50,000 whichever is less, data showing how the payment was computed; and

(8) When fixed moving expense payments are made, the data called for in (3) and (4)

above need not be maintained. Instead records showing the basis on which payment was made shall be maintained.

c. *Replacement housing payment records.* The State agency shall maintain records containing the following information regarding replacement housing payments:

(1) The date of the State agency's receipt of each application for such payments;

(2) The date on which each payment was made or the application rejected;

(3) Supporting data explaining how the amount of the supplemental payment to which the applicant is entitled was calculated;

(4) The individual responsible for determining the amount of the replacement housing payment shall place in the file a signed and dated statement setting forth:

(a) The amount of the replacement housing payment;

(b) His understanding that the determined amount is to be used in connection with a Federal-aid highway project; and

(c) That he has no direct or indirect present or contemplated personal interest in this transaction nor will derive any benefit from the replacement housing payment.

(5) A statement by the State agency that in its opinion the relocated person has been relocated into adequate replacement housing.

d. *Incidental expense records.* The State agency shall maintain records showing an itemized statement of the costs incurred in paying expenses incidental to the transfer of property to the State which are supported by receipted bills or other evidence of expense.

e. *Records available for inspection.* The relocation records must be available at reasonable hours for inspection by representatives of the Federal Government who have an interest or responsibility in matters relative thereto.

40. *Reports*—a. *Quarterly report.* Form PR-1228, "Summary of Relocation Assistance and Payment Statistics" shall be submitted quarterly for periods ending March 31, June 30, September 30, and December 31, showing the information requested on the enclosed sample report form. The reports shall be furnished within 30 days after the end of the quarter which the report covers. A separate report should be submitted for the rural and urban portion of each system. The reports shall be forwarded to the Associate Administrator for Right-of-Way and Environment through the division and regional offices.

b. *Reporting to management.* The States are encouraged to establish a reporting procedure which will keep management advised as to the status of relocation of relocatees and its effect on scheduling of construction projects. For example:

(1) The total number of persons to be relocated on the project initially (reported by individuals, families, businesses, and nonprofit organizations);

(2) The total number of persons displaced, relocated this reporting period (reported by individuals, families, businesses, and nonprofit organizations);

(3) The total number of persons displaced, relocated to date (reported by individuals, families, businesses, and nonprofit organizations);

(4) The analysis of problem cases encountered or anticipated;

(5) The method proposed for resolving problem cases; and

(6) A progress analysis of relocating the remaining occupants as compared to the remaining leadtime.

[F.R. Doc. 70-17128; Filed, Dec. 18, 1970; 8:45 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7080]

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

Accumulation Trusts—"Capital Gain Distribution" Defined

On March 4, 1970, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to provide regulations under section 665(g) of the Internal Revenue Code of 1954, as added thereto by section 331(a) of the Tax Reform Act of 1969 (83 Stat. 592), was published in the FEDERAL REGISTER (35 F.R. 4054). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments so proposed are adopted subject to the change set forth below:

Section 1.665(g)-1 as set forth in the notice of proposed rule making is revised.

(Sec. 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954)

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

Approved: December 12, 1970.

JOHN S. NOLAN,
Acting Assistant Secretary of the Treasury.

In order to provide regulations under section 665(g) of the Internal Revenue Code of 1954, as added thereto by section 331(a) of the Tax Reform Act of 1969 (83 Stat. 592), the Income Tax Regulations (26 CFR Part 1) are amended by inserting the following new sections immediately after § 1.665(e)-2:

§ 1.665(g) Statutory provisions; excess distributions by trusts; definition of capital gain distributon.

SEC. 665. *Definitions applicable to Subpart D.* * * *

(g) *Capital gain distributions.* For purposes of this subpart, the term "capital gain distribution" for any taxable year of the trust means, to the extent of undistributed capital gain for such taxable year, that portion of—

(1) The excess of the amount specified in paragraph (2) of section 661(a) for such taxable year over distributable net income for such year reduced (but not below zero) by the amounts specified in paragraph (1) of section 661(a), over,

(2) The undistributed net income of the trust for all preceding taxable years.

(Sec. 665(g) as added by sec. 331(a), Tax Reform Act, 1969 (83 Stat. 592))

§ 1.665(g)-1 Capital gain distribution.

For any taxable year of a trust beginning after December 31, 1969, the term "capital gain distribution" means, to the extent of the undistributed capital gain of the trust, that portion of (a) the excess of (1) the amounts properly paid or credited or required to be distributed within the meaning of section 661(a)(2) for such taxable year over (2) distributable net income for such year reduced (but not below zero) by the amount of income required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year), over (b) the amount of such excess deemed under section 666(a) to be undistributed net income of the trust. For such taxable year the undistributed capital gain includes the total undistributed capital gain for all years of the trust beginning with the first taxable year beginning after December 31, 1968, in which income is accumulated, and ending before such taxable year.

[F.R. Doc. 70-16990; Filed, Dec. 18, 1970; 8:45 a.m.]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

SUBCHAPTER N—METAL AND NONMETALLIC MINE SAFETY

ESTABLISHMENT OF SUBCHAPTER

A new Subchapter N—Metal and Nonmetallic Mine Safety is established in Chapter I of Title 30, and Parts 55, 56, and 57 are included within the new subchapter.

RICHARD R. HITE,
Deputy Assistant Secretary for Administration.

DECEMBER 14, 1970.

[F.R. Doc. 70-17100; Filed, Dec. 18, 1970; 8:45 a.m.]

Title 32—NATIONAL DEFENSE

Chapter XVI—Selective Service System

[Amdt. 122]

PART 1605—COMPENSATED CIVILIAN EMPLOYEES

Employees of State Headquarters and Other Offices Within the State

Amendment to the Selective Service Regulations is hereby prescribed to read as follows:

Paragraph (b) of § 1605.31 is amended to read as follows:

§ 1605.31 Appointment and tenure of employees of State Headquarters and other offices within the State.

* * * * *

(b) Subject to instructions given and limitations imposed by the Director of Selective Service, the principal supervisory compensated employee in every local board or a panel of such board which has an independent staff that is

responsible only to the panel, and local board compensated employees having responsibility for supervising the work of two or more local boards shall be appointed as the "Executive Secretary" of the local board or local boards. Appointments of "Executive Secretary" shall be limited to 10 years but may be extended for additional 10-year periods by the State Director of Selective Service.

(Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460)

The foregoing amendment tc the Selective Service Regulations shall become effective upon filing with the Office of the Federal Register.

[SEAL] CURTIS W. TARR,
Director.

DECEMBER 14, 1970.

[F.R. Doc. 70-17147; Filed, Dec. 18, 1970; 8:48 a.m.]

Title 7—AGRICULTURE

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

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Expenses and Rate of Assessment and Carryover of Unexpended Funds

On December 4, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 18475), regarding proposed expenses and the related rate of assessment for the period August 1, 1970, through July 31, 1971, and carryover of unexpended funds from the period August 1, 1969, through July 31, 1970, pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Growers Administrative Committee (established pursuant to said amended marketing agreement and order), it is hereby found and determined that:

§ 905.209 Expenses and rate of assessment.

(a) Expenses: Expenses that are reasonable and likely to be incurred by the Growers Administrative Committee during the period August 1, 1970, through July 31, 1971, will amount to $168,000.

(b) Rate of assessment: The rate of assessment for said period, payable by each handler in accordance with § 905.41, is fixed at $0.006 per standard packed box of fruit.

(c) Reserve: Unexpended assessment funds in excess of expenses incurred during the fiscal period ended July 31, 1970, are carried over as a reserve in accordance with § 905.42 of said marketing agreement and order.

(d) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of fruit are now being made, (2) the relevant provisions of said amended marketing agreement and this part require that the rate of assessment fixed for a particular fiscal period shall be applicable to all assessable fruit handled from the beginning of such period, and (3) the current fiscal period began on August 1, 1970, and said rate of assessment will automatically apply to all assessable fruit beginning with such date.

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

Dated: December 15, 1970.

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

[F.R. Doc. 70-17110; Filed, Dec. 18, 1970; 8:46 a.m.]

[Orange Reg. 67, Amdt. 1; Grapefruit Reg. 69, Amdt. 2; Tangerine Reg. 40, Amdt. 3; Tangelo Reg. 40, Amdt. 2]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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 of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, grapefruit, tangerines, and tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendation by the Growers Administrative Committee reflects its appraisal of the potential marketing situation during the week in which Christmas Day occurs and for the period immediately following. Historically, there has been heavy purchasing of fresh oranges, grapefruit, tangerines, and tangelos in the terminal markets prior to Christmas Day followed by a period of slow movement immediately following the holiday. Inordinate shipments in the period of slow movement tend to depress market prices and returns to growers. Hence, the curtailment of such shipments, as hereinafter specified, is necessary to prevent a buildup of excess supplies in the markets during and immediately following the Christmas Day week in order to prevent unduly depressed market prices and returns to growers.

(3) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that 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; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective upon publication in the FEDERAL REGISTER. Domestic shipments of Florida oranges, grapefruit, tangerines and tangelos are currently regulated pursuant to Orange Regulation 67 (35 F.R. 18741), Grapefruit Regulation 69 (35 F.R. 14499, 17937), Tangerine Regulation 40 (35 F.R. 16075, 17167, 17937), Tangerine Regulation 40 (35 F.R. 16075, 17167, 17938), and Tangelo Regulation 40 (35 F.R. 14500, 19737) and, unless sooner terminated or modified, will continue to be so regulated through September 12, 1971; determinations as to the need for, and extent of, regulation under § 905.52(a)(3) of the order must await the development of the crops and the availability of information about the demand for such fruits; the recommendation and supporting information for limiting the total quantity of fresh oranges, grapefruit, tangerines, and tangelos by prohibiting shipments thereof, pursuant to said section, during the period December 23 through December 30, 1970, as herein provided, were promptly submitted to the Department after an open meeting of members of the Growers Administrative Committee on December 3, 1970, held to consider recommendations for such regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; necessary supplemental information was submitted to the Department on December 9, 1970; information regarding the provisions of the regulation recommended by the committee has been disseminated among shippers of such fruits grown in the production area, and this regulation, including the effective time thereof, is identical with the recommendations of the committees; and compliance with this regulation will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective time hereof.

Order. 1. In § 905.525 (Grapefruit Reg. 59; 35 F.R. 14499, 17937) the provisions of paragraph (a)(2) are revised to read as follows:

§ 905.525 Grapefruit Regulation 69.

(a) * * *

(2) During the period December 23 through December 30, 1970, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any grapefruit grown in the production area.

* * * * *

2. In § 905.526 (Tangelo Reg. 40; 35 F.R. 14500, 17937) the provisions of paragraph (a)(2) are revised to read as follows:

§ 905.526 Tangelo Regulation 40.

(a) * * *

(2) During the period December 23 through December 30, 1970, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any tangelos grown in the production area.

* * * * *

3. In § 905.528 (Tangerine Reg. 40; 35 F.R. 16075, 17167, 17938) the provisions of paragraph (a)(2) are revised to read as follows:

§ 905.528 Tangerine Regulation 40.

(a) * * *

(2) During the period December 23 through December 30, 1970, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any tangerines grown in the production area.

* * * * *

4. In paragraph (a) of § 905.529 (Orange Reg. 67; 35 F.R. 18741) the provisions of paragraph (a)(2) preceding subdivision (i) thereof are revised, and a new paragraph (a)(3) is added to read as follows:

§ 905.529 Orange Regulation 67.

(a) * * *

(2) Except as otherwise provided in subparagraph (3) of this paragraph, during the period December 10, 1970, through September 12, 1971, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

* * * * *

(3) During the period December 23 through December 30, 1970, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any oranges grown in the production area.

* * * * *

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

Dated, December 15, 1970, to become effective upon publication in the FEDERAL REGISTER.

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

[F.R. Doc. 70–17112; Filed, Dec. 18, 1970; 8:46 a.m.]

[Orange Reg. 67]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Regulation by Grade and Size; Correction

In the FEDERAL REGISTER issue of December 10, 1970, paragraph (a)(2)(i) of Orange Regulation 67 (35 F.R. 18741) contained an error relative to the minimum grade of oranges, except Navel, Temple, and Murcott Honey oranges, and omitted a definition of such grade, Florida No. 1 Grade, in paragraph (b) of such regulation. Such regulation is hereby corrected to read as follows:

§ 905.529 Orange Regulation 67.

(a) * * *

(2) * * *

(i) Any oranges, except Navel, Temple, and Murcott Honey oranges, grown in the production area, which do not grade at least Florida No. 1 Grade for oranges;

* * * * *

(b) Terms used in the amended marketing agreement and order shall, when used herein, have the same meanings as given to the respective terms in said amended marketing agreement and order; "Florida No. 1 Grade" shall have the same meaning as when used in section (1)(a) of Regulation 105–1.02, as amended, effective October 28, 1970, of the regulations of the Florida Citrus Commission, and all other terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meanings as given to the respective terms in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140—51.1178 of this title).

Dated: December 15, 1970.

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

[F.R. Doc. 70–17111; Filed, Dec. 18, 1970; 8:46 a.m.]

[Lemon Reg. 459]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.759 Lemon Regulation 459.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), 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, 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 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 December 15, 1970.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period December 20, 1970, through December 26, 1970, are hereby fixed as follows:

(i) District 1: 32,000 cartons;

(ii) District 2: 59,000 cartons;

(iii) District 3: 109,000 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" 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: December 17, 1970.

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

[F.R. Doc. 70–17161; Filed, Dec. 18, 1970; 8:48 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[Docket No. 70–313]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

In § 76.2, the introductory portion of paragraph (e) is amended by adding the name of the State of Mississippi, and a new paragraph (e)(12) relating to the State of Mississippi is added to read:

(12) *Mississippi.* That portion of Forrest County bounded by a line beginning at the junction of U.S. Highway 11 and the southern city limits of Hattiesburg; thence, following the southern city limits of Hattiesburg in an easterly direction to the Mississippi Central Railroad; thence, following the Mississippi Central Railroad in a southeasterly direction to Old Highway 24; thence, following Old Highway 24 in a westerly direction to the Hess pipeline; thence, following the Hess pipeline in a southwesterly direction to the Mississippi Power Co. line; thence, following the Mississippi Power Co. line in a northwesterly direction to U.S. Highway 11; thence, following U.S. Highway 11 in a northeasterly direction to the southern city limits of Hattiesburg.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

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

The amendment quarantines a portion of Forrest County, Miss., because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined portion of such county.

The amendment imposes certain further restrictions necessary to prevent the interstate spread of hog cholera and must be made effective immediately to accomplish its purpose in the public interest. 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 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 16th day of December 1970.

F. J. MULHERN,
Acting Administrator, Agricultural Research Service.

[F.R. Doc. 70–17152; Filed, Dec. 18, 1970; 8:48 a.m.]

[Docket No. 70–314]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

In § 76.2, the introductory portion of paragraph (e) is amended by adding the name of the State of Minnesota; paragraph (f) is amended by deleting the name of the State of Minnesota; and a new paragraph (e)(13) relating to the State of Minnesota is added to read:

(13) *Minnesota.* (i) That portion of Freeborn County comprised of London, Moscow, and Oakland Townships.

(ii) That portion of Mower County comprised of Austin, Lansing, Lyle, Nevada, Red Rock, and Windom Townships.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

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

The amendment quarantines portions of Freeborn and Mower Counties in Minnesota because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined portions of such Counties.

The amendment also deletes Minnesota from the list of hog cholera eradication States in § 76.2(f), and the special provisions pertaining to the interstate movement of swine and swine products from and to such eradication States under Part 76 are no longer applicable to Minnesota.

The amendment imposes certain further restrictions necessary to prevent the interstate spread of hog cholera and must be made effective immediately to accomplish its purpose in the public interest.

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 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 16th day of December 1970.

F. J. MULHERN,
Acting Administrator, Agricultural Research Service.

[F.R. Doc. 70–17153; Filed, Dec. 18, 1970; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 70–CE–20–AD; Amdt. 39–1120]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Models 65, 65–80, 65–A80, and 65–B80 Airplanes; Correction

In F.R. Doc. 70–16259 appearing at pages 18451 and 18452 in the issue of Friday, December 4, 1970, the first sentence of the preamble of the subject airworthiness directive should be corrected to read as follows:

As a result of recent FAA requirements, fatigue analyses and tests conducted by various manufacturers and because of comparable stress levels of Beech Models 65, 65–80, 65–A80, and 65–B80 airplanes, it has been determined that certain components of the wing structure on these model airplanes may have a limited fatigue life.

Issued in Kansas City, Mo., on December 11, 1970.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 70–17102; Filed, Dec. 18, 1970; 8:45 a.m.]

[Airspace Docket No. 70-EA-64]

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

Designation of Transition Area

On page 18889 of the FEDERAL REGISTER for September 2, 1970, the Federal Aviation Administration published proposed regulations which would designate a Barnesville, Ohio transition area.

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

In view of the foregoing, the proposed regulations are hereby adopted effective 0901 G.m.t., January 7, 1971.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348, sec. 6(c), Department of Transportation Act, (49 U.S.C. 1655 (c))

Issued in Jamaica, N.Y., on October 27, 1970.

WAYNE HENDERSHOT,
Acting Director, Eastern Region.

Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a Barnesville, Ohio, transition area described as follows:

BARNESVILLE, OHIO

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the center, 40°00'10" N., 81°11'30" W., of the Bradfield Airport, Barnesville, Ohio.

[F.R. Doc. 70-17103; Filed, Dec. 18, 1970; 8:45 a.m.]

[Airspace Docket No. 70-SO-74]

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

Alteration of Transition Area

On November 14, 1970, F.R. Doc. 70-15373 was published in the FEDERAL REGISTER (35 F.R. 17535), amending Part 71 of the Federal Aviation Regulations by altering the Jacksonville, N.C., transition area.

In the amendment, reference was made to the Jacksonville-Onslow County Airport. The airport name has been changed to "Albert Ellis Airport" and the geographic coordinate (ARP), "lat. 34°49'49" N., long. 77°36'42" W.," was obtained from the Airports Division. It is necessary to amend the FEDERAL REGISTER to reflect the airport name change and insert the geographic coordinate for the airport. Since this amendment is editorial in nature, notice and public procedure hereon are unnecessary and action is taken herein to amend the FEDERAL REGISTER document accordingly.

In consideration of the foregoing, effective immediately, F.R. Doc. 70-15373 is amended as follows: In line five of the Jacksonville, N.C., * * * transition area description "* * * Jacksonville-Onslow County Airport * * *" is deleted and "* * * Albert Ellis Airport (lat. 34°49'49" N., long. 77°36'42" W.) * * *" is substituted therefor.

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

Issued in East Point, Ga., on December 7, 1970.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[F.R. Doc. 70-17104; Filed, Dec. 18, 1970; 8:45 a.m.]

[Airspace Docket No. 70-SO-100]

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

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Florence, S.C., control zone.

The Florence control zone is described in § 71.171 (35 F.R. 2054 and 3755). In the description, an extension is predicated on the Florence VOR 052° and 232° radials. Effective January 7, 1971, the final approach radials for VOR RWY 23 Instrument Approach Procedure will be changed to the 049° and 229° radials, respectively. It is necessary to alter the control zone description to reflect this change. Since this amendment is minor in nature, notice and public procedure hereon are unnecessary and action is taken herein to amend the description accordingly.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., January 7, 1971, as hereinafter set forth.

In § 71.171 (35 F.R. 2054), the Florence, S.C., control zone (35 F.R. 3755) is amended as follows: "* * * 052° and 232° * * *" is deleted and "* * * 049° and 229° * * *" is substituted therefor.

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

Issued in East Point, Ga., on December 7, 1970.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[F.R. Doc. 70-17105; Filed, Dec. 18, 1970; 8:45 a.m.]

[Docket No. 10722; Amdt. 733]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (358 F.R. 5610).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20590. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC 20590, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.11 is amended by establishing, revising, or canceling the following L/MF-ADF(NDB)-VOR SIAPs, effective January 7, 1971:

Porterville, Calif.—Porterville Municipal Airport; VOR 1, Original; Canceled.

2. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAPs, effective January 7, 1971:

Atlanta, Ga.—Fulton County Airport; VOR Runway 8R, Amdt. 1; Revised.
Aurora, Ill.—Aurora Municipal Airport; VOR-A, Amdt. 2; Revised.
Cedartown, Ga.—Cornelius-Moore Field; VOR-A, Amdt. 3; Revised.
Coldwater, Mich.—Branch County Memorial Airport; VOR Runway 21, Amdt. 1; Revised.
Florence, S.C.—Florence Municipal Airport; VOR-A, Amdt. 7; Revised.
Huron, S. Dak.—W. W. Howes Municipal Airport; VOR Runway 12, Amdt. 11; Revised.
Kamuela, Hawaii—Waimea-Kohala Airport; VOR-A, Amdt. 1; Revised.
Kamuela, Hawaii—Waimea-Kohala Airport; VOR Runway 4, Amdt. 3; Revised.
Kenosha, Wis.—Kenosha Municipal Airport; VOR Runway 14, Original; Established.
Lincoln, Ill.—Logan County Airport; VOR/DME Runway 3, Amdt. 2; Revised.
Logansport, Ind.—Logansport Municipal Airport; VOR-A, Amdt. 2; Revised.
Minneapolis, Minn.—Crystal Airport; VOR-A, Amdt. 3; Revised.
Muncie, Ind.—Delaware County-Johnson Field; VOR Runway 14, Amdt. 4; Revised.
Muncie, Ind.—Delaware County-Johnson Field; VOR Runway 20, Amdt. 1; Revised.
Muncie, Ind.—Delaware County-Johnson Field; VOR Runway 32, Amdt. 2; Revised.
Porterville, Calif.—Porterville Municipal Air-

port; VOR Runway 30, Original; Established.
Rome, Ga.—Russell Field; VOR Runway 36, Amdt. 5; Revised.
San Antonio, Tex.—International Airport; VOR Runway 17, Amdt. 18; Revised.
Santa Ana, Calif.—Orange County Airport; VOR Runway 1L, Amdt. 5; Revised.
Santa Ana, Calif.—Orange County Airport; VOR Runway 19R, Amdt. 10; Revised.
Sault Ste. Marie, Mich.—Sault Ste. Marie Municipal Airport; VOR Runway 32, Amdt. 7; Revised.
South Boston, Va.—William M. Tuck Airport; VOR-A, Amdt. 2; Revised.
South St. Paul, Minn.—South St. Paul Municipal-Richard E. Fleming Field; VOR-A, Amdt. 4; Revised.
South St. Paul, Minn.—South St. Paul Municipal-Richard E. Fleming Field; VOR-B, Amdt. 4; Revised.
Hilo, Hawaii—General Lyman Field; VOR/DME-A, Amdt. 4; Revised.
Los Banos, Calif.—Los Banos Municipal Airport; VOR/DME Runway 32, Original; Established.
Smyrna, Tenn.—Smyrna Airport; VOR/DME Runway 32, Original; Established.

3. Section 97.25 is amended by establishing, revising, or canceling the following LOC-LDA SIAPs, effective January 7, 1971:

Dayton, Ohio—James M. Cox/Dayton Municipal Airport; LOC (BC) Runway 24L, Amdt. 9; Canceled.
Dayton, Ohio—James M. Cox/Dayton Municipal Airport; LOC (BC) Runway 24R, Amdt. 1; Revised.
Grand Rapids, Mich.—Kent County Airport; LOC (BC) Runway 8, Amdt. 5; Revised.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; LOC (BC) Runway 11L, Original; Canceled.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; LOC (BC) Runway 11R, Amdt. 15; Revised.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; LOC (BC) Runway 22, Amdt. 8; Revised.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; LOC Runway 29R, Original; Canceled.
Santa Ana, Calif.—Orange County Airport; LOC (BC) Runway 1L, Amdt. 1; Revised.
Santa Ana, Calif.—Orange County Airport; LOC Runway 19R, Amdt. 1; Revised.
Tacoma, Wash.—Tacoma Industrial Airport; LOC Runway 17, Original; Established.

4. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAPs, effective January 7, 1971:

Atlanta, Ga.—Fulton County Airport; NDB Runway 8R, Amdt. 1; Revised.
Burwell, Nebr.—Burwell Municipal Airport; NDB Runway 15, Original; Established.
Dalton, Ga.—Dalton Municipal Airport; NDB Runway 32, Amdt. 1; Revised.
Dayton, Ohio—James M. Cox/Dayton Municipal Airport; NDB Runway 6R, Amdt. 19; Canceled.
Dayton, Ohio—James M. Cox/Dayton Municipal Airport; NDB Runway 6L/R, Amdt. 2; Revised.
Dayton, Ohio—James M. Cox/Dayton Municipal Airport; NDB Runway 24L/R, Amdt. 9; Revised.
Florence, S.C.—Florence Municipal Airport; NDB (ADF) Runway 23, Original; Canceled.
Gadsden, Ala.—Gadsen Municipal Airport; NDB Runway 6, Amdt. 4; Revised.
Glasgow, Ky.—Glasgow Municipal Airport; NDB Runway 7, Original; Established.
Huron, S. Dak.—W. W. Howes Municipal Airport; NDB Runway 12, Amdt. 11; Revised.
Indiana, Pa.—Indiana County/Jimmy Stewart Field; NDB-A, Amdt. 1; Revised.
Jasper, Tex.—Jasper County Airport; NDB-A, Original; Established.
Jasper, Tex.—Jasper County Airport; NDB Runway 17, Amdt. 2; Revised.
Kenosha, Wis.—Kenosha Municipal Airport; NDB Runway 14, Amdt. 1; Revised.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; NDB Runway 4, Amdt. 6; Revised.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; NDB Runway 11L, Amdt. 1; Revised.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; NDB Runway 29L, Amdt. 13; Revised.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; NDB Runway 29R, Amdt. 1; Revised.
Rome, Ga.—Russell Field; NDB-A, Amdt. 5; Revised.
Sault Ste. Marie, Mich.—Sault Ste. Marie Municipal Airport; NDB Runway 32, Amdt. 3; Revised.
Sparta, Ill.—Sparta Community Airport; NDB Runway 18, Original; Established.
Texarkana, Ark.—Texarkana Municipal/Webb Field; NDB Runway 22, Original; Established.
Waukesha, Wis.—Waukesha County Airport; NDB Runway 10, Original; Established.

5. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective January 7, 1971:

Dayton, Ohio—James M. Cox/Dayton Municipal Airport; ILS Runway 6L, Amdt. 2; Revised.
Huron, S. Dak.—W. W. Howes Municipal Airport; ILS Runway 12, Amdt. 13; Revised.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; ILS Runway 4, Amdt. 11; Revised.
Minneapolis, Minn.—Minneapolis-St. Paul International Wold Chamberlain Airport; ILS Runway 29L, Amdt. 30; Revised.
Santa Ana, Calif.—Orange County Airport; ILS Runway 19R, Amdt. 1; Revised.
Texarkana, Ark.—Texarkana Municipal/Webb Field; ILS Runway 22, Original; Established.

6. Section 97.31 is amended by establishing, revising, or canceling the following Radar SIAPs, effective January 7, 1971:

Abilene, Tex.—Abilene Municipal Airport; ASR Runway 17R, Amdt. 2; Canceled.
Abilene, Tex.—Abilene Municipal Airport; ASR Runway 35L, Amdt. 2; Canceled.
Abilene, Tex.—Abilene Municipal Airport; Radar-1, Original; Established.
Atlanta, Ga.—Fulton County Airport; Radar-1, Amdt. 7; Revised.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; Radar-1, Amdt. 21; Revised.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c), 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on December 4, 1970.

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

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 F.R. 5610) approved by the Director of the Federal Register on May 12, 1969.

[F.R. Doc. 70-17036; Filed, Dec. 18, 1970; 8:45 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce

CHANGE IN CHAPTER TITLE

To implement the provisions of Reorganization Plan No. 4 of 1970 (35 F.R. 15627), which was effective October 3, 1970, Chapter IX of Title 15, Code of Federal Regulations, presently entitled "Environmental Science Services Administration, Department of Commerce", is retitled as set forth above. The following organizational names appearing in this chapter are changed as follows: "Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey; and Weather Bureau to National Weather Service".

Dated: December 8, 1970.

JOHN W. TOWNSEND, Jr.,
Acting Associate Administrator.

[F.R. Doc. 70-17095; Filed, Dec. 18, 1970; 8:45 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 70-261]

PART 19—CUSTOMS WAREHOUSES AND CONTROL OF MERCHANDISE THEREIN

Charge To Be Made for Services of Customs Warehouse Officer

Public Law 90-363, dated June 28, 1968, provides for Columbus Day, the second Monday in October to be celebrated as a legal public holiday beginning in 1971. The reimbursement rate for this holiday, for the ½ percent increase in the Government costs for retirement benefits of customs employees, provided by Public Law 91-93, and for the increased contribution by the Government for health benefits, are not included in the present rate of 134 percent of the hourly rate of regular pay used to compute the charge to be made for the services of a customs warehouse officer. To provide for reimbursement under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555) by the warehouse proprietor of these increased costs, § 19.5(b) of the Customs regulations is amended to read as follows:

§ 19.5 Customs warehouse officer; compensation of.

* * * * *

(b) The charge to be made for the services of a customs warehouse officer or a customs employee temporarily assigned to act as a customs warehouse

officer at a bonded warehouse on a regular workday during his basic 40-hour workweek shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee with an addition equal to any night pay differential actually payable under 5 U.S.C. 5545. The rate per hour equal to 137 percent of the hourly rate of regular pay is computed as follows:

	Hours	Hours
Gross number of working hours in 52 40-hour weeks		2,080
Less:		
9 legal public holidays—New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day	72	
Annual Leave—26 days	208	
Sick Leave—13 days	104	384
Net number of working hours		1,696
Gross number of working hours in 52 40-hour weeks		2,080
Working hour equivalent of Government contributions for employee uniform allowance, retirement, life insurance and health benefits computed at 11½ percent of annual rate of pay of employee		239
Eqivalent annual working hour charge to customs appropriation		2,319

Ratio of annual number of working hours charged to customs appropriation to net number of annual working hours $\frac{2319}{1696}$ = 137 percent.

The charge to be made for the services of a customs warehouse officer or a customs employee temporarily assigned to act as a customs warehouse officer at a bonded warehouse on a holiday or outside his established basic workweek shall be the amount actually payable to the employee for such services under the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 911, 922), or the customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. The time charged shall include any time within the regular working hours of the employee required for travel between the duty assignment and the place where the employee is regularly employed excluding lunch periods, charged in multiples of 1 hour, any fractional part of an hour to be charged as 1 hour when the services are performed during the regularly scheduled tour of duty of the warehouse officer or between the hours of 8 a.m. and 5 p.m. on weekdays when the officer has no regularly scheduled tour of duty. In no case shall the charge be less than $1.

* * * * *

(Secs. 555, 624, 46 Stat. 743, 759; 19 U.S.C. 1555, 1624)

The change in the percentage ratio of annual working hours charged to the Customs appropriation to the net number of working hours, merely reflects changes in statutory provisions involved in the computation of this figure. Notice and public procedure under 5 U.S.C. 553 is, therefore, considered unnecessary.

This amendment shall become effective January 10, 1971.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: December 9, 1970.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 70-17146; Filed, Dec. 18, 1970; 8:48 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 103—Department of Health, Education, and Welfare

MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter 103 is amended as follows:

SUBCHAPTER A—GENERAL

PART 103–1—INTRODUCTION

1. In § 103–1.109 paragraph (b) is revised to read as follows:

§ 103–1.109 Numbering of HEWPMR.

* * * * *

(b) Material issued by operating agencies and staff offices of HEW to complement the HEWPMR shall be identified by prefixes to the number 103, part, subpart, section, and subsection. The following are the assigned prefixes:

Organization	*Prefix*
HEW	(None)
Office of the Secretary	OS
Office of Field Coordination	OFC
Facilities Engineering and Construction Agency	FEC
Individual Regional Office	RO(+Roman No.)
Environmental Health Service	EHS
Food and Drug Administration	FDA
Office of Education	OE
Health Services and Mental Health Administration	HSM
National Institutes of Health	NIH
Social and Rehabilitation Service	SRS
Social Security Administration	SSA

The organizations listed above shall, under the prefixes assigned, publish detailed operating instructions as deemed necessary. However, under no circumstances shall any organization's implementation or supplementation of the FPMR or HEWPMR conflict, supersede, or duplicate policies or procedures prescribed by these regulatory issuances. Material so issued shall follow the numbering system, format, and arrangement of the FPMR and HEWPMR, and will be applicable only within the organization issuing the publication. Such material shall not be published routinely in the FEDERAL REGISTER. Requests for approval to publish material in the FEDERAL REGISTER shall be submitted to the Office of General Services, OS–OASA, when publication is deemed appropriate.

2. In § 103–1.5003 paragraph (b) is revised to read as follows:

§ 103–1.5003 General.

* * * * *

(b) Department officials assigned responsibility for the management of property (see § 103–1.5006) are responsible for the conduct of an effective program that will prevent loss, waste, unauthorized or improper use, and unwarranted accumulations of property. Such a program will provide the following:

(1) Effective planning and scheduling of requirements to assure that supplies, equipment, and space are available to adequately serve operations while at the same time maintaining operating costs and inventory levels at a minimum.

(2) Assurance through leadership and direction that:

(i) Maximum utilization of property is obtained and that property is used for official purposes only;

(ii) Adequate inventory controls and accountability records are maintained;

(iii) Property is properly cared for including preservation, preventive maintenance, handling and storage;

(iv) Property is made available for reassignment to other Government activities when such property is no longer required for present or approved projects or programs;

(v) Newly acquired property is adequately inspected to assure receipt of proper quantities in acceptable condition, and compliance with specifications and standards;

(vi) Property management reports are submitted as required; and

(vii) Periodic management reviews are conducted for the purpose of determining (*a*) compliance with prescribed policies and regulations, and (*b*) the need for guidance and/or training. The reviews shall be conducted by qualified personnel preferably assigned to positions not directly accountable or responsible for the property in the area being reviewed. The Procurement and Materiel Checklist, Form HEW–552, available through normal distribution channels, shall be used as appropriate in conducting such reviews.

(5 U.S.C. 301; 40 U.S.C. 486(c))

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

PART 103–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

3. A new Part 103–40 is added as follows:

Sec.

103–40.000 Scope of part.

Subpart 103–40.1—General Provisions

103–40.101 Transportation assistance.
103–40.102 Representation before regulatory bodies.
103–40.103 Selection of carriers.

AUTHORITY: The provisions of this Part 103-40 issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

§ 103-40.000 Scope of part.

The policies and procedures prescribed in this part are applicable to all shipments of property for which payment of transportation charges are made by the Government directly to carriers whether transportation is accomplished by Government bills of lading, commercial bills of lading to be converted to Government bills of lading, or by commercial forms and procedures; except they do not apply to shipment of household goods and personal effects of civilian employees when transported within the conterminous United States, unless such shipments meet the criteria set forth in Bureau of the Budget Circular A-56. Policies and procedures governing shipment of household goods for civilian employees when not transported by use of Government bills of lading are contained in the HEW Travel Manual.

Subpart 103-40.1—General Provisions

§ 103-40.101 Transportation assistance.

Transportation assistance relative to rates, routes, and other tariff information may be obtained from the Transportation and Communications Service

of the nearest General Services Administration Regional Office. Questions relative to policy and procedures, or requests for interpretation of instructions, shall be forwarded to the officials responsible for transportation and traffic management at the operating agency headquarters.

§ 103–40.102 Representation before regulatory bodies.

Recommendations to institute actions with respect to tariffs, rates, or service matters before Federal and State regulatory bodies shall be forwarded to the Office of General Services, OASA, for submittal to the General Services Administration.

§ 103–40.103 Selection of carriers.

Selecting the proper mode of transportation will contribute significantly to assuring that property is delivered in good condition at the required time. Factors to be considered are dependability, safety, economy, and urgency of need. When terminal services such as unloading and delivery are required, consideration should be given to utilizing carriers whose rates include such services. The type material being shipped and the shipping and receiving facilities at origin and destination must also be considered. Shipping officers shall assure that carriers utilized are authorized to provide required services. When necessary, GSA regional offices will provide assistance in determining carriers' operating authorities. The following are the principal modes of transportation available and the relative economy of each mode:

(a) *Air express.* Air express is a most expensive mode of transportation and should not be used except under unusual and emergency circumstances.

(b) *Air freight.* Air freight, in some instances, is competitive with surface express services. Pickup and delivery charges must be taken into consideration when comparing charges with other modes. Care should be exercised when shipping via this mode to specify "Air Freight" on the bill of lading. This precludes the possibility of shipment moving via air express.

(c) *Bus.* It is frequently economical and expeditious to ship small packages of 100 pounds or less by passenger bus lines. However, pickup and delivery service is not provided.

(d) *Freight forwarders.* Freight forwarders offer a service of assembling, collecting, consolidating, shipping, and distributing small lots of freight. This service offers the advantage of consolidating small lots of several shippers into volume lots for transport via the several modes in a more expeditious manner. Freight forwarders generally provide free door-to-door pickup and delivery service. This service is often the most efficient and economical method for forwarding small packages.

(e) *Motor carrier.* Motor carriers usually provide pickup and delivery service at shipper's and consignee's door on less than truckload (LTL) and truckload (TL) shipments. When inside pickup and/or inside delivery services are required, instructions to the carrier shall be annotated on the bill of lading, and when necessary, arrangements shall be made with the carrier for such service. Carriers may assess additional charges for inside pickup and/or delivery. When inside pickup or delivery service is performed at extra charges, the bill of lading shall be annotated to confirm that the service was performed.

(f) *Railway express.* Railway express is primarily used for small shipments including exceptionally fragile or costly articles which may require greater care and responsibility by the carrier. When selecting this mode of transportation, consideration should be given to cost and time-in-transit, as compared with the use of parcel post, air freight, freight forwarders, motor carriers, and bus package service. At times, other services may be as expeditious and economical as railway express depending upon type and size of shipment.

(g) *Rail freight.* Rail freight is especially adaptable to transport heavy, low grade material or for bulk freight and long distance moves. Many rail carriers provide for pickup and/or delivery of less than carload (LCL) shipments without additional charge.

(h) *Water carrier.* Water transportation, when available, provides low cost transportation for bulk freight, and is usually advantageous when time of delivery is not a governing factor.

(i) *Household goods carriers.* This mode provides door-to-door service including pickup at residence and delivery into residence at destination. Normally utilized for most domestic shipments of household goods comprising 500 pounds or more.

(j) *Residence-to-residence containerized service.* This mode consists of residence-to-residence shipment of household goods, including packing at point of origin, delivery to overseas destination, unpacking and placing goods in residence.

(k) *Motor-van-Sea-van service.* This mode is similar to residence-to-residence service, except that goods are picked up at residence by a highway moving van, transported to carriers' facilities near the port of export where they are packed and crated, and transported in a commercial sea-van container. The process is reversed when shipment arrives at port of destination for delivery to residence.

(l) *Unaccompanied baggage service (air and surface).* This mode consists of baggage service between the conterminous United States and foreign countries, Alaska, and Hawaii on a through bill of lading. It may include marking, pickup at origin, transport to the port or airport of embarkation, arranging for ocean or air transportation and delivery of shipment to the destination designated on bill of lading.

§ 103–40.107 Surveys.

Request for survey of an operating agency's transportation activities shall be submitted by the appropriate headquarters activity or the Executive Office, OASA, to the Office of General Services, OS–OASA, to arrange for such survey by GSA.

§ 103–40.150 Responsibility.

(a) *Office of General Services, OASA.* The Office of General Services, OS–OASA, shall:

(1) Develop, prescribe, issue, and maintain Department transportation and traffic management policies and procedures to effect efficient and economical movement of property for which the Department is responsible;

(2) Interpret transportation directives and instructions of the General Accounting Office, General Services Administration, and transportation regulatory agencies;

(3) Maintain a program of evaluation and make such changes as may be necessary for an efficient and economical transportation program;

(4) Monitor carriers' compliance with governing regulations; and

(5) Provide staff assistance as necessary.

(b) *Office of Personnel and Training, OASA.* The Office of Personnel and Training, OS–OASA, shall be responsible for (pertains to members of the PHS Commissioned Corps only):

(1) Timely issuance of personnel orders directing a change of station which provide:

(i) Entitlement to ship household goods, and where applicable, authorization to ship privately-owned vehicles;

(ii) Corps member's grade, thereby establishing maximum weight allowances which may be shipped at Government expense;

(iii) Points between which transportation is authorized, thereby establishing maximum distance goods may be shipped at Government expense;

(iv) Specific authorized allowances if limited or restricted;

(v) Entitlement to additional temporary storage or nontemporary storage when authorized; and

(vi) Appropriate fiscal information (see HEW Accounting Manual), and fiscal accounting points to which charges are to be billed.

(2) Directing affected Corps members on permanent change of station to appropriate shipping officer;

(3) Providing members informative material relative to entitlements and necessary forms for requesting shipment of household goods and privately-owned vehicles; and

(4) Supplementing the Joint Travel Regulations and providing interpretation of entitlements under applicable regulations—Joint Travel Regulations including AID and State—in situations requiring explanation beyond the knowledge of shipping officers, local personnel or administrative offices, or operating agency headquarters personnel responsible for such matters.

(c) *Operating agencies, Office of Field Coordination, and Executive Office, OS.* Heads of operating agencies, the Office of Field Coordination, and the Executive Office, OS, shall be responsible for the following:

(1) Assigning responsibility for all matters relating to transportation and traffic management throughout their respective agencies to the general services or supply officer, or official serving in either capacity at headquarters;

(2) Assigning responsibility for all matters relating to transportation and traffic management at field stations and field offices to general services or supply officers or officials serving in either capacity at field activities. Such officials may designate employees under their supervision to perform transportation functions. When acting in this capacity such designees shall be identified as shipping officers, and shall be delegated limited contracting authority in accordance with Part 3–75 of this title (HEW Procurement Regulations), to procure transportation and related services, and sign and issue Government bills of lading. Responsible headquarters officials shall maintain current rosters of designated shipping officers, including addresses and telephone numbers of all employees designated as shipping officers within their respective agencies. (If employees designated for the shipment of household goods are different from those designated for shipment of Government property, separate rosters shall be maintained for employees performing each function.);

(3) Effecting compliance with the policies and procedures established in this Part 103–40, by activities under their jurisdiction;

(4) Assigning shipment responsibility for small field activities, if deemed appropriate, to nearby installations having transportation capability, or arranging with another operating agency of the Department to provide this service. As a matter of general policy, each major Department installation outside the Washington, D.C. area, will provide transportation and traffic management services for other Department activities in the vicinity, e.g., Department activities located in the vicinity of the National Communicable Disease Center, Atlanta, Georgia; the National Air Pollution Control Administration, Durham, North Carolina; Public Health Service Hospitals, etc., regardless of operating agency affiliation; and

(5) Assuring that adequate controls are established and responsibilities assigned to inspect shipments received, initiating actions required in connection with discrepancies in shipments, and processing loss and damage claims.

(d) *Shipping officers.* Shipping officers shall be responsible for:

(1) Assuring that transportation of property is by the most efficient and economical method available which will provide the required service;

(2) Selecting routes (where necessary) which will assure safe and expeditious service;

(3) Using premium transportation only when program needs can justify the expenditure of the added transportation costs;

(4) Making equitable distribution of shipments among carriers providing equally satisfactory service at the same overall cost;

(5) Utilizing the services of a number of qualified carriers to provide reasonable assurance of capability, availability, and service during peak shipping periods (of particular significance for household goods);

(6) Preparation and issuance of Government bills of lading and related documents;

(7) Insuring that Government bills of lading are issued for official purposes on the basis of official documents which authorized transportation at Government expense, and that appropriate records are maintained of such issuances;

(8) Arranging, when necessary, with State Department despatch Agents or through GSA facilities for transportation of shipments to points outside the conterminous United States;

(9) Issuing, when necessary, Standard Form 1108, Certificate in Lieu of Lost U.S. Government Bill of Lading (see p. 36, GSA Handbook—"How To Prepare and Process U.S. Government Bills of Lading");

(10) Selecting storage facilities when required;

(11) Determining whether carriers used have special tenders filed, or are parties to special tenders providing reduced rates on Government shipments, and reference to such tenders is appropriately noted on Government bills of lading;

(12) Requesting reweighing of shipments (household goods) when deemed appropriate (shipping officers should make such requests occasionally to insure against irregularities, or upon well founded requests by property owners);

(13) Assuring that incoming shipments are properly checked and inspected, that appropriate receipts are rendered carriers, that bills of lading are properly accomplished, and that appropriate actions are taken in connection with discrepancies, loss, or damage occuring in transit; and

(14) Referring questions of policy and procedures not covered by official instructions, or requests for interpretation of such instructions, through appropriate channels to the official responsible for transportation and traffic management at the operating agency headquarters.

§ 103–40.151 Transportation publications.

(a) Current issues of the following publications shall be made available to, and utilized by shipping officers when the type or volume of shipments justifies the need. In some instances they may be secured free of charge from local sources.

(1) Uniform Freight Classification (rail shipments), issued by the Uniform Classification Committee, 202 Union Station, Chicago, IL 60602.

(2) National Motor Freight Classification (motor freight shipments), issued by the National Motor Freight Traffic Association, Inc., Agent, 1616 P Street NW., Washington, DC 20036.

(3) Official Express Classification (express shipments), issued by REA Express, 39th Street and Northern Boulevard, Long Island City, NY 11101.

(4) Motor Carriers' Explosives and Dangerous Articles Tariff, issued by the American Trucking Association, Inc., 1616 P Street NW., Washington, DC 20036.

(5) Department of Transportation Regulations for the Transportation of Explosives and Other Dangerous Articles, issued by the Bureau of Explosives, Association of American Railroads, 2 Penn Plaza, New York NY 10001.

(6) U.S. Coast Guard Regulations Governing Transportation or Storage of Explosives and Other Dangerous Articles, or Substances, or Combustible Liquids on Board Ship, issued by the Bureau of Explosives, Association of American Railroads, 2 Penn Plaza, New York, NY 10001.

(7) Official Air Transport Restricted Articles Tariff, issued by the Airline Tariff Publishers, Inc., Suite 616, 1825 K Street NW., Washington, DC 20006.

(8) International Air Transport Association Restricted Articles Tariff, published by the International Air Transport Association, 1155 Mansfield Street, Montreal 113, PQ, Canada.

(9) List of First Class Post Offices, Parcel Post Guide, and Schedule of Postage Fees and Rates.

(10) Correct Way to Fill Out the Shipper's Export Declaration, issued by the U.S. Department of Commerce, Bureau of the Census, Foreign Trade Division, Washington, D.C. 20203.

(11) Foreign Trade Statistics Regulations, published by the U.S. Department of Commerce, Bureau of the Census, Foreign Trade Division, Washington, D.C. 20203.

(b) The following GSA pamphlets are available from GSA Supply Depots and self-service stores, and shall be made available to and utilized by all shipping officers for guidance and assistance in performing shipping functions:

(1) How to Prepare and Process U.S. Government Bills of Lading—Federal Stock No. 7610–682–6740.

(2) Common Shipping Faults and Their Remedies—Federal Stock No. 7610–543–7676.

(3) Help Prevent Loss and Damage—Federal Stock No. 7610–753–4796.

(c) Shipping officers arranging for shipments of household goods shall obtain or have available current issues of the following publications:

(1) Household Goods Military and Government Rate Tariff, published by the Household Goods Carriers' Bureau, 1424 16th Street NW., Washington, DC 20036.

(2) Household Goods Government Rate Tender, published by the Movers' & Warehousemen's Association of America, Inc., Agent, Suite 1101, Warner Building, 13th and K Streets NW., Washington, DC 20004.

(3) Joint Travel Regulations for Members of the Uniformed Services. Requests for this issuance should be directed to the Commissioned Personnel Operations Division, Office of Personnel

and Training, Office of the Assistant Secretary for Administration, DHEW, Room 4–35, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20852.

(4) Bureau of the Budget Circular No. A–56, Regulations governing payment of travel and transportation expenses of civilian officers and employees of the United States, available through administrative channels.

(5) DHEW Travel Manual, available through administrative channels.

(6) Household Goods Carriers' Bureau, Agent Mileage Guide, published by the Household Goods Carriers' Bureau, 1424 16th Street NW., Washington, DC 20036.

Subpart 103–40.3—Freight Rates, Routes, and Services

§ 103–40.303 Implementation of standard routing principle.

See § 101–40.303 of FPMR and GSA pamphlet "How to Prepare and Process U.S. Government Bills of Lading" (§ 103–40.151).

§ 103–40.304 Description of property for shipment.

Shipping officers shall assure that descriptions used on Government bills of lading are in conformity with the governing freight classification, carrier tariff or rate tender (see § 103–40.151). GSA will, upon request, provide assistance in determining appropriate descriptions to be used. For further information on freight classification see § 103–40.350. Transportation charges on packages or cartons containing a mixture of several different articles are based on the highest rated article in the package or container applied to the weight of the entire package. Care should be exercised in packing like-rated or similar-rated articles in the same package, insofar as practicable.

§ 103–40.305 Negotiation for changes in rates, ratings, rules, and services.

§ 103–40.305–3 Negotiation by other executive agencies.

(a) Under authority of section 22 of the Interstate Commerce Act (49 U.S.C. 22) common carriers by rail, motor, water and freight forwarder are permitted to transport Government property free or at reduced rates. These tenders usually referred to as section 22, Quotations or Tenders, provide transportation rates or services at a cost below the published tariffs.

(b) The section 22 method of publishing rates, rules, and regulations for application to shipments of Government property is frequently used by carriers, since it affords a quick method of establishing rates and/or services which are not subject to many of the ICC rules and regulations applicable to usual tariff publications.

§ 103–40.305–5 Reports of agency negotiations.

Shipping officers shall submit a report of each negotiation conducted as set forth in § 101–40.305–5 of this title.

§ 103–40.306 Rate tenders to the Government.

§ 103–40.306–3 Distribution.

In addition to the distribution of rate tenders set forth in § 101–40.306–3 of this title, one copy shall be submitted to the Interstate Commerce Commission, Bureau of Traffic, Concurrence Branch, Washington, D.C. 20423, and one copy forwarded through channels to the Office of General Services, OS–OASA. Tenders voluntarily submitted by carriers shall be referred to the Office of General Services, OS–OASA.

§ 103–40.306–50 Special rate tenders (household goods only).

(a) Rate tariffs issued by household goods carriers (see § 103–40.151) which provide reduced rates for household goods transported by use of Government bills of lading shall be utilized for all domestic shipments of household goods transported by motor van. These tariffs shall also be utilized for the domestic portion of shipments moving by motor van to ports to be crated for shipment to points outside the conterminous United States. (If residence-to-residence containerized service, or motor-van-sea-van service is not utilized for shipments to points outside the conterminous United States, it will be more economical in most instances to have goods packed and crated at origin and transported by motor or rail freight to the port designated by the U.S. Despatch Agent.)

(b) Shipping officers shall secure one-time tenders or letters of confirmation from carriers setting forth charges to apply, or applicable tariffs covering shipments from the conterminous United States to overseas points, including Alaska and Hawaii. The distribution set forth in § 103–40.306–3 does ont apply to one-time tenders. A copy of each such tender or confirmation shall be attached to the original Government bill of lading. Two copies with references to the specific Government bill(s) of lading covering shipment(s) should be immediately forwarded to the Motor Tariff Unit, General Accounting Office, Washington, D.C. 20548, and one copy attached to the memorandum copy of the Government bill of lading retained by shipping officer.

§ 103–40.350 Freight classification (not applicable to household goods).

(a) *Description.* Freight classification is the grouping of many varieties of commodities into a defined number of classes or groups to enable carriers to engage in rate making by classes or categories rather than individual items. Articles for shipment by rail, motor or REA Express will be described in the terms of the governing freight classification publications (see § 103–40.151).

(b) *Freight classification guides.* (1) Activities having repetitive shipments of similar groups of items shall arrange with the Transportation and Communications Service in the servicing GSA regional office to have a freight classification guide prepared for such shipments. Also activities having occasional shipments shall refer questions on freight classification to the Transportation and Communications Service of the local GSA regional office. To obtain the most favorable classification, a complete description of the items, packaging, and other pertinent data relative to the material to be shipped should be furnished GSA.

(2) Problems in obtaining freight classification information which cannot be resolved with the servicing GSA regional offices shall be submitted through the appropriate headquarters office to the Office of General Services, OASA. A complete description of the items involved, packaging, and other pertinent information regarding the shipment must be included in the information forwarded to OASA–OGS.

Subpart 103–40.7—Reporting and Adjusting Discrepancies in Government Shipments

§ 103–40.700 Scope of subpart.

This subpart provides policies and procedures for reporting and adjusting discrepancies in shipments (except household goods), on which the Government pays the transportation charges.

§ 103–40.702 Reporting discrepancies.

§ 103–40.702–3 Standard Form 361, Discrepancy in Shipment Report.

Sufficient copies of Standard Form 361 shall be prepared for internal requirements, including a copy for the fiscal office responsible for payment of transportation charges.

§ 103–40.710 Processing claims against carriers.

Any additional procedures necessary for processing SF–362, U.S. Government Freight Loss/Damage Claim, shall be developed jointly by the receiving activity and the servicing fiscal office.

§ 103–40.711 Collection of claims.

§ 103–40.711–2 Claims against international ocean or air carriers.

A copy of the voucher covering the amount withheld for loss or damage, together with details of the loss or damage and evidence in support of the carrier's liability, shall be forwarded through the operating agency headquarters fiscal office for submission to the General Accounting Office.

§ 103–40.712 Referral of claims to U.S. General Accounting Office.

Claims which occur as set forth in § 101–40.712 of this title shall be referred to the operating agency headquarters fiscal office for appropriate action.

Subpart 103–40.49—Forms, Formats, and Agreements

§ 103–40.4900 Scope of subpart.

This subpart contains forms, formats, agreements, and illustrations to be used in implementing the provisions of this Part 103–40. These forms, formats, agreements, and illustrations are designed to

provide uniform transportation transactions between shipping activities within the Department, and between shipping activities of the Department and the transportation industry and related industries.

§ 103–40.4902 Standard forms.

The standard forms in this Subpart 103–40.49 are prescribed for use where appropriate (see Subpart 103–40.53) by all shipping activities of the Department and may be obtained through regular supply channels, or from the nearest General Services Administration self-service store or supply depot.

§ 103–40.4906 Illustrations.

§ 103–40.4906–50 Standard Form 1196, Short Form—U.S. Government Bill of Lading (Original).

§ 103–40.4906–51 Standard Form 1197, Certified True Copy of Lost Short Form—U.S. Government Bill of Lading.

§ 103–40.4906–52 Sample of Standard Form 1103, U.S. Government Bill of Lading completed for domestic household goods shipment.

§ 103–40.4906–53 Form PHS–1672, Authorization for Storage of Household Goods, Temporary-Nontemporary.

Subpart 103–40.50—Definitions of Terms

§ 103–40.5000 Scope of subpart.

This subpart provides definitions of terms consistent with those used by the transportation industry.

§ 103–40.5001 Definitions.

§ 103–40.5001–1 Accessorial charge.

Charge by carrier for rendering service in addition to line-haul, such as transit, sorting, packing, cooling, heating, switching, diverting, and reconsigning.

§ 103–40.5001–2 Actual value rate.

A rate based on the actual value of the property shipped. (The actual value of the shipment must be divulged to the carrier.)

§ 103–40.5001–3 Agreed valuation.

The value of articles in a freight shipment agreed upon as the basis on which the freight rate is assessed. This valuation establishes a value beyond which recovery cannot be had in event of loss or damage in transit.

§ 103–40.5001–4 Astray freight.

Shipments or portions of shipments found in carriers' possession for which billing (waybill) is not available or which is being held for any reason except transfer.

§ 103–40.5001–5 Bargeload.

The quantity of freight required for the application of a bargeload rate. A barge loaded to its carrying capacity.

§ 103–40.5001–6 Bill of lading, Government (GBL).

The GBL is a limited liability contract covering transportation of property from one place to another. It is a receipt, identifies the consignee, serves as proof the shipment was delivered to consignee, and serves as a basis for collection and audit of charges.

§ 103–40.5001–7 Bill of lading, order.

A negotiable document by which a transportation line acknowledges receipt of freight and contracts for its movement. The surrender of the original order bill of lading, properly endorsed is required by transportation lines upon delivery of the freight, in accordance with the terms of bill of lading.

§ 103–40.5001–8 Bill of lading, straight.

A nonnegotiable document by which a transportation line acknowledges receipt of freight and contracts for its movement. The surrender of the original straight bill of lading is not required by transportation lines upon delivery of the freight, except when necessary for the purpose of identifying the consignee.

§ 103–40.5001–9 Carload (CL).

The quantity of freight required for the application of a carload rate. A car loaded to the carrying capacity.

§ 103–40.5001–10 Carrier.

Includes railroads, express companies, freight forwarders, motor carriers, barge and steamship companies, air carriers and pipeline companies.

§ 103–40.5001–11 Carrier, common.

A person or company engaged in the business of transporting persons or property for compensation and for all persons impartially.

§ 103–40.5001–12 Carrier, contract.

A person or company other than a common carrier who, under special and individual contracts or agreements, transports passengers or property for compensation.

§ 103–40.5001–13 Carriers, for-hire.

Common and contract carriers who transport passengers and property for compensation.

§ 103–40.5001–14 Carrier, line-haul.

A carrier providing intercity transportation service.

§ 103–40.5001–15 Carrier, private.

Persons, other than those included in the terms "common carrier" or "contract carrier," who transports property of which such carrier is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of any commercial enterprise.

§ 103–40.5001–16 Charter air service.

Air transportation procurred under arrangements with carriers for the exclusive use of one or more aircraft between points in the United States for periods of less than 90 days.

§ 103–40.5001–17 Circuitous route.

An indirect route.

§ 103–40.5001–18 Classification, freight.

A system of grouping together commodities of like or similar transportation characteristics for the purpose of assigning ratings to be used in applying rates. A publication containing a list of articles and the classes to which they are assigned for the purpose of applying rates.

§ 103–40.5001–19 Classification rating.

The class to which an article is assigned for transportation purposes. Usually expressed by number or letter.

§ 103–40.5001–20 Clearance limits.

The dimensions beyond which the size of, or projections on, a shipment may not extend in order to clear obstructions which restrict the handling or transportation of such shipment. Such limits may be actual or prescribed by law or regulation.

§ 103–40.5001–21 Conterminous United States.

The contiguous 48 States and the District of Columbia.

§ 103–40.5001–22 Declared value.

The value of goods, as stated by owner (shipper), when delivered to carrier (see Agreed valuation).

§ 103–40.5001–23 Demurrage.

A penalty charge made on cars, vehicles or vessels held by or for consignor or consignee for loading or unloading, for shipping directions or for any purpose. (Ordinarily, adequate time for loading, unloading, etc., is allowed prior to the time demurrage takes effect.)

§ 103–40.5001–24 Description, freight.

Standardized descriptions under which individual articles are grouped for the purpose of assessing class and commodity rates.

§ 103–40.5001–25 Diversion.

A change made in the route of a shipment in transit (see Reconsignment).

§ 103–40.5001–26 Drayage.

Local transportation services between points within a commercial zone, a metropolitan area, or from a point within a city, town, or village to a point adjacent thereto, for which rates and charges usually are not published in tariffs on file with the municipality concerned, or in special tenders on file with the U.S. Government.

§ 103–40.5001–27 Embargo.

To restrict or prohibit an acceptance and/or movement of freight.

§ 103–40.5001–28 Facilities, carrier.

Carrier's operating equipment, terminals, warehouses, and other instruments used in the performance of their duties.

§ 103–40.5001–29 Ferry car.

See Trap car.

§ 103–40.5001–30 Freight forwarder.

An individual, firm, partnership, corporation, company, or association other than a railroad, motor, water, or air carrier, which (a) represents itself as a common carrier; (b) undertakes to assemble and consolidate shipments, or provide for assembling and consolidating, and performing or providing for the performance of break-bulk and distribution; (c) assumes responsibility for the transportation of such property from point of receipt to point of destination; and (d) utilizes the service of carriers subject to appropriate regulatory agencies.

§ 103–40.5001–31 Knocked down (KD).

A term used to denote that an article has been taken apart so as to reduce materially the space occupied.

§ 103–40.5001–32 Less than bargeload.

The quantity of freight less than that required for the application of a bargeload rate.

§ 103–40.5001–33 Less than carload (LCL).

The quantity of freight less than that required for the application of a carload rate.

§ 103–40.5001–34 Less than truckload (LTL).

The quantity of freight less than that required for the application of truckload rate.

§ 103–40.5001–35 Light and bulky.

Articles which have a low weight per cubic foot of space occupied. Such articles are usually made subject to the provisions of Rule 34 of the rail classifications.

§ 103–40.5001–36 Lighterage.

A charge for hauling freight on flat-bottomed boats usually across harbors or to oceangoing vessels.

§ 103–40.5001–37 Operating authority.

Authority granted by regulatory bodies to carriers specifying areas or highways routes over which they may transport specified commodities.

§ 103–40.5001–38 Over freight.

Freight which has been delivered to an installation by a carrier without waybill or identifying marks.

§ 103–40.5001–39 Palletized.

A method of securing freight to platforms for ease in handling and storing. This method is also used to consolidate small packages into a unitized load.

§ 103–40.5001–40 Pickup and delivery.

A service rendered by carriers in which shipments are picked up at consignor's location and carried to the carriers' yards for shipment and/or delivered from carriers' station to consignees' location without additional charge. (A money allowance may be given in lieu of this service if the shipper or receiver performs the service for himself.)

§ 103–40.5001–41 Reconsignment.

Any change, other than a change in the route, made in a consignment before the arrival of the goods at their billed destination. Any change made in consignment after the arrival of the goods at their billed destination, when the change is accomplished under conditions which make it subject to the reconsignment rules and charges of the carrier (see Diversion).

§ 103–40.5001–42 Released valuation rate.

A rate applied subject to limitations with respect to the liability of carriers in case of loss of and/or damage to a shipment.

§ 103–40.5001–43 Routing officer.

An official who issues route orders or selects routes by which things are transported.

§ 103–40.5001–44 Routing or route order.

An order issued by a routing officer specifying the mode of transportation and the means within that mode by which shipment will move.

§ 103–40.5001–45 Schedule of rates.

(See Tariff). A publication filed with regulatory bodies containing minimum charges, rules and regulations of contract operations of motor carriers. (The terms "tariffs" and "schedules" are used indiscriminately in Part I of the Interstate Commerce Act. In Parts II and III, "tariffs" applies to common carriers and "schedules" to contract carriers. Part IV uses the term "tariffs.")

§ 103–40.5001–46 Section 22 quotations.

See "Special tender."

§ 103–40.5001–47 Shipper's Export Declaration (Commerce Form 7525–V).

A U.S. Department of Commerce form which is filed with the Collector of Customs at the port of exit when required for shipments to foreign countries.

§ 103–40.5001–48 Special tender.

A tender of rates, charges, or arrangements made by commercial carriers for the carriage, storage, or handling of property, pursuant to the provisions of section 22 of the Interstate Commerce Act or other appropriate statutory authority.

§ 103–40.5001–49 Switching.

The moving of cars from one place to another within the switching limits of a particular point.

§ 103–40.5001–50 Tariff.

A publication containing rates, rules, ratings, regulations, and/or charges applying to transportation and incidental services (see Schedules of rates).

§ 103–40.5001–51 Team-track.

A track on which cars are placed for the use of the public in loading and unloading freight.

§ 103–40.5001–52 Tenders negotiated.

Special tenders which are offered by commercial carriers in response to requests for adjustment.

§ 103–40.5001–53 Tenders, unsolicited or nonnegotiated.

Special tenders which are offered by commercial carriers for reasons best known to the carriers and which are not in response to adjustments sought by GSA.

§ 103–40.5001–54 Tracing.

The act of requesting a transportation line to determine the location of a shipment for the purpose of expediting movement or establishing the time of delivery

§ 103–40.5001–55 Traffic management.

The direction, control, and supervision of all functions incident to the effective and economical procurement and use of freight and passenger transportation service from commercial for hire transportation companies (including rail, highway, air, inland waterway, coastwise, and intercoastal carriers).

§ 103–40.5001–56 Transit point.

The destination on the line of a carrier where freight to be accorded a transit privilege is delivered to the consignee and registered for transit.

§ 103–40.5001–57 Transit privilege.

The opportunity of storing, or storing and processing a shipment at a transit point, and subsequently reforwarding the same material or its equivalent to its destination and receiving the benefit of the lowest rate in effect from the initial point of origin to the final destination.

§ 103–40.5001–58 Transportation officer.

A person appointed or designated by appropriate authority to perform traffic management functions.

§ 103–40.5001–59 Trap car (Ferry car).

A railroad car used for the movement of LCL freight between a shipper siding and a central freight station, usually for transfer in connection with a line-haul movement.

§ 103–40.5001–60 Truckload (TL).

The quantity of freight required for the application of a truckload rate. A motor truck loaded to its carrying capacity.

Subpart 103–40.51 — Preservation, Packaging, Packing, and Marking

§ 103–40.5101 General.

The preservation of goods in transit is an essential part of transportation. Materials lost in transit or received in unusable condition, even when reimbursed, represent loss of operational capacity

during a planned period. Time, skill, and manpower required for production and transportation to the location of need will also have been wasted.

§ 103–40.5102 Definitions.

As used in this subpart, preservations, packaging, and packing shall have the following meanings:

§ 103–40.5102–1 Preservation.

The application or use of cleaning, drying, preservatives against corrosion, or any other protective measures to prevent deterioration resulting from exposure to heat, cold, moisture, and other conditions.

§ 103–40.5102–2 Packaging.

The application or use of appropriate interior wrapping, package cushioning, interior containers, interior identification markings, or any other protective measures up to, but not including, shipping containers.

§ 103–40.5102–3 Packing.

The application or use of exterior shipping containers, assembly of items or packages therein, blocking, bracing or cushioning, weatherproofing, exterior strapping, and exterior marking, or any other exterior measures designed to protect the goods during shipment or storage.

§ 103–40.5103 Carrier's requirements.

The carrier's rules and regulations on preservation, packaging, and packing, as published in its freight classification, and other tariffs, shall be observed as minimum requirements in preparing property for shipment.

§ 103–40.5104 Other requirements.

Since carrier requirements for the protection of shipments are based on transportation hazards only, additional protection measures shall be considered, as necessary, to prepare shipments for storage and/or subsequent reshipment.

§ 103–40.5105 Levels of protection.

(a) *Domestic.* Federal Standard No. 102 (Preservation, Packaging, and Packing Levels), defines three levels of preservation and packaging and four levels of packing based on the nature of the goods, the probable storage conditions and duration, and the area of distribution.

(b) *Export and import.* The varying conditions a shipment may encounter from origin to destination preclude the possibility of export and import preservation, packaging, and packing standards. Federal specifications for the preservation, packaging, and packing of specific commodities shall be used to the extent available.

(c) *Special instructions.* Instructions to carriers for the preservation or protection of property, such as valuables and drugs, should be annotated on both the shipping instructions and the bill of lading.

§ 103–40.5106 Selection of level of protection.

The following factors shall be considered in determining the level of protection to be used in preparing property for shipment:

(a) Mode of transportation;

(b) Nature and value of goods;

(c) Size and weight of packing material;

(d) Carrier's requirements;

(e) Cost of packing material;

(f) Anticipated handling and storage prior to use; and

(g) Effect of method of packing upon transportation charges.

§ 103–40.5107 Packing articles of different freight classifications.

Articles subject to different classification ratings shall be packed separately unless some specific advantage is to be gained by packing them together.

§ 103–40.5108 Explosives and other dangerous articles.

Special attention shall be given to the preparation for shipment of explosives, flammables, poisonous materials, and other dangerous articles or substances (see Subpart 103–40.57). The following regulations shall be complied with when applicable to the materials being shipped and the mode of transportation used:

(a) *Rail, motor, and inland waterways shipments.* Hazardous materials regulations prepared by the Department of Transportation (49 CFR Parts 170 through 199).

(b) *Ocean shipments.* Regulations prescribed by the Coast Guard, Department of Transportation (46 CFR Parts 146 through 149).

(c) *Air shipments.* Regulations prescribed by the Federal Aviation Administration, Department of Transportation (14 CFR Part 103).

§ 103–40.5109 Marking.

(a) *General.* As a rule, each package, bundle, or piece of property shipped in less-than-load quantities shall be marked as required in this section. This includes property procured in load quantities when shipped in less-than-load quantities.

(b) *Domestic shipments*—(1) *Federal requirements.* When applicable, the requirements of Federal Standard No. 123, "Marking for Domestic Shipment," shall be observed.

(2) *Carrier requirements.* In addition to the markings required by subparagraph (1) of this paragraph, the following requirements shall be observed:

(i) When freight is consigned to a place where there are two or more of the same names in the same State, the name of the county must also be shown;

(ii) When freight is consigned to a place not located on the line of a carrier, the marking must show the name of the station at which the consignee will accept delivery;

(iii) When consigned "To Order" or "C.O.D.," the marking must also state, and must include an identifying symbol or number which also must be shown on the shipping order and the bill of lading;

(iv) All marks shall be compared with the shipping order or the bill of lading, and corrections, if necessary, made by the shipper before the consignor signs the bill of lading; and

(v) Packages requiring special handling shall bear appropriate markings, e.g., "Fragile, Handle With Care, This End Up, Use No Hooks," etc.

(c) *Exceptions.* (1) Freight either fully occupying the visible capacity of a freight car, weighing 6,000 pounds or more, or declared by the shipper as weighing 6,000 pounds, and charged for by the carrier as less-than-carload (LCL) or any quantity (AQ) rating, when shipped from one station, in or on one car, from one consignor for delivery to one consignee at one destination, need not be marked as required for less-than-carload freight.

(2) Freight in excess of a full carload must be marked as required for less-than-carload (LCL) freight unless such excess weighs 6,000 pounds or more.

(3) Freight offered to motor carriers for transportation when the quantity is sufficient to occupy the major capacity of the vehicle, and easily identified as belonging to the same shipment, need not be marked as required for less-than-truckload (LTL) shipments.

(4) Packages which have been palletized or skidded, and other unitized freight items, need not be individually marked if the unit is marked and the numbers of pieces loaded in the unit is shown on the bill of lading.

(5) Regardless of the volume, freight requiring exclusive use of the conveyance need not be marked.

(6) Shipments of less than 6,000 pounds loaded in a conveyance for stop off enroute to complete full vehicle loading need not be marked as less-than-carload (LCL) or less-than-truckload (LTL).

(d) *Export and import shipments.* (1) The absence of uniform specifications for export and import markings requires that such freight be marked to meet a variety of needs. Ocean vessels generally stow freight by destination port; hence, the need for clear markings.

(2) Some countries require markings with stencil and indelible ink, while others permit waterproof paint. Letters and figures should be up to 2½ inches in height, if the size of the unit permits. Each unit should be marked on two sides.

(3) Consideration shall be given to available American or International Standards applicable to pictorial and marking terms.

(4) The following markings shall be placed on each separate unit:

(i) Name of consignee;

(ii) Destination;

(iii) Requisition or purchase order number (where applicable);

(iv) Weight in pounds or cubic measurements; and

(v) Number of the case and total number of cases. In addition to the above, the

markings should include the port of export and import, and the name of the broker or agent at the port of export and import, if any. When required, the gross, tare, and net weight of each unit should be shown.

Subpart 103–40.52—Ordering and Loading Transportation Equipment

§ 103–40.5200 Scope of subpart.

This subpart prescribes policies and procedures for ordering and accepting equipment from carriers.

§ 103–40.5201 Rail.

The proper ordering of cars to suit needs of shipments is extremely important. Orders for cars will specify type and size of equipment; when and where they should be placed for loading; commodity and weight to be shipped; oversize dimensions, if any; destination; and proposed route if available. When the commodity shipped is subject to Rule 34 of the Uniform Freight Classification, care must be exercised to order the proper size car as the minimum carload weight will be based on the size of car ordered when a larger car is furnished at the carrier's convenience, in lieu of a smaller car ordered by the shipper.

§ 103–40.5202 Motor.

Information to be furnished to motor carriers when ordering equipment is substantially the same as required for rail carriers, except that motor carriers will be informed when special equipment or handling is required for oversize or over weight commodities. This is necessary so that adequate provisions may be made by the carrier for equipment or special services to accommodate the shipment.

§ 103–40.5203 Water.

Information furnished water carriers will include date and time shipment will be available for loading; origin and destination of shipment; weight; cube; commodity description; and requirement for special equipment and handling when appropriate.

§ 103–40.5204 Acceptance of carrier's equipment.

Shipping personnel shall insure that equipment placed by carriers is suitable for the commodities to be shipped. Rail cars and motor vehicles which are not suitable in every respect, as determined by visual inspection, will not be accepted for loading.

§103–40.5205 Difficulty in obtaining equipment.

If difficulties are encountered in obtaining necessary rail cars or motor vehicles in which to make a shipment, assistance may be obtained from the appropriate GSA Transportation and Communication Service Office.

Subpart 103–40.53—Bills of Lading

§ 103–40.5300 Scope of subpart.

This subpart provides policy and procedures for the use and issuance of the U.S. Government Bill of Lading, SF–1103, and optional Short Form U.S. Government Bill of Lading, SF–1196, for obtaining freight or express transportation services for the account of the United States, and for exceptions thereto.

§ 103–40.5301 General.

Except as otherwise provided in this subpart, the SF–1103 or the optional SF–1196 as appropriate shall be used to procure transportation of property when the charges are properly payable by the Government directly to carriers. The Government bill of lading serves the following purposes: (a) It is a receipt for the goods received by the carrier for transportation; (b) it is a contract of carriage; (c) it serves as documentary evidence of title to the goods in case of dispute or controversy; and (d) it serves as a document by which carriers are paid for transportation services rendered.

§ 103–40.5302 Persons authorized to issue Government bills of lading.

Unless specifically excluded, contracting officers delegated authority to procure nonpersonal services have authority to sign and issue Government bills of lading. Other persons designated to serve as shipping officers as provided in § 103–40.150 shall be delegated limited contracting authority in accordance with Part 3–75 of this title (HEW Procurement Regulations) to procure transportation and related services and sign and issue Government bills of lading. Only persons meeting the requirements of this § 103–40.5302 shall sign and issue U.S. Government Bills of Lading.

§ 103–40.5303 Preparation and processing U.S. Government Bills of Lading, SF–1103.

(a) Appropriate blocks of the bill of lading shall be fully and accurately prepared as set forth in the GSA handbook entitled "How to Prepare and Process U.S. Government Bills of Lading," before releasing it to the carrier. This handbook is further identified in § 103–40.151(b).

(b) Issuance of Government bills of lading after transportation services have been performed is prohibited except:

(1) When required for conversion of commercial shipping documents;

(2) When the supply of Government bills of lading at origin has been exhausted; or

(3) When the furnishing of a Government bill of lading at origin would unduly delay the shipment of urgently needed materials.

In these instances, the commercial shipping documents must be annotated "To be converted to a U.S. Government Bill of Lading."

(c) Any corrections, alterations, or remarks necessary to be entered on the Government bill of lading shall be authenticated and explained by the person making them. Otherwise such information should be entered on a separate sheet and made part of the Government bill of lading. The consignee will notify the issuing office of any changes made which are necessary to complete the records of the issuing office.

§ 103–40.5304 Standard U.S. Government Bill of Lading (GBL), SF–1103.

(a) *General.* The standard U.S. Government Bill of Lading (SF–1103), consists of a carbon-interleaved set of five separate basic forms and a set of five continuation sheets (SF–1109).

(b) *Disposition of Government bills of lading.* General disposition instructions are provided in Chapter 1 of the GSA handbook referred to in § 103–40.5303(a). Operating agencies shall provide issuing offices with any additional instructions necessary to assure that administrative needs are met. These include the provisions that:

(1) One copy of SF–1103a shall be annotated with actual or estimated charges and forwarded to the fiscal accounting point shown in the block "charges to be billed to."

(2) One copy of SF–1103a shall be retained in the files of the issuing office.

(3) When a shipment involves household goods, copies of SF–1103a shall be:

(i) Tendered to carrier for annotation and return to origin shipping officer;

(ii) Tendered to carrier, who should, along with a legible copy of the inventory and condition report, surrender to owner of goods at time of pickup; and

(iii) Mailed to shipping officer serving destination area.

§ 103–40.5305 Temporary receipt in lieu of U.S. Government Bill of Lading, and certificate in lieu of lost U.S. Government Bill of Lading.

General provisions for issuance of Standard Form No. 1107, Temporary Receipt in Lieu of U.S. Government Bill of Lading, and Standard Form No. 1108, Certificate in Lieu of Lost U.S. Government Bill of Lading are contained in the GSA handbook entitled "How to Prepare and Process U.S. Government Bills of Lading," see § 103–40.151(b).

§ 103–40.5306 Conversion of commercial bills of lading to U.S. Bills of Lading, and procedure for handling lost commercial bills of lading.

General provisions for the conversion of commercial bills of lading to U.S. Government Bills of Lading, and procedures for handling lost commercial bills of lading are contained in the GSA handbook entitled "How to Prepare and Process U.S. Government Bills of Lading," see § 103–40.151(b).

§ 103–40.5307 Short Form—U.S. Government Bill of Lading.

(a) *Standard form for use in making small shipments.* The short form U.S. Government Bill of Lading, SF–1196 (see § 103–40.4906–50), is prescribed for optional use for small shipments of property, provided that:

(1) The total transportation charges do not exceed $100 per shipment.

(2) Both origin and destination are within the conterminous United States (this restriction does not apply to shipments to be subsequently reshipped for export on another bill of lading, or to shipments to be reshipped from an air

or water port to other points in the conterminous United States).

(3) The property shipped is not household goods or Class A and B explosives.

(4) Special services, such as armed guard service, are not required.

(5) Continuation sheets are not required.

(6) The purpose of the issuance is not to convert a commercial bill of lading or commercial express receipt to a Government bill of lading.

(7) Two or more modes of transportation (e.g., air-truck, or rail-barge) are not involved in the movement.

(8) The consignee is a U.S. Government office (exceptions may be made for repetitive shipments to outside organizations with whom a particular agency has a continuous and close relationship).

(9) The contents are not of such unusual value that, in the opinion of the shipping officer, they should only be released to carriers under the additional controls of the standard U.S. Government Bill of Lading.

(b) *Description and distribution of optional short form Government bill of lading.* All copies of the optional form U.S. Government Bill of Lading, SF–1196, will be prepared simultaneously and will in the exact order named, consist of:

(1) Original—The original of the bill of lading, properly executed, is to be furnished the carrier's agent at shipping point subsequent submission to the responsible finance office as supporting evidence for the voucher covering the transportation charges involved.

(2) Shipping order (Copy No. 2) is also to be furnished the carrier's agent at shipping point to be retained by the carrier.

(3) Memorandum copy (Copy No. 3)—Memorandum copy/consignee copy, contains provisions on the reverse side for the consignee to annotate exceptions to delivery in good order, is to be mailed to attention of the consignee's receiving or traffic department as the shipment and property received copy.

(4) Memorandum copy (Copy No. 4)—Memorandum copy/property shipped copy, is to be retained by the shipper.

(5) Memorandum copy (Copy No. 5)—Memorandum copy/fiscal copy is to be annotated with actual or estimated charges by issuing office and forwarded to the fiscal accounting office responsible for payment of charges for obligation of funds.

(6) Memorandum copy (Copy No. 6)—Memorandum copy/issuing office copy, is to be retained by the issuing office. Additional memorandum copies may be prepared if required by internal procedures. However, in the interest of economy, the number prepared should be kept at a minimum.

(c) *Procedure in case of loss and/or damage.* In case of exception to delivery in good order, the consignee will annotate the reverse side of the "Consignee Copy" (Copy No. 3) and the carrier's documents. The carrier will be requested to prepare a Joint Inspection Report, a copy of which will be forwarded by the consignee to the fiscal office responsible for payment of transportation charges within 20 days of receipt of the shipment or discovery of damage. In case of nondelivery or rejection of an entire shipment, a written report prepared by the consignee will be filed with the responsible fiscal office within 20 days after date of shipment.

(d) *Substitute for lost original short form bill of lading.* When an original short form bill of lading (SF–1196) has been lost or destroyed, the only form that may be issued in lieu of it is a Certified True Copy of Lost Short Form U.S. Government Bill of Lading, SF–1197 (see § 103–40.4906–51). The issuing officer who signed the original bill of lading will sign the certification statement on this form. The procedure in such instances is as follows:

(1) The origin carrier shall submit a written request to the issuing office for a certified true copy of the original document.

(2) The issuing office shall prepare, in duplicate, the Certified True Copy of the Short Form—U.S. Government Bill of Lading (SF–1197) from the "Property Shipped Copy" of the Short Form Government bill of lading.

(3) The issuing officer shall annotate and sign both copies of the SF–1197.

(4) The carbon copy of SF–1197 shall be plainly marked "Memo Copy" and be attached with the letter of request, to the "Property Shipped Copy" or Issuing Office Copy and retained for a permanent record.

(5) The Certified True Copy of the lost original short form bill of lading (SF–1197) shall be given to the origin carrier only, and not sooner than 15 days after date of shipment.

The Certificate in Lieu of Lost U.S. Government Bill of Lading (SF–1108) shall not be issued to replace a lost or destroyed original short form Government bill of lading (SF–1196).

§ 103–40.5308 Accountability of forms.

(a) *General.* Activities shall establish controls and maintain a record on Form HEW–190, Accountability for Accountable Forms, of all Government bills of lading issued and on hand as set forth in this § 103–40.5308. Storage space containing blank bills of lading shall be locked or otherwise secured when not in use.

(b) *Receipts.* Upon receipt of a supply of Government bills of lading (SF–1103 and SF–1196) from the distribution point, the responsible official will:

(1) Inspect the package to determine whether each set is serially numbered consecutively.

(2) Verify receipt of the correct quantity of sets of bills of lading in the package.

(3) Record serial numbers appearing on the bills of lading received.

(4) Notify the distribution point from which the supply was received of any discrepancies found in bills of lading received.

(c) *Lost or stolen blank original bills of lading.* If original bills of lading are discovered to have been lost or stolen, the shipping officer will notify all local carriers not to honor such bills of lading.

(d) *Canceled bills of lading.* When it is necessary to cancel a Government bill of lading, the original will be retained in the files of the issuing activity.

§ 103–40.5309 Shipment registers.

Operating agencies may prescribe the use of registers for shipments. When established, a register should be maintained for Government bills of lading, "Issued," and one for "Received." Registers should contain such pertinent data as Government bill of lading serial number, general description of contents of shipment, consignor and/or consignee, method of shipment, and the date on which each shipment is actually shipped or received.

§ 103–40.5310 Exceptions to use of U.S. Government Bill of Lading forms.

(a) *Local storage, drayage, and hauling.* Government bills of lading may be used to procure local storage, drayage, and hauling services when such services are provided for under established tariffs, schedules or tenders (5 GAO 3028.10). In all other instances, such services will be procured in accordance with procurement regulations.

(b) *Use of commercial forms and procedures.* (Applicable only to Government property.) Subject to the following limitations and instructions, the head of a procuring activity or his designee (see § 3–75.103 of this title (HEWPR)), may for specific circumstances, approve the use of commercial forms and procedures to procure freight or express transportation services for designated types of small shipments when he determines that this procedure is more efficient and economical than the use of Government bills of lading. This discretionary authority is directed toward those shipping situations wherein it is cumbersome and impractical to issue Government bills of lading at origin, and relatively expensive to convert commercial bills to Government bills of lading at destination, for small shipments bearing a nominal transportation charge.

(1) *Limitations on the use of commercial forms.* The discretionary authority to approve the use of commercial bills of lading or express receipts, for shipping property for the account of the United States, is subject to the following limitations:

(i) The administrative authorization to use commercial forms and procedures must clearly define and describe the particular shipping circumstances and conditions in which they may be used for small shipments, following an administrative determination that commercial forms and procedures will be more efficient and economical than standard Government forms and procedures for the particular circumstances considered. A copy of each such authorization and any amendments extending, curtailing, or cancelling an authorization shall be sent to the Transportation Division, U.S.

General Accounting Office, Washington, D.C. 20548.

(ii) In no circumstances shall the use of commercial forms and procedures be authorized, unless the transportation charges ordinarily do not exceed $25 per shipment and the occasional exception does not exceed this monetary limitation by an unreasonable amount.

(iii) A letter of agreement must be executed by each participating carrier (or its agent) signifying acceptance of the arrangements to use commercial bills and procedures. (Agreements with the National Bus Traffic Association, Inc. and REA Express have been accepted by the General Services Administration on behalf of the civilian agencies of the Federal Government. See subparagraph (2) of this paragraph.) The letter shall contain the following provision: "The shipments covered by this agreement are subject to the terms and conditions set forth in the standard form of the U.S. Government Bill of Lading and any other applicable contract or agreement of the carrier for the transportation of shipments for the United States on Government bills of lading." The head of the procuring activity approving the use of commercial forms and procedures shall advise each participating carrier (or its agent) of this requirement. A copy of each such agreement shall be retained by the head of the procuring activity. Each participating carrier (or its agent) shall be required to file a copy of each such agreement with the appropriate fiscal office (organization and address) responsible for payment of transportation charges.

(2) *Agreements.* In accordance with the provisions of 5 GAO 3017.20(3), agreements have been executed for shipments made by civilian agencies of the Government on commercial bills of lading between the Government and REA Express (see GSA Bulletin FPMR G–50); and between the Government and the National Bus Traffic Association, Inc. (see GSA Bulletin FPMR G–45) on behalf of the carriers listed in Appendix A of that agreement. These agreements may be used only after an administrative decision has been made by the head of a procuring activity for specific circumstances to use commercial forms and procedures, in lieu of Government bills of lading for such shipments, and then only to the extent, and under the conditions, contained in this § 103–40.5310(b). Use of these agreements obviates the necessity for individual carriers participants to the agreements to execute individual agreements with specific Government agencies.

Subpart 103–40.54—Demurrage, Detention, and Storage

§ 103–40.5400 Scope of subpart.

This subpart prescribes policies and procedures for guidance in the prevention and handling of demurrage, detention, and storage charges.

§ 103–40.5401 Demurrage and detention.

(a) Demurrage and detention charges are penalty charges assessed against shippers or receivers for delaying carrier's equipment beyond the free time permitted for loading or unloading.

(b) The "free time" allowed for loading or unloading is usually ample, particularly if the shipment has been properly coordinated and scheduled into the facility workload.

(c) Arrangements for handling bulky, large, heavy, or other unusual commodities, shall be given special attention before shipment is made.

(d) Shipments shall be scheduled to destinations in a manner permitting expeditious handling. Shipping and receiving capacities, loading and unloading facilities, and transport media, are all factors requiring consideration.

§ 103–40.5402 Straight demurrage, detention, and storage bills, freight.

Carriers bills for straight demurrage, detention, or storage shall contain the following information:

(a) Car initials and numbers, if rail;
(b) Truck numbers and carriers, if motor;
(c) Contents;
(d) Date of arrival;
(e) Date of arrival notice;
(f) Date and hour ordered;
(g) Date and hour of placement;
(h) Date and hour released;
(i) Amount due for demurrage or storage; and
(j) Government bill of lading reference. (If covered by a commercial bill of lading, so state.)

§ 103–40.5403 Storage, temporary and nontemporary, household goods.

To the extent possible, when storage is necessary in connection with a household goods shipment, goods shall be placed in facilities of the line-haul transportation company or its agents to avoid possible dual responsibility in case of loss and/or damage. Temporary storage shall not be authorized in connection with local drayage, or for the convenience of the carrier.

(a) Storage-in-transit may be authorized on Government bills of lading in the following instances:

(1) When temporary storage not in excess of 90 days is required by members of the PHS Commissioned Corps, incident to an authorized shipment of household goods.

(2) When temporary storage not in excess of 60 days is authorized in connection with shipment by Government bills of lading for civil service personnel.

(b) Under certain conditions, temporary storage for members of the PHS Commissioned Corps beyond the initial 90 days, but not exceeding an additional 90 days, may be authorized or approved by personnel order. When temporary storage beyond the initial 90 days authorized on Government bills of lading is authorized or approved by personnel order, Form PHS–1672, Authorization for Storage of Household Goods for Commissioned Officers of the Public Health Service, shall be completed by shipping officers as certification to carriers that authority was given for the additional temporary storage.

(c) When nontemporary storage is required, it must be authorized initially in the personnel order and further certified to the storage facility, by use of Form PHS–1672, Authorization for Storage of Household Goods for Commissioned Officers of the Public Health Service.

§ 103–40.5404 Average agreements.

Rail carriers' tariffs provide for the execution of an average agreement whereby credits may be earned by prompt loading and unloading of carload freight within the free time allowed. Credits may be earned to offset certain obligations incurred beyond the free time. When it is determined that an average agreement would be advantageous at a specific point, GSA will arrange for the execution of the necessary agreements. Requests for such arrangements should be forwarded through the appropriate headquarters office to the Office of General Services, OASA–OS, for submittal to GSA.

§ 103–40.5405 Certification of bills.

A certificate, signed by an authorized representative of the receiving activity, shall be placed on the reverse of the demurrage or detention bill. The certification should read substantially as follows: "I certify that the car, or truck, shown on this bill of lading has been held between the dates shown, that the charge is proper and payable from Government funds, and that detention of this car or truck was due to (state the exact cause for failure to release and return car, or truck, to carrier within the free time)". In addition to the signature of the authorized representative, the certificate should show his title and the date.

Subpart 103–40.55—Reconsignment or Diversion

§ 103–40.5500 Scope of subpart.

This subpart provides policies and procedures for requesting reconsignment or diversion of shipments.

§ 103–40.5501 General.

(a) Reconsignment or diversion of carload or truckload shipments are privileges extended by the carrier by which a shipper may, after his goods have been delivered to the carrier, but prior to receipt at destination, make changes in shipping instructions affecting the movement or ownership.

(b) Less than carload (LCL) or less than truckload (LTL) shipments may also be reconsigned when necessary, if carriers' tariffs so provide. However, because of the difficulties and delays involved in locating such shipments, requests for reconsignments on less than carload or less than truckload lots should be limited to those of extreme urgency.

(c) Utilization of diversion or reconsignment privileges permit application of the through rate from origin to the ultimate destination, if a through rate exists from origin to the new destination via the route the shipment will travel when diverted or reconsigned. This is in lieu of the use of a combination of rates to and from the point at which the diversion

or reconsignment is effected. Normally, a combination of rates would be more expensive than the through rate plus the diversion or reconsignment charges.

§ 103–40.5502 Requests for reconsignment or diversion.

Requests for reconsignment or diversion may be requested orally or in writing. When made orally, they shall be confirmed in writing in order that the carrier has written authority for billing purposes. It is of the utmost importance that requests for reconsignment allow carriers adequate opportunity to locate shipments in time to effect reconsignment. Carriers are not responsible for failing to effect reconsignment or diversion when requests for such actions do not allow sufficient time to do so.

§ 103–40.5503 Reconsignment data.

When requesting reconsignment or diversion of a shipment, the carrier shall be provided the following information:

(a) Date of shipment;
(b) Shipper;
(c) Origin;
(d) Consignee;
(e) Destination;
(f) Description of material;
(g) Name of orginating carrier;
(h) Car initials and numbers or truck number (applicable only on carload or truckload shipments);
(i) Bill of lading or pro number;
(j) Number of packages in shipment (applicable only on LTL or LCL shipments);
(k) Weight of shipment (applicable only on LTL or LCL shipments);
(l) New consignee;
(m) New destination;
(n) Original and new route; and
(o) Other pertinent information.

§ 103–40.5504 Endorsement on bills of lading.

The original bill of lading and the memorandum copy shall be endorsed as follows: "This shipment was reconsigned at (Point of reconsignment) on (Date) by (Name of carrier making reconsignment) to (New consignee and destination) via (Added route and delivery, if any) as authorized (Authority for reconsignment). No other bill of lading will be issued. All charges and additional transportation costs, if any, are payable from the appropriation shown on this bill of lading." The endorsement should also include the date and signature of the person authorizing reconsignment or diversion and his title. The endorsement should be placed on the face of the bill of lading, under the "Description of Articles" or "Marks," if space permits. Otherwise, it should be placed on the reverse of the bill of lading, under "Special Services Ordered," or on a continuation sheet to the Government bill of lading (SF–1109) and companion copies (with a reference to the notation on the face of the bill of lading). All parties furnished memorandum copies of the bill of lading should be advised by the shipper of the action taken.

§ 103–40.5505 Holding-in-transit.

In some instances, it may be necessary to instruct a carrier to hold a car for further instructions enroute. New instructions should be furnished the carrier within 24 hours of holding the car, since in most cases free time will elapse thereafter, and demurrage charges accrue.

Subpart 103–40.56—Tracing and Expediting

§ 103–40.5600 Scope of subpart.

This subpart provides policy and procedures for requesting tracing and expediting services.

§ 103–40.5601 Tracing.

Tracing is the procedure for locating shipments. It is a service which carriers perform for shippers or consignees when it is necessary to locate a shipment en route, or when a shipment is undelivered or overdue. Records should be maintained reflecting the time-in-transit on used routes, this will enable shipping officers to determine the routes which are capable of producing the desired service. If freight is not delivered within a reasonable time after it is tendered for transportation, the shipping officer at origin or at destination shall request the carrier at origin to furnish information as to the location of the shipment. Failure to prove delivery will constitute a basis for freight claim action against the carrier (see § 103–40.710). A tracer shall not be requested until the carrier has had enough time, after receipt of the shipment, to make delivery at destination.

§ 103–40.5602 Procedure for tracing.

Requests for tracing of shipments shall be submitted to the origin carrier and will include the following information:

(a) Date of shipment;
(b) Shipper;
(c) Origin;
(d) Consignee;
(e) Destination;
(f) Description of commodity shipped;
(g) Initial carrier;
(h) Carrier's waybill or freightbill number, if known;
(i) Government bill of lading number;
(j) Number and type of packages in shipment; and
(k) Weight of shipment.

§ 103–40.5603 Expediting.

Expediting is an action taken to provide for movement of a shipment from origin to destination in the shortest possible time. This can be action taken before receipt of a shipment by the carrier, or clearing the way for a shipment so that it receives the best service available when late or overdue. Expediting should not be requested unless it is believed that the shipment may not arrive at destination on time.

§ 103–40.5604 Procedure for expediting.

Generally the procedure (for expediting a shipment) is to communicate with the origin carrier, providing information similar to that required in § 103–40.5602, and requesting that shipment be expedited.

Subpart 103–40.57—Items Requiring Special Handling

§ 103–40.5700 Scope of subpart.

This subpart provides policy and procedures for the shipment of narcotics, explosives, alcohol, laboratory specimens, and other dangerous items.

§ 103–40.5701 Narcotics.

Because of the susceptibility of narcotic drugs to pilferage and theft, such material shall be shipped by one of the following methods as appropriate:

(a) Shipments may be forwarded by registered mail when specifically authorized by the Post Office Department and in accordance with the applicable postal regulations. Such shipment shall be labeled "POISON". The actual value of the shipment will be declared at the time shipment is tendered to the post office. In no instance will narcotic parcels be so marked as to disclose their contents or their value.

(b) When registered mail service cannot be utilized, narcotic drugs will be forwarded by railway or air express. A separate U.S. Government Bill of Lading shall be prepared exclusively for each such shipment. Such shipments will be described as "drugs" in the "Description of Articles" space on the bill of lading. The bill of lading and the exterior of each package included in the shipments will be marked "Protective Signature Service Requested". Packages will not be marked in a manner that will reveal their contents and will be sealed with wax or other sealing method acceptable to the express company so that any tampering in transit will be revealed. Shipments forwarded via international express, whether air or surface, are subject to customs requirements of the countries involved. Consequently, air express shipments or surface shipments in international express service will not be initiated prior to consulting with local representatives of the express companies.

(c) Shipments forwarded by ocean carriers will be delivered to the master of the vessel or his authorized representative under hand-to-hand signature receipt. A copy of the receipt will be forwarded to the consignee, under separate cover, with advice relative to the impending arrival of the shipment.

§ 103–40.5702 Dangerous articles and explosives.

(a) Shipments of explosives, flammable liquids and solids, corrosive liquids, acids, compressed gases, combustible liquids, poisons, radioactive substances, and other hazardous articles are subject to certain restrictions and special regulations. The general requirements are that:

(1) Articles be properly described;
(2) Containers be of an approved type and properly labeled (see Subpart 103–40.51); and
(3) Notation of the label used be shown on the bill of lading.

(b) Restrictions on and requirements for land, water, and air shipments vary, as do the labeling and packing requirements for different items. In view of the

special requirements involved for different items and different modes, transportation personnel will refer to the appropriate publications covering restricted and dangerous articles listed in § 103–40.151. Transportation personnel will also contact local agents of carriers to be utilized for advice and assistance in making shipments of dangerous articles and explosives. Information relative to governing rules and regulations may also be secured from the Department of Transportation and Regional Offices of the General Services Administration, as required, to assure that shipment of dangerous articles are shipped in accordance with applicable rules and regulations governing such shipments. Transportation personnel arranging for shipment will assure that carriers used have appropriate operating authority for transporting the specific items shipped.

(c) The following certification, over the signature of the official responsible for transportation, or his agent, will appear on the bill of lading or shipping order:

This is to certify that the above articles are properly described by name and are packed and marked and in proper condition for transportation according to the governing Federal Regulation.

§ 103–40.5703 Use of diplomatic pouch.

(a) Normally, shipment will not be made via diplomatic pouch; however, if it is determined that a shipment would be inordinately delayed in customs if shipped by commercial means, consideration may be given to such method under the following conditions:

(1) The weight to be shipped does not meet the minimum weight to a particular destination.

(2) The comparative cost of minimum or less than minimum weight items can be determined. The Department of State has a rate/weight chart from which this determination can be made.

(3) Department of State Form DS–1019 (Pouch Control Form) must be fully and accurately completed for each shipment, items must be properly packed and accurately described.

(4) Specific authorization must be obtained from the Diplomatic Pouch and Carrier Operation Division, Department of State, for items to be shipped.

(b) Flammable, corrosive, poisonous, radioactive, magnetic, or other items of a hazardous or potentially hazardous nature shall not be shipped via diplomatic pouch under any circumstances.

§ 103–40.5704 Alcohol.

Alcohol may be shipped via freight provided: (a) No laws or tariff provisions are violated; (b) the cost is not in excess of other methods of shipment; and (c) packaging is adequate to withstand the hazards of transportation and to prevent pilferage.

§ 103–40.5705 Laboratory specimens.

Infectious, contaminating, or obnoxious laboratory specimens shipped for purpose of examination analysis, diagnostic and research study, must receive exceptional care in packing and shipping. Officials responsible for transportation of such items shall insure that the packing and labeling of these items comply with governing regulations for the method of shipment utilized.

§ 103–40.5706 Protection of shipments against heat or cold while in transit.

(a) Shipments may encounter extreme changes in temperature. Such changes may occur within a relatively short distance. Protective services against heat or cold are available from carriers. The carriers require that the specific type and degree of protective services to be furnished be ordered prior to shipment. Officials responsible for transportation shall consider the need of such services, and be responsible for the following:

(1) Ordering the proper type of equipment required to transport the items involved;

(2) Inspecting the condition of the equipment when tendered by carriers;

(3) Proper loading of carrier's equipment; and

(4) Including complete instructions on the face of the bill of lading relative to the degree of protective service required.

(b) Normally, material requiring protection against heat or cold will not be shipped on the same bill of lading with material not requiring such protection. The postal system does not provide protective service against exposure to heat or cold. Therefore, the postal system will not be utilized for shipment of perishable items, unless the official responsible for the transportation is satisfied that the dry ice or other preservative packed in the shipping container is sufficient for protection until the shipment is delivered to the consignee. Assistance and information relative to protective services offered by the various modes of transportation, and instructions to be placed on bills of lading may be obtained from the appropriate GSA regional office.

§ 103–40.5707 Household goods and personal effects.

§ 103–40.5707–1 General.

An expedited mode of transportation (REA Express, Air Freight, etc.) may be used when authorized for a portion of household goods and/or personal effects within weight allowances for such shipments when ordinary means will not provide the required service. Exclusive use of vehicle (such as a motor van) will not be authorized at Government expense. Motor carriers of household goods will not accept articles of extraordinary value, e.g., currency, valuable papers, jewelry, collections, precious metals, etc. Such articles should be shipped via an expedited mode.

§ 103–40.5707–2 Expedited mode.

Household goods or personal effects authorized shipment via an expedited mode shall be appropriately packed by one of the following procedures:

(a) Have goods packed by carrier transporting remainder of household goods. Charges for such packing should be itemized by the carrier and submitted for payment with Government bill of lading covering bulk shipment transported by the carrier; or

(b) Have goods packed by a commercial packing company by use of a purchase order; or

(c) Owner of goods may arrange with a commercial packing company to have goods packed, pay for such packing, and submit paid receipt with a claim for reimbursement to appropriate fiscal accounting point.

§ 103–40.5707–3 Articles of extraordinary value.

Shipment of articles of extraordinary value, when authorized, shall be packed and shipped in the same manner as set forth in § 103–40.5707–2. Such shipments must be consigned to the owner or to an agent designated in writing by the owner. (Charges for declared valuation in excess of the released valuation in carrier's tariff at the lowest rate, must be borne by the owner of the goods.)

§ 103–40.5707–4 Unaccompanied baggage.

Shipment of unaccompanied baggage (that portion of an employees personal effects which are not carried free on ticket used for personal travel, and authorized for shipment separately from the bulk of household goods) may be handled in the same manner as through bill of lading shipments of household goods, or by unaccompanied baggage service on a through bill of lading shipments of household goods, or by unaccompanied baggage service on a through bill of lading.

§ 103–40.5707–5 Local drayage.

(a) Drayage of household goods between points within a metropolitan area (commercial zone), when authorized by appropriate order, shall be accomplished as follows:

(1) If drayage services are provided for under established tariffs, schedules, or tenders (5 GAO 3028.10), Government bills of lading may be used to procure such services.

(2) In all other instances, such services shall be procured in accordance with procurement regulations.

(b) Governing regulations do not provide for temporary storage in connection with local drayage.

Effective date. This amendment shall be effective upon publication in the FEDERAL REGISTER.

Dated: December 14, 1970.

SOL ELSON,
Acting Deputy Assistant Secretary for Administration.

[F.R. Doc. 70–17106; Filed, Dec. 18, 1970; 8:46 a.m.]

Title 46—SHIPPING

Chapter IV—Federal Maritime Commission

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[General Order 20, Amdt. 4; Docket No. 70-20]

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

Miscellaneous Amendments

By notice published in the FEDERAL REGISTER on April 29, 1970 (35 F.R. 6763), the Commission served notice that it was considering amending paragraph (e) and adding new paragraph (k) to § 540.9 of Subpart A, 46 CFR Part 540; the addition of new paragraph (j) to § 540.21 of Subpart B; the amendment of paragraph (e) of § 540.27 of Subpart B; and the addition of a new Subpart C to Part 540. In the preamble to its notice of proposed rule making, the Commission outlined the function of its proposed amendments and additions as follows:

> These proposed amendments are for the purpose of attaining more efficient and effective regulations to accomplish the purposes of sections 2 and 3 of Public Law 89-777. A comprehensive review of actual operating experience pursuant to Federal Maritime Commission regulations prescribed in General Order 20, as amended, indicates that certain modification of existing rules and the addition of new rules to provide for the assessment, remission, and mitigation of penalties as authorized by sections 2(c) and 3(c) of Public Law 89-777 may be warranted at this time.

Three comments were filed by, or on behalf of, the International Committee of Passenger Lines (International Committee), P&O Lines and Mitsui O.S.K. Lines (Mitsui/P&O), and Norwegian Caribbean Lines (Norwegian Caribbean). Replies to these comments were filed by Hearing Counsel, and the International Committee submitted answers to these replies. The Commission has carefully considered the position of the parties and the final rules promulgated herein have been drafted with the parties comments and arguments in mind. Comments and arguments not specifically discussed or reflected herein, have been considered and found not relevant, material, or justified.

As proposed to be amended, respective paragraphs (e) of §§ 540.9 and 540.27 would require that the designation of an agent can only be revoked upon three (3) years' notice to the Commission and that a copy of such irrevocable designation must accompany any applicaton for a certificate of either performance or casualty. Further, proposed §§ 540.9(e) and 540.27(e) would provide that in any instance in which the designated agent cannot be served because of death or disability, the Secretary of the Commission will be deemed to be the applicant's agent for service of process. The International Committee contends that there is no authority under the Shipping Act, 1916, for the requirement of a legal agent for the service of process and that, in any event, the appointment of a legal agent for three years is not justified, "since that is longer than the 1-year period usually provided for bringing suit." Appointment of a new agent for one year, when the original agent's appointment is terminated, is viewed by this party as being sufficient.

Mitsui/P&O take issue only with the lack of an actual notice stipulation in the proposal which would allow for "substituted service" upon the Commission Secretary. These commentators argue that it is conceivable that there might be a temporary hiatus in the person of the designated agent at a critical moment in time when service of process is sought to be effected and that, as a result, the Secretary of the Commission would be served in the carrier's behalf, pursuant to the rule as presently drafted, without the carrier itself ever being apprised of the fact. This deficiency, submit Mitsui/P&O, "requires correction as a matter of fundamental due process." Accordingly, they suggest that a provision be incorporated into the final rules requiring that, where "substituted service" is effected, a notice of the suit be sent, by registered mail, to the carrier at its last known address on file with the Commission.

The contention that the Commission is not authorized to require the appointment of an agent for the service of process has previously been considered and rejected by us in Docket No. 66-67, the proceeding which culminated in the issuance of the rules now proposed to be amended. We remain of the opinion, as expressed therein, that:

> The intention of the statute will have gone for naught if the person injured cannot avail himself of the legal process which is contemplated for the recovery of monies. The legal processes will be effectively closed to the injured party if he is unable to find someone who can be the recipient of legal service of process. The Commission does not understand Congress to have enacted such an empty statute.

We find considerable merit, however, with certain other objections raised by the parties and directed to particular aspects of proposed paragraphs (e) of §§ 540.9 and 540.27. Accordingly, these paragraphs have been extensively revised. The requirement that the designation of an agent for service of process be irrevocable for a period of 3 years has been deleted. In lieu thereof, we have expanded the reasons a designated agent might not be able to be served to include the "unavailability" of such agent. Amending §§ 540.9(e) and 540.27(e) to provide that the Secretary of the Commission can be served instead of the appointed agent where such agent cannot be served because of his death, disability or unavailability eliminates the need for an irrevocable designation of any period of time. If the designated agent cannot, for any reason, be served, then service is made upon the Secretary of the Commission. This is the procedure the Commission chose to follow in Docket No. 70-25, the proceeding instituted to implement the financial responsibility provisions of Public Law 91-224, the oil pollution legislation, and, considering the similarity in purpose behind the two sets of rules, we think this procedure is both practical and appropriate here also.

We agree with Mitsui/P&O that any "substituted service" provision should be coupled with the requirement that actual notice also be given to the party sought to be served by the substituted method. A provision requiring that where "substituted service" is effected on the Secretary, service must also be made upon the person against whom the action is brought, by registered mail, at his last known address is not only in keeping with fundamental due process but again also wholly consistent with the position taken by the Commission upon the same basic issue in Docket No. 70-25. At Hearing Counsel's suggestion, the Commission therein adopted into its final rules "the requirement that actual notice be given to the party actually sought to be served by the substituted method", explaining:

> It is indeed conceivable that there might be a temporary absence of the designated agent at a time when service of process was being sought, and that in such a case, under the present form of the rule, the Secretary of the Commission would be served in the parties' behalf, but the party itself under the rules need never be apprised of the fact. To remedy this "deficiency," we have adopted Hearing Counsel's suggestion.

Since that rationale applies with equal force to the present situation, we have incorporated into paragraphs (e) of §§ 540.9 and 540.27, as finally promulgated, the requirement that a party serving the Secretary in accordance with the "substituted service" provision must also serve the certificant, insurer, escrow agent or guarantor, by registered mail, at its last known address on file with the Commission. It will be noted that to conform the "substituted service" provision to other portions of paragraphs (e), the person providing the evidence of financial responsibility has also been included as a party required to be accorded actual notice.

Proposed new paragraph (k) to § 540.9 provides that persons, in whose name a certificate of performance has been issued, should be deemed to be responsible for any unearned passage money held by an agent or any person or organization with which the certificant has made an arrangement for the sale of passage tickets, unless the Commission has been notified to the contrary. Norwegian Caribbean objects to the proposed paragraph (k) on the grounds that its coverage is unclear. They express concern that the proposed rule might be interpreted to subject it, as a certificant, to financial liability where its tickets are sold, and passage money collected, by an unauthorized agent. Likewise, Mitsui P&O and the International Committee submit that care should be taken to avoid any inference that proposed § 540.9(k) imposes any change in substantive rights and responsibilities. To achieve this end and to make it absolutely clear that the proposed rules are intended to impose liability on the certificant only where the

agent has been designated by the certificant to sell its tickets, the International Committee suggests that the first sentence of § 540.9(k) be amended to read as follows:

(k) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits in the hands of its agents or of any other person or organization authorized by the certificant to sell the certificant's tickets * * *.

Further, the International Committee takes the position that the adoption by the Commission of new paragraph (k), requiring the giving of notice by the certificant in every instance where such certificant will not assume responsibility for all passenger fares and deposits collected, renders "unnecessary and redundant" existing § 540.9(f) of the rules which provides that, in the case of any charter arrangements involving a vessel subject to these regulations, the vessel owner or the charterer (in the event of a subcharter) must within 10 days file with the Commission evidence of any such arrangement. The Committee reasons that since new paragraph (k) would squarely impose upon a certificant a broad obligation to give notice, both to the Commission and the party with whom it is dealing, in every instance where the certificant will not assume responsibility for all passenger fares and deposits collected, the Commission will in fact be informed of all instances (charter or otherwise) in which the certificant desires not to assume such responsibility.

Since some uncertainty has been voiced regarding the correct interpretation of § 540.9(k), we agree with the International Committee that that section should be revised to make its intention absolutely clear. In this regard, we find that the language revision suggested by the Committee is not only succinct and to the point but also fully consistent with the Commission's intent and purpose in advancing the proposed rule, that is, to hold the certificant financially responsible for passage monies only where the person selling the certificant's tickets is either his agent or another person somehow authorized by him to sell such tickets. Acordingly, we are adopting the Committee's suggested revision as proposed.

We also agree with the International Committee that the adoption of new paragraph (k) would supersede paragraph (f) of § 540.9 and render that latter paragraph unnecessary. We are, therefore, deleting paragraph (f) of § 540.9 from the rules of this subpart. However, in order that there be no question whatever that charter arrangements would, with the deletion of paragraph (f), be covered by new paragraph (k), we have expressly provided that "arrangements", as used in paragraph (k), includes "charters and subcharters".

Proposed new § 540.21(j) defines "passengers embarking at United States ports" as any person, not "necessary" to the business or operation of a vessel who boards a vessel in the United States and is carried by that vessel on a voyage. Mitsui/P&O propose a minor change to conform new paragraph (j) with what they consider to be the "intent of the rule, i.e., to exclude all of the carrier personnel." They feel the word "necessary", as used in the proposed definition, may be unduly constricting. They foresee that a carrier's employees might accompany a vessel on strictly carrier business (e.g., for purposes of research, equipment evaluation, etc.) but that they would not be "necessary" to the "business, operation or navigation" of the particular vessel, and perhaps not "necessary" to the carrier's overall operations. So that such personnel should not be excluded from the coverage of the casualty rules, they suggest § 540.21(j) be amended to include within the definition of "passengers" any persons "not actually engaged in the business, operation or navigation of a vessel or its owner or operator."

We wholly concur with Hearing Counsel's assessment of Mitsui/P&O's proposed redefinition of "passengers embarking at United States ports" as being "unduly broad". To adopt the Mitsui/P&O suggestion would indeed extend the scope of the term beyond the meaning intended to be ascribed to it. For, to the extent the proposed revision would exclude from "passenger" status persons somehow related to the vessel owner's nonmaritime "business" but not the vessel's "business, operation or navigation", it is, we believe, clearly beyond the scope and purpose of Public Law 89–777 and the Commission's rules. In order to be excluded from "passenger" status the person embarking must be related to the carrier operations and not to other aspects of the company's business. Accordingly, the Commission's definition of "passengers embarking at United States ports" contained in § 540.21(j) will be retained as initially proposed.

Finally, new Subpart C would provide specific procedural regulations pertaining to the assessment, remission and mitigation of penalties as authorized by sections 2(c) and 3(c) of Public Law 89–777. Comments are addressed to only two sections of proposed Subpart C and one of these raises but a minor objection. Mitsui/P&O and the International Committee object to the definition of "violation" contained in § 540.31(d) of proposed new Subpart C which provides:

(d) "Violation" includes any violation of (1) either section 2 or section 3 of the Act; (2) the provisions of this part; and (3) all other rules and regulations that may be subsequently promulgated by the Commission pursuant to the authority of sections 2 and 3 of the Act.

In Mitsui/P&O's view, the penalty power represented by the rule above, extends beyond the statutory authorizations. They submit that a "violation" of one of the Commission's rules would not necessarily involve violation of the statute. One example cited as support for this proposition is where there would be a failure to file, as and when specified, one of the periodic reports called for in various parts of General Order 20. Mitsui/P&O are of the opinion that such an infraction would not be a violation of the penalty provisions of the Act, whatever else it might be. They thus propose to amend the proposed rule by deleting subparagraphs (2) and (3).

The other comment lodged by the International Committee questions the propriety of the use of the word "must" in § 540.32(a), the relevant portion of which provides:

* * * This notification shall further advise the offender that, within 20 days, or such longer period as the Commission in its discretion may allow, he must either pay the penalty demanded or petition for the remission or mitigation of such penalty.

The Committee suggests that since the mitigation provisions of Public Law 89–777 provided that "penalties may be remitted or mitigated", the word "must" in § 540.32(a) should be changed to "may". The point is made that under Public Law 89–777 "a privilege to seek remission or mitigation is granted and no requirement imposed." The suggestion that the word "must" be changed to "may" in paragraph (a) is a point well taken. Accordingly, the suggested revision will be made in the final rules.

Moreover, since the present language of § 540.31(d) appears to raise administrative and legal issues which can best be resolved on the basis of the particular violation involved, we are striking the definition of "violation" contained in paragraph (d) by deleting that paragraph in its entirety. This revision should not be considered, however, as barring the Commission from assessing a penalty for a violation of one of its own rules. Thus, if the Commission determined at a future date and on an ad hoc basis that a violation of one of its rules also directly or indirectly violated section 2 or section 3 of Public Law 89–777, pursuant to which such rule was promulgated, a penalty could be assessed.

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553), and sections 2 and 3 of Public Law 89–777 (80 Stat. 1357, 1358), Part 540 of 46 CFR is amended as set forth below:

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

1. Paragraph (e) of § 540.9 of Subpart A is amended, paragraph (f) is deleted, and a new paragraph (k) is added to read as follows:

§ 540.9 Miscellaneous.

* * * * * * *

(e) Each applicant, insurer, escrow agent and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this Subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of his death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with

the above provision must also serve the Certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail at its last known address on file with the Commission.

(f) [Deleted]

* * * * *

(k) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits in the hands of its agents or of any other person or organization authorized by the certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Public Law 89–777 and not permit use of its name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission.

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Others Persons on Voyages

2. Section 540.20 of Subpart B is amended by adding new paragraph (j), which provides as follows:

§ 540.20 Scope.

* * * * *

(j) For the purpose of determining compliance with § 540.22, passengers embarking at United States ports means any persons, not necessary to the business, operation, or navigation of a vessel, whether holding a ticket or not, who board a vessel at a port or place in the United States and are carried by the vessel on a voyage from that port or place.

3. Paragraph (e) of § 540.27 of Subpart B is amended to read as follows:

§ 540.27 Miscellaneous.

* * * * *

(e) Each applicant, insurer, escrow agent, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of his death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail, at its last known address on file with the Commission.

4. Part 540 is amended by the addition of a new Subpart C, which provides as follows:

Subpart C—Assessment, Remission, and Mitigation of Civil Penalties

Sec.
540.30 Scope.
540.31 Definitions.
540.32 Procedure.
540.33 Petition for remission or mitigation of penalty.
540.34 Settlement, execution of agreement form.
540.35 Referral to Department of Justice.
540.36 Payment of penalties.

AUTHORITY: The provisions of this Subpart C issued under secs. 2 and 3 of Public Law 89–777 (80 Stat. 1356–1358).

Subpart C—Assessment, Remission, and Mitigation of Civil Penalties

§ 540.30 Scope.

Sections 2 and 3 of Public Law 89–777 subject any person who violates the provisions of those sections to:

* * * a civil penalty of not more than $5,000 in addition to a civil penalty of $200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission.

These sections further provide that such penalties may be "remitted or mitigated" by the Commission "upon such terms as they in their discretion shall deem proper." This subpart sets forth regulations prescribing standards and procedures for the collection, mitigation, and remission of civil penalties incurred under sections 2 and 3 of Public Law 89–777, and the rules and regulations promulgated pursuant thereto.[1]

§ 540.31 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) "Person" includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any territory or possession of the United States, or the laws of any foreign country.

(b) "Commission" means the Federal Maritime Commission.

(c) "The Act" (Public Law 89–777 (80 Stat. 1356, 1357, 1358)).

(d) "Offender" includes all persons charged with a violation.

§ 540.32 Procedure.

(a) If it is adjudged or otherwise determined that a violation has occurred and it is decided to invoke a statutory penalty, a registered letter will be sent to the offender informing him of the nature of the violation, statutory and factual basis of the penalty, and the amount of the penalty. This notification shall further advise the offender that, within 20 days, or such longer period as the Commission in its discretion may allow, he may either pay the penalty demanded or petition for the remission or mitigation of such penalty.

(b) All correspondence, petitions, forms, or other instruments regarding the collection, remission or mitigation of any penalty under this subpart should be addressed to the General Counsel, Federal Maritime Commission, 1405 I Street NW., Washington DC 20573.

§ 540.33 Petition for remission or mitigation of penalty.

(a) An offender may submit any oral or written material or information in answer to the notification letter explaining, mitigating, showing extenuating circumstances, or where there has been no formal proceeding on the merits, denying the violation. Material or information so presented will be considered in making the final determination as to whether to mitigate the penalty and the amount for which it will be mitigated, or whether to remit it in full.

(b) When no penalty is invoked or the penalty is remitted, no further action by the offender will be necessary. When the penalty is mitigated, such mitigation will be made conditional upon the full payment within 15 days or such longer period as the Commission in its discretion may allow unless offender within that time executes a promissory note as provided by § 540.36.

§ 540.34 Settlement: execution of agreement form.

When a statutory penalty is mitigated and the offender agrees to settle for that amount, he shall be provided with a Settlement Agreement Form (Appendix A), to be signed, in duplicate, and returned. This form, after reciting the nature of the violation, will contain a statement evidencing the offender's agreement to settlement of the Commission's penalty claim for the amount set forth in the agreement and shall also embody an "approval and acceptance" provision. Upon settlement of the penalty in the agreed amount, one copy of the Settlement Agreement shall be returned to the debtor with the "Approval and Acceptance" thereon signed by the General Counsel of the Commission.

§ 540.35 Referral to Department of Justice.

(a) The Commission will refer violations to the Department of Justice with the recommendation that action be taken to collect the full statutory penalty, when:

(1) The offender, within the prescribed time, does not explain the violation, petition for mitigation or remission, or otherwise respond to letters or inquiries.

(2) The offender, having responded to such letters or inquiries, fails or refuses to pay the statutory or mitigated penalty,

[1] Sections 2(d) and 3(d) of Public Law 89–777 authorize the "Federal Maritime Commission * * * to prescribe such regulations as may be necessary to carry out the provisions of * * * (secs. 2 and 3)".

as determined by the Commission, within the time.

(b) No action looking to the remission or mitigation of a penalty shall be taken on any petition, irrespective of the amount involved, if the case has been referred to the Department of Justice for collection.

§ 540.36 Payment of penalties.

Payment of penalties by the offender shall be made by:

(a) A bank cashier's check or other instrument acceptable to the Commission.

(b) Regular installments by check after the execution of a promissory note containing a confess-judgment agreement (Appendix B).

(c) A combination of the above offered alternatives.

All checks or other instruments submitted in payment of claims shall be made payable to "Federal Maritime Commission".

Effective date. This amendment shall become effective on February 1, 1971.

By order of the Federal Maritime Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

APPENDIX A—SETTLEMENT AGREEMENT

Whereas, consideration is being given to the institution of civil action against the undersigned respondent for recovery of penalties arising under the provisions of ----------; by virtue of certain violations or alleged violations of said provisions, each of which is particularly identified, and set forth below:

Whereas, the undersigned respondent is desirous of expeditiously settling the matter according to the terms and conditions hereof and the avoidance of delay and expense incidental to litigation; and

Whereas, section ------ of Public Law 89–777 (46 U.S.C. ------) authorizes the assessment, collection, remission and mitigation of penalties incurred under the provisions thereof and any rules and regulations promulgated pursuant thereto by the Federal Maritime Commission,

Now therefore, in consideration of the premises herein, the undersigned respondent herewith tenders, or agrees to tender within 15 days, to the Federal Maritime Commission the sum of $------[1] upon the following stipulations and terms of settlement:

1. Upon acceptance of this agreement of settlement in writing by the General Counsel of the Federal Maritime Commission, this instrument shall forever bar the commencement or institution of any civil action or other claim for recovery of penalties from respondent based upon those specific acts or things done or alleged to have been done or arising from those acts or things set forth and described above.

2. The undersigned voluntarily signs his instrument and states that no promises or representations have been made to the respondent other than the agreements and consideration herein expressed.

3. It is expressly understood and agreed that this instrument is not to be construed as an admission of guilt by undersigned respondent to the alleged violations set forth above.[2]

Dated and executed this ------ day of ----------, 19--.

(Name of Person or Corporation)

(Signature of Officer of Owner)

APPROVAL AND ACCEPTANCE

Above terms and conditions and amount of consideration approved and accepted:

By the FEDERAL MARITIME COMMISSION:

(General Counsel)

(Date)

APPENDIX B—PROMISSORY NOTE CONTAINING AGREEMENT FOR JUDGMENT

For value received, (insert name of debtor) promises to pay to the order of the Federal Maritime Commission the sum of $------ Dollars in monthly installments by a bank cashier's or a certified check of not less than $------ Dollars each, on or before the first day of each calendar month until such obligation arising under Public Law 89–777 (46 U.S.C. ------) and described in Appendix A attached and made a part hereof is fully paid. If any such installment shall remain unpaid for a period of 10 days, the entire amount of this obligation less payments actually made, shall thereupon become immediately due and payable at the option of the Federal Maritime Commission without demand or notice, said demand and notice being hereby expressly waived.

(Insert name of debtor) does hereby authorize and empower the United States Attorney, any of his assistants or any attorney of any court of record, Federal or State, to appear for it and to enter and confess judgment against it for the entire amount of this obligation, less payments actually made, at any time after the same becomes due and payable, as herein provided, in any court of record, Federal or State; to waive the issuance and service of process upon it in any suit on this obligation; to waive any venue requirement in such suit; to release all errors which may intervene in entering up such judgment or in issuing any execution thereon; and to consent to immediate execution of said judgment.

(Insert name of debtor) hereby ratify and confirm all that said attorney may do by virtue hereof.

Dated and executed this ------ day of ----------, 19----.

(Insert Name of Debtor)

President

[F.R. Doc. 70–17148; Filed, Dec. 18, 1970; 8:48 a.m.]

[1] Payment will be made in one, or a combination of, the following methods:

(a) A bank cashier's check or other instrument acceptable to the Commission.

(b) Regular installments by check after the execution of a promissory note, copy of which will be attached to this agreement.

[2] This provision will apply only in those instances where there has been no formal proceeding on the merits as to the alleged violations.

Title 21—FOOD AND DRUGS

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

SUBCHAPTER D—HAZARDOUS SUBSTANCES

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

Certain Toys Intended for Use by Children; Classification as Banned Hazardous Substances

The notice published in the FEDERAL REGISTER of November 17, 1970 (35 F.R. 17663), proposing to classify certain toys intended for use by children as banned hazardous substances, provided for the filing of comments within 15 days after said date.

Comments were received from business associations, manufacturers, and distributors of the articles involved and from consumer groups and individuals, principally as follows:

1. The contention was made that most, if not all, toys are hazardous when subjected to abuse and that it is therefore unfair to single out the classes of toys set forth in the proposal.

2. The large outdoor-type darts are not toys but are a game or sports article intended to be used and enjoyed by adults and older children or by children under adult supervision, and are so used.

3. The cap guns described in the proposal are loud, but no louder than other articles, and since the loudness is due to the caps used, and not the gun, the gun should not be banned. The 100-decibel level for the cap guns is too low; the level should be at variously higher levels from 130 decibels proposed by Consumers Union of the U.S., Inc., to 160 decibels proposed by the Ohio Art Co. The distributor commented that no standard specifies the distance from the gun at which to test the gun.

4. The 15-day period providing for comment was insufficient.

5. Consumers Union of the U.S., Inc., petitioned that the toys named within the proposal, as well as several other named toys, be immediately declared to be imminent hazards and banned.

6. The Association of Doll Manufacturers requested an exemption from the proposed classification as a banned toy for dolls, stuffed animals, and other similar toys having internal components that have the potential for laceration, puncture wound injury, or other similar injury provided such toys are constructed so that they will not break or deform to expose such components either in normal expose or when subjected to reasonably foreseeable damage or abuse.

The Commissioner of Food and Drugs has evaluated the comments and concludes that:

1. In enacting the Child Protection Act of 1966 (Public Law 89–756) and the

Child Protection and Toy Safety Act of 1969 (Public Law 91–113), both of which amended the Federal Hazardous Substances Act, Congress rejected the argument that all toys are hazardous when subjected to abuse and decided instead that those toys which came within the proscriptions of the statute are to be declared banned hazardous substances.

2. The large outdoor-type darts are intended for use by adults as an outdoor sport or game. Suitable labeling can be devised to inform parents or other adults of the necessity of carefully supervising children if they are to be permitted to play the game and to give other information relating to the safety of all nonplayers in the immediate area.

3. As the notice states, the cap gun named is only an example of the class involved. If the gun itself can be modified to reduce the noise hazard when used, or if the cap can be changed to bring the noise down to an acceptable level, then the gun will not come within the revised prohibition as set forth below.

4. The noise produced by the cap guns is of the intermittent impulse type. The Report of Working Group 57, "Proposed Damage-Risk Criterion for Impulse Noise (Gunfire)," by the Committee on Hearing, Bioacoustics and Biomechanics (CHABA), NAS–NRC, July, 1968, proposes a peak pressure level for adults of from 138 to 164 decibels. The Walsh-Healy Act, and the regulations thereunder, provide for a maximum exposure to impulsive or impact noise under Government contracts of 140 decibels (41 U.S.C. 35(e), 38; 41 CFR 50–204.10). Risk of unnecessary damage to children's hearing should be avoided where possible. Noise injury from toys is unnecessary and avoidable. In view of the present paucity of scientific information concerning impulse noise and its effect upon the hearing of children, the acceptable decibel level for children's toys should be set at a point lower than for adults, or at least as low as the lower limits permitted adults in unavoidable circumstances. On an interim basis, pending further investigation to determine whether prevention of damage to the hearing of children requires a further revision of the decibel level, 138 decibels will be the maximum decibel level permitted by the regulation herein for impulse-type noise produced by caps intended for use in toy guns or produced by compressed-air or other types of toy guns not intended for use with caps.

5. Since the statute speaks of normal use and of reasonably foreseeable abuse (15 U.S.C. 1261(s)), it is clear that for cap guns, tests should be made in the manner that the gun might be fired by a child.

6. The petition of Consumers Union of the U.S., Inc., and the Childrens Foundation requires no response, as the matter is before the District Court. Without waiting for the Commissioner to consider and respond to the petition, the petitioners filed an action in the U.S. District Court for the District of Columbia for the identical relief sought in the petition.

7. The exemption requested by the Association of Doll Manufacturers is reasonable and has been incorporated in the exemption regulation below.

8. Sufficient time was provided for comments on the proposal and, in terms of consumer protection, extending the time for comment would be to the detriment of the public.

Therefore, pursuant to provisions of the Federal Hazardous Substances Act (sec. 3(e)(1), 83 Stat. 187; 15 U.S.C. 1262) and under authority delegated to the Commissioner (21 CFR 2.120), Part 191 is amended by adding two new sections, as follows:

§ 191.9a Banned toys.

(a) *Toys with mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commissioner has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

(1) Any toy rattle containing, either internally or externally, rigid wires, sharp protrusions, or loose small objects that have the potential for causing lacerations, puncture wound injury, aspiration, ingestion, or other injury.

(2) Any toy having noisemaking components or attachments capable of being dislodged by the operating features of the toy or capable of being deliberately removed by a child, which toy has the potential for causing laceration, puncture wound injury, aspiration, ingestion, or other injury.

(3) Any doll, stuffed animal, or other similar toy having internal or external components that have the potential for causing laceration, puncture wound injury, or other similar injury.

(4) Lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury.

(5) Caps (paper or plastic) intended for use with toy guns and toy guns not intended for use with caps if such caps when so used or such toy guns produce impulse-type sound at a peak pressure level at or above 138 decibels, referred to 0.0002 dyne per square centimeter, when measured in an anechoic chamber at a distance of 25 centimeters (or the distance at which the sound source ordinarily would be from the ear of the child using it if such distance is less than 25 centimeters) in any direction from the source of the sound. This subparagraph is an interim regulation pending further investigation to determine whether prevention of damage to the hearing of children requires revision of this regulation.

§ 191.65a Exemptions from classification as a banned toy.

(a) The term "banned hazardous substance" as used in section 2(q)(1)(A) of the act shall not apply to the following articles:

(1) Toy rattles described in § 191.9a(a)(1) in which the rigid wires, sharp protrusions, or loose small objects are internal and provided that such rattles are constructed so that they will not break or deform to expose or release the contents either in normal use or when subjected to reasonably foreseeable damage or abuse.

(2) Dolls and stuffed animals and other similar toys described in § 191.9a(a)(3) in which the components that have the potential for causing laceration, puncture wound injury, or other similar injury are internal, provided such dolls, stuffed animals, and other similar toys are constructed so that they will not break or deform to expose such components either in normal use or when subjected to reasonably foreseeable damage or abuse.

(3) Lawn darts and similar sharp-pointed articles not intended for toy use and marketed solely as a game of skill for adults, provided such articles:

(i) Bear the following statement on the front of the panel of the carton and on any accompanying literature:

> WARNING: Not a toy for use by children. May cause serious or fatal injury. Read instructions carefully. Keep out of reach of children.

Such statement shall be printed in sharply contrasting color within a borderline and in letters at one-quarter inch high on the main panel of the container and at least one-eighth inch high on all accompanying literature.

(ii) Include in the instructions and rules clear and adequate directions and warnings for safe use including a warning against use when any person or animal is in the vicinity of the intended play or target area.

(iii) Are not sold by toy stores or store departments dealing predominantly in toys and other children's articles.

Effective date. This order shall be effective on its date of FEDERAL REGISTER publication. It would be contrary to the public interest to delay the effective date because the toys are hazardous and should be removed from the market to prevent possible injury.

(Sec. 3(e)(1), 83 Stat. 187; 15 U.S.C. 1262)

Dated: December 17, 1970.

JAMES D. GRANT,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 70–17220; Filed, Dec. 18, 1970; 9:49 a.m.]

Title 49—TRANSPORTATION

Chapter V—National Highway Safety Bureau, Department of Transportation

PART 553—RULE-MAKING PROCEDURES: MOTOR VEHICLE SAFETY STANDARDS

Effect of Petition for Reconsideration

Sections 553.35 and 553.37 of Title 49, Code of Federal Regulations, provide procedural rules for submission of, and action upon, petitions for reconsideration of rules issued under the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.). The purpose of this notice is to establish a new section in Part 553, to make clear the National Highway Safety Bureau's interpretation of the effect of the filing of a petition for reconsideration upon the running of the 60-day period for judicial review of orders issued under the Act (15 U.S.C. 1394).

The Bureau's position is that the 60-day period for judicial review is stayed by a timely petition for reconsideration of an order, and that the review period does not expire until 60 days after the Director's disposition of the petition by notice in the FEDERAL REGISTER. A party adversely affected by the order may, however, seek judicial review before the petition is disposed of.

The staying of the expiration of the review period while action is being taken on petitions for reconsideration is manifestly in the interest both of affected parties and orderly administration by the Bureau. Original orders are often amended on reconsideration. If the expiration of the judicial review period is not stayed, affected parties will be forced to file their appeal in court within 30 days after filing a petition for reconsideration, regarding an issue that may subsequently be mooted by Bureau action on the petition. There would be corresponding pressure on the Bureau to take hasty action on the petition. It appears that the intent of the statute would be best carried out by allowing an appeal at any time between the original Bureau order and 60 days after final action on petitions.

The language of the statute can support this interpretation. The key language is that a person may seek judicial review "at any time prior to the 60th day after such order is issued" (15 U.S.C. 1394(a)(1)). Where a rule is promulgated, and then action is taken on a petition for reconsideration, actually both actions can reasonably be viewed as the issuance of an order. A party may accordingly wait until the last "order" in the rulemaking process to prepare his court action, with 60 days to do so. Alternatively, he may appeal immediately after the rule is first issued, as, for example, where the effective date is soon enough that he considers it important to obtain an immediate resolution of the issues.

In light of the foregoing, Part 553, Rulemaking Procedures: Motor Vehicle Safety Standards, of Title 49, Code of Federal Regulations is amended by adding a new § 553.39, Effect of petition for reconsideration on time for seeking judicial review, to read as set forth below. Since this rule is interpretative in nature, notice and public procedure thereon are unnecessary, and it is effective upon publication in the FEDERAL REGISTER.

§ 553.39 Effect of petition for reconsideration on time for seeking judicial review.

The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the 60-day period in which to seek judicial review of that rule, as to every person adversely affected by the rule. Such a person may file a petition for judicial review at any time from the issuance of the rule in question until 60 days after publication in the FEDERAL REGISTER of the Director's disposition of any timely petitions for reconsideration.

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.51 (35 F.R. 4955))

Issued on December 17, 1970.

DOUGLAS W. TOMS,
Director.

[F.R. Doc. 70-17223; Filed, Dec. 18, 1970; 10:00 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Parts 11, 24, 133]

TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

Notice of Proposed Rule Making

Notice is hereby given that under the authority of 5 U.S.C. 301, R.S. 251 (19 U.S.C. 66), and section 624, 46 Stat. 759 (19 U.S.C. 1624), it is proposed to revise the Customs Regulations relating to trademarks, trade names, and copyrights.

The revision is part of the general revision of the Customs Regulations, and replaces the provisions of §§ 11.14 through 11.21 with a new Part 133. This part follows a new format, and contains changes or additions in language to clarify the former provisions. The principal changes in the requirements or procedures in proposed Part 133 from those set forth in §§ 11.14 through 11.21 are as follows:

1. In Subpart A relating to recordation of trademarks:

Section 133.1 adds a provision for notice of approval of applications.

Section 133.2 requires applicants to identify foreign concerns under common ownership or control which use the trademark.

Section 133.3(b) provides for a fee for each class of merchandise where a trademark is registered for several classes.

Section 133.4 adds provisions relating to the effective date and duration of trademark recordation.

Sections 133.5 and 133.6 add recordation procedures when there is a change in ownership of a recorded trademark, or a change in the name of the owner.

Section 133.7 clarifies the recordation renewal procedure, and provides a grace period for renewal beyond which a new application for recordation must be made.

2. In Subpart B relating to recordation of trade names:

Section 133.11 states what may be recorded as a trade name.

Section 133.12 clarifies the procedure for application to record a trade name, paralleling that for trademarks.

Section 133.14 adds publication and opposition procedures prior to recordation of a trade name, as well as a provision for publication on final approval or disapproval of recordation of a trade name, based on current practice.

Section 133.15 states the term of a trade name recordation.

3. In Subpart C relating to importations infringing upon recorded trademarks or trade names:

Section 133.22 clarifies detention procedures and adds a provision for notice of detention of mail importations based on present practice.

Section 133.23 clarifies the procedures for obtaining the release of detained articles.

Section 133.24 adds a provision clearly making redelivery procedures applicable where merchandise released from Customs custody is found subject to the restrictions covering trademarks or trade names.

4. In Subpart D relating to recordation of copyrights:

Section 133.31(c) adds a provision for notification of approval of applications.

Sections 133.32 and 133.33 rephrase the requirements for application to record copyrights, and provide that all applications shall be made to the Commissioner of Customs. The requirement of submission of an index card notice for readily identifiable copyrighted works is deleted.

Section 133.34 adds provisions relating to the effective date and duration of copyright recordation.

Sections 133.35, 133.36, and 133.37 add procedures where there is a change in ownership of a copyright, or a change in the name of the owner, and for renewal of recordation upon renewal of the copyright registration.

5. In Subpart E relating to importations violating the copyright laws:

Section 133.42 provides for seizure rather than refusal of delivery of articles determined to be piratical copies of recorded copyrighted works, or of articles which the importer does not deny are piratical copies.

Section 133.43 rephrases and expands the procedure to be followed where piratical copying is suspected, based on current practice.

Section 133.45(c) adds procedures based on current practice for the release of books under the Universal Copyright Convention.

Section 133.46 provides for redelivery of articles released from Customs custody found subject to copyright restrictions.

6. In Subpart F relating to the procedures following forfeiture or assessment of liquidated damages:

Section 133.51 adds procedures for the obtaining of relief from forfeiture or the assessment of damages.

There is included as part of the proposed revision a parallel reference table showing the relationship between the proposed provisions and those in 19 CFR Chapter I.

Accordingly, it is proposed to amend the Customs Regulations as set forth below:

PART 11—PACKING AND STAMPING; MARKING

1. The heading of Part 11 is amended to read as set forth above.

§§ 11.14–11.21 [Deleted]

2. Part 11 is amended by deleting §§ 11.14 through 11.21.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

§ 24.12 [Amended]

3. In § 24.12, paragraph (a)(1) is amended by deleting subdivision (i).

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

4. Chapter I of Title 19 of the Code of Federal Regulations is amended to add Part 133 entitled, "Trademarks, Trade Names, and Copyrights" as follows:

Sec.

AUTHORITY: The provisions of this Part 133 issued under R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624. Subpart D also issued under sec. 109, 61 Stat. 664, 17 U.S.C. 109.

§ 133.0 Scope.

This part provides for the recordation of trademarks, trade names, and copyrights with the Bureau of Customs for the purpose of prohibiting the importation of infringing articles. It also sets forth the procedures for the disposition of articles bearing infringing marks, names, or copyrights.

Subpart A—Recordation of Trademarks

§ 133.1 Recordation of trademarks.

(a) *Eligible trademarks.* Trademarks registered by the U.S. Patent Office under the Trademark Act of March 3, 1881, the Trademark Act of February 20, 1905, or the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) except those registered on the supplemental register under the 1946 Act (15 U.S.C. 1096), may be recorded with the Bureau of Customs if the registration is current.

(b) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval of an application for recordation filed in accordance with § 133.2 and of the approval of an application filed in accordance with §§ 133.5, 133.6, and 133.7.

(Secs. 28, 42, 60 Stat. 436, 440; 15 U.S.C. 1096, 1124)

§ 133.2 Application to record trademark.

An application to record one or more trademarks shall be in writing, addressed to the Commissioner of Customs, Washington, D.C. 20226, and shall include the following information:

(a) The name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);

(b) The places of manufacture of goods bearing the recorded trademark;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and

(d) The identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad. For this purpose:

(1) "Common ownership" means individual or aggregate ownership of more than 50 percent of the business entity; and

(2) "Common control" means effective control in policy and operations and is not necessarily synonymous with common ownership.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.3 Documents and fee to accompany application.

(a) *Documents.* The application shall be accompanied by:

(1) A status copy of the certificate of registration certified by the U.S. Patent Office showing title to be presently in the name of the applicant; and

(2) Seven hundred copies of this certificate, or of a U.S. Patent Office facsimile. The copies may be reproduced privately and shall be on paper approximately 8½" by 11" in size. If the certificate consists of two or more pages, the copies may be reproduced on both sides of the paper.

(b) *Fee.* The application shall be accompanied by a fee of $100 for each trademark to be recorded. However, if the trademark is registered for more than one class of goods (see 37 CFR Part 6) the fee for recordation shall be $100 for each class for which the applicant desires to record the trademark with the Bureau of Customs. For example, to secure recordation of a trademark registered for three classes of goods, a fee of $300 is payable. The check or money order shall be made payable to the Bureau of Customs.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

§ 133.4 Effective date, term, and cancellation of trademark recordation and renewals.

(a) *Effective date.* Recordation of trademark and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the Bureau of Customs instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation or renewal of an existing recordation of a trademark shall remain in force concurrently with the 20-year current registration period or last renewal thereof in the Patent Office.

(c) *Cancellation of recordation.* Recordation of a trademark with the Bureau of Customs shall be canceled if the trademark registration is finally canceled or revoked.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.5 Change of ownership of recorded trademark.

If there is a change in ownership of a recorded trademark and the new owner wishes to continue the recordation with the Bureau of Customs, he shall apply therefor by:

(a) Complying with § 133.2;

(b) Describing any time limit on the rights of ownership transferred;

(c) Submitting a status copy of the certificate of registration certified by the U.S. Patent Office showing title to be presently in the name of the new owner; and

(d) Paying a fee of $40 which covers all trademarks included in the application which have been previously recorded with the Bureau of Customs. The check or money order shall be payable to the Bureau of Customs.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

§ 133.6 Change in name of owner of recorded trademark.

If there is a change in the name of the owner of a recorded trademark, but no change in ownership, written notice thereof shall be given to the Commissioner of Customs, accompanied by:

(a) A status copy of the certificate of registration certified by U.S. Patent Office showing title to be presently in the name as changed; and

(b) A fee of $40 which covers all trademarks included in the application which have been previously recorded with the Bureau of Customs. The check or money order shall be payable to the Bureau of Customs.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

§ 133.7 Renewal of trademark recordation.

(a) *Application to renew.* To continue uninterrupted Customs protection for trademarks, the trademark owner shall submit a written application to renew Customs recordation to the Commissioner of Customs not later than 3 months after the date of expiration of the current 20-year trademark registration issued by the Patent Office. A timely application to renew a Customs recordation must include the following:

(1) A status copy of the certificate of registration certified by the U.S. Patent Office showing renewal of the trademark and title to be in the name of the applicant;

(2) A statement describing any change of ownership or in the name of owner, in compliance with §§ 133.5 and 133.6, and any change of addresses of owners or places of manufacture; and

(3) A fee of $40 which covers all recordation renewals submitted with the fee. The check or money order shall be made payable to the Bureau of Customs.

(b) *Delayed application.* Upon request made during the grace period of 3 months afforded by paragraph (a) of this section, a trademark owner whose application for renewal of recordation is unavoidably delayed may be afforded a reasonable extended period within which to comply with the requirements of paragraph (a) of this section. The request shall be in writing, addressed to the Commissioner of Customs, and shall set forth the circumstances due to which application is delayed.

(c) *Untimely application.* Failure of the trademark owner to submit a renewal application within the 3-month grace period afforded in accordance with paragraph (a) of this section or within an extension of time granted in accordance with paragraph (b) of this section, shall deprive the trademark owner of the renewal process. A delinquent applicant will be required to apply anew to record the renewed trademark in accordance with the procedures and requirements of §§ 133.2 and 133.3.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

Subpart B—Recordation of Trade Names

§ 133.11 Trade names eligible for recordation.

The name or trade style used for at least 6 months to identify a manufacturer or trader may be recorded with the Bureau of Customs. Words or designs used as trademarks, whether or not registered in the Patent Office shall not be accepted for recordation as a trade name. Generally, the complete business name will be recorded unless convincing proof establishes that only a part of the complete name is customarily used.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.12 Application to record a trade name.

An application to record a trade name shall be in writing addressed to the Commissioner of Customs, Washington, D.C. 20226, and shall include the following information:

(a) The name, complete business address, and citizenship of the trade name owner or owners (if a partnership, the citizenship of each partner; if an association or corporation, the State, country or other political jurisdiction within which is was organized, incorporated or created);

(b) The name or trade style to be recorded;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trade name and a statement as to the use authorized;

(d) The identity of any parent or subsidiary company, or other foreign company under common ownership or control which uses the trade name abroad (see § 133.2(d)); and

(e) A description of the merchandise with which the trade name is associated.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.13 Documents and fee to accompany application.

(a) *Documents.* The application shall be accompanied by a statement of the owner, partners or principal corporate officer, and by two statements by at least two other persons not associated with or related to the applicant but having actual knowledge of the facts, stating that to his best knowledge and belief:

(1) The applicant has used the trade name in connection with the class or kind of merchandise described in the application for at least 6 months;

(2) The trade name is not identical or confusingly similar to any other trade name or registered trademark used in connection with such class or kind of merchandise; and

(3) The applicant has the sole and exclusive right to the use of such trade name in connection with the merchandise of that class or kind.

(b) *Fee.* The application shall be accompanied by a fee of $100 for each trade name to be recorded. The check or money order shall be made payable to the Bureau of Customs.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

§ 133.14 Publication of trade name recordation.

(a) *Notice of tentative recordation.* Notice of tentative recordation of a trade name shall be published in the FEDERAL REGISTER and the Customs Bulletin. The notice shall specify a procedure and a time period within which interested parties may oppose the recordation.

(b) *Notice of final action.* After consideration of any claims, rebuttals, and other relevant evidence, notice of final aproval or disapproval of the application shall be published in the FEDERAL REGISTER and the Customs Bulletin.

§ 133.15 Term of Customs trade name recordation.

Protection for a recorded trade name shall remain in force as long as it is used. The recordation shall be canceled upon request or upon evidence of disuse. From time to time, the Commissioner of Customs may request the trade name owner to advise whether the name is still in use. The failure of a trade name owner to respond to such a request shall be regarded as evidence of disuse.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

Subpart C—Importations Infringing Recorded Trademarks or Trade Names

§ 133.21 Restrictions on importation of articles bearing recorded trademarks and trade names.

(a) *Copying or simulating marks or names.* Articles of foreign or domestic manufacture bearing a mark or name copying or simulating a recorded trademark or trade name shall be denied entry and are subject to forfeiture as prohibited importations. A "copying or simulating" mark or name is an actual counterfeit of the recorded mark or name or is one which so resembles it as to be likely to cause the public to associate the copying or simulating mark with the recorded mark or name.

(b) *Identical trademark.* Foreign-made articles bearing a trademark identical with one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States are subject to forfeiture as prohibited importations.

(c) *Restrictions not applicable.* The restrictions set forth in paragraphs (a) and (b) of this section do not apply to imported articles when:

(1) Both the foreign and the U.S. trademark or trade name are owned by the same person or business entity;

(2) The foreign and domestic trademark or trade name owners are parent and subsidiary companies or are otherwise subject to common ownership or control;

(3) The articles of foreign manufacture bear a recorded trademark or trade name applied under authorization of the U.S. owner;

(4) The objectionable mark is removed or obliterated prior to importation in such a manner as to be illegible and incapable of being reconstituted, for example by:

(i) Grinding off imprinted trademarks wherever they appear;

(ii) Removing and disposing of plates bearing a trademark or trade name;

(5) The merchandise is imported by the recordant of the trademark or trade name or his designate; or

(6) The recordant gives written consent to a specific importation of articles bearing its trademark or trade name, and such consent is furnished to appropriate Customs officials.

(Sec. 42, 60 Stat. 440, sec. 526, 46 Stat. 741; 15 U.S.C. 1124, 19 U.S.C. 1526)

§ 133.22 Detention of articles subject to restrictions.

(a) *In general.* Articles subject to the restrictions of § 133.21 shall be detained for 30 days from the date of notice to the importer that such restrictions apply to permit the importer to establish that any of the circumstances described in § 133.21 (c) are applicable.

(b) *Notice of detention.* Notice of detention of articles found subject to the restrictions of § 133.21 shall be given the importer in writing, except that for articles accompanying the importer or arriving by mail, notice of detention shall be given in the following manner:

(1) *Articles accompanying importer.* When the articles are carried as accompanying baggage or on the person or persons arriving in the United States the Customs inspector shall orally advise the importer that the articles are subject to detention.

(2) *Mail importations.* When the articles arrive by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, notice of the detention shall be given on Customs Form 8.

(c) *Failure to obtain release in 30 days.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of Part 171 of this chapter.

§ 133.23 Release of detained articles.

(a) *General.* Articles detained in accordance with § 133.22 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction set forth in § 133.21(c) are established.

(b) *Articles accompanying importer.* Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(1) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(2) The request of the importer to obtain skillful removal of the marks is granted by the district director on such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(c) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at $250 or less may be exported or destroyed at the request of the addressee or may be released if:

(1) The addressee appears in person at the Customs office identified on Customs Form 8, and removes or obliterates the marks in a manner acceptable to the Customs officer; or

(2) The addressee requests by execution and filing with the district director of the declaration on Customs Form 8 that the package be sent to him for removal or obliteration of the marks.

§ 133.24 Demand for redelivery of released merchandise.

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of § 133.21, the district director shall promptly make demand for the redelivery of the merchandise under the terms of the entry bond in accordance with § 8.26 of this chapter. If the merchandise is not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 25.17 of this chapter.

Subpart D—Recordation of Copyrights

§ 133.31 Recordation of copyrighted works.

(a) *Eligible works.* Claims to copyright which have been registered in accordance with the provisions of the Copyright Act of July 30, 1947, as amended (17 U.S.C. 1–32), or unregistered claims to copyright in works entitled to protection under section 9(c) of that Act, as amended (17 U.S.C. 9(c)), by virtue of the Universal Copyright Convention, may be recorded with the Bureau of Customs if the copyright is subsisting.

(b) *Countries party to the Universal Copyright Convention.* The following countries are party to the Universal Copyright Convention:

Andorra.	Denmark.
Argentina.	Ecuador.
Australia.	Finland.
Austria.	France.
Belgium.	Germany, Federal Republic of.
Brazil.	Ghana.
Cambodia.	Greece.
Canada.	Guatemala.
Chile.	Haiti.
Costa Rica.	Holy See.
Cuba.	Iceland.
Czechoslovakia.	India.
Ireland.	Nigeria.
Israel.	Norway.
Italy.	Paskistan.
Japan.	Panama.
Kenya.	Paraguay.
Laos.	Peru.
Lebanon.	Philippines.
Liberia.	Portugal.
Liechtenstein.	Spain.
Luxembourg.	Sweden.
Malawi.	Switzerland.
Malta.	Tunisia.
Mexico.	United Kingdom.
Monaco.	United States of America.
Netherlands.	Venezuela.
New Zealand.	Yugoslavia.
Nicaragua.	Zambia.

(c) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval of an application filed in accordance with § 133.32 and of the approval of application filed in accordance with §§ 133.35, 133.36, and 133.37.

§ 133.32 Application to record copyright.

An application to record a copyright to secure Customs protection against the importation of piratical copies shall be in writing addressed to the Commissioner of Customs, Washington, D.C. 20226, and shall include the following information:

(a) The name and complete address of the copyright owner or owners;

(b) The name and principal address of any foreign person or business entity authorized or licensed to use the copyright, and a statement as to the use authorized; and

(c) In the case of protection claimed under section 9(c) of the Copyright Act, by virtue of the Universal Copyright Convention, a statement setting forth the name of the author and his citizenship and domicile at the time of publication, the date and country of publication, and a description of the work, including its title, and a statement that all copies bore the Universal Copyright Convention notice from the date of first publication.

§ 133.33 Documents and fee to accompany application.

(a) *Documents.* The application for recordation shall be accompanied by the following documents:

(1) An "additional certificate" of copyright registration issued by the U.S. Copyright Office, except for unregistered Universal Copyright Convention works as described in § 133.32(c). If applicable, the application also shall be accompanied by a certified copy of a document recorded in the Copyright Office showing title to be presently in the name of the applicant; and

(2) Seven hundred 8" x 10½" photographic or other likenesses of any three-dimensional work, design, print, label, or other work not readily identifiable by title and author. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author.

(b) *Fee.* Each application shall be accompanied by a fee of $100 for each copyright to be recorded. The check or money order shall be made payable to the Bureau of Customs.

(Sec. 501, 65 Stat. 290; 31 U.S.C. 483a)

§ 133.34 Effective date, term, and cancellation of recordation.

(a) *Effective date.* Recordation of copyright and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the Bureau of Customs instructing Customs officers as to the terms and conditions of import protection appropirate.

(b) *Term.* The recordation, or renewal of an existing recordation, of a copyright shall remain in force concurrently with the 28-year current registration period or renewal thereof in the Copyright Office.

(c) *Cancellation.* Recordation of a copyright with the Bureau of Customs shall be canceled if the registration in the U.S. Copyright Office is finally canceled or revoked.

§ 133.35 Change of ownership of recorded copyright.

(a) *Application.* If the ownership of a recorded copyright is transferred and the new owner wishes to continue the recordation with the Bureau of Customs, he shall make written application to the Commissioner of Customs as follows:

(1) Comply, as appropriate, with § 133.32; and

(2) Describe any time limit on the rights of ownership transferred.

(b) *Document and fee.* The application shall be accompanied by:

(1) A certified copy of any document recorded in the U.S. Copyright Office showing title to be presently in the name of the applicant; and

(2) A fee of $40. The check or money order shall be payable to the Bureau of Customs.

(Sec. 501, 65 Stat. 290; 31 U.S.C. 483a)

§ 133.36 Change in name of owner of recorded copyright.

If there is a change in the name of the owner of a recorded copyright, but no transfer of ownership, written notice specifying the change shall be given to the Commissioner of Customs accompanied by the following:

(a) A certified copy of any document recorded in the U.S. Copyright Office showing title to be presently in the name as changed; and

(b) Payment of a fee of $40. The check or money order shall be payable to the Bureau of Customs.

(Sec. 501, 65 Stat. 290; 31 U.S.C. 483a)

§ 133.37 Renewal of copyright recordation.

(a) *Application for renewal.* To continue uninterrupted Customs protection for a recorded copyright, the copyright owner shall make written application to the Commissioner of Customs to renew Customs recordation not later than 3 months from the date of expiration of the copyright registration. An application to renew a Customs recordation shall include the following:

(1) An "additional certificate" of the renewal certificate issued by the U.S. Patent Office showing renewal of the copyright and title to be in the name of the applicant;

(2) A statement describing any change of ownership or name of owner, in compliance with §§ 133.35 and 133.36 and any change of address of owner or place of manufacture; and

(3) Payment of a fee of $40. The check or money order shall be payable to the Bureau of Customs.

(b) *Delayed application.* Upon request made during the grace period of 3 months afforded by paragraph (a) of this section, a copyright owner whose application for renewal of recordation is unavoidably delayed may be afforded a reasonable extended period within which to comply with the requirements of paragraph (a) of this section. The request shall be in writing, addressed to the Commissioner of Customs, and shall set forth the circumstances due to which application is delayed.

(c) *Untimely application.* Failure of the copyright owner to submit a renewal application within the 3-month grace period afforded in accordance with paragraph (a) of this section, or within an extension of time granted in accordance with paragraph (b) of this section, shall deprive the copyright owner of the renewal process. A delinquent applicant will be required to apply anew to record the renewed copyright in accordance with the procedures and requirements of §§ 133.32 and 133.33.

Subpart E—Importations Violating Copyright Laws

§ 133.41 False notice of copyright.

(a) *Importation prohibited.* The importation of articles bearing a false notice of copyright is prohibited. Books, periodicals, newspapers, music, moving picture films, and other articles which bear words indicating they are entitled to copyright protection in the United States, when in fact they are not so entitled, bear a false notice of copyright.

(b) *Seizure and forfeiture.* All articles bearing a false notice of copyright shall be seized and forfeited, except when imported in the mails. Such articles imported in the mails shall be returned to the postmaster for return to the sender as nondeliverable.

(Secs. 106, 108, 61 Stat. 663, 664; 17 U.S.C. 106, 108)

§ 133.42 Piratical copies.

(a) *Importation prohibited.* The importation of piratical copies of works copyrighted in the United States is prohibited. Piratical copies are actual copies or substantial copies of a recorded copyrighted work, produced and imported in contravention of the rights of the copyright owner.

(b) *Seizure and forfeiture.* The district director shall seize and forfeit an imported article which he determines constitutes a piratical copy of a recorded copyrighted work. The district director shall also seize and forfeit an imported article if the importer does not deny a representation that the article is a piratical copy as provided in § 133.43(a).

(Secs. 106, 108, 61 Stat. 663, 664; 17 U.S.C. 106, 108)

§ 133.43 Procedure on suspicion of piratical copying.

(a) *Notice to the importer.* If the district director has any reason to believe that an imported article may be a piratical copy of a recorded copyrighted work, he shall withhold delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact a piratical copy and alleging that the detention of the article will result in a material depreciation of its value, or a loss or damage to him. The district director shall also advise the importer that in the absence of receipt within 30 days of a denial by the importer that the article constitutes a piratical copy, it shall be considered to be such a copy and shall be subject to seizure and forfeiture.

(b) *Notice to copyright owner.* If the importer of suspected piratical copies files a denial as provided in paragraph (a) of this section, the district director shall furnish the copyright owner a representative sample of the imported articles, together with notice that the imported articles will be released to the importer unless within 10 days from the date of the notice, exclusive of any intervening Saturday, Sunday, or holiday, the copyright owner files with the district director:

(1) A written demand for the exclusion from entry of the detained imported articles; and

(2) A bond in the form and amount specified by the district director, conditioned to hold the importer or owner of such imported articles harmless from any loss or damage resulting from Customs detention in the event the Commissioner of Customs or his designee determines that the article is not a piratical copy prohibited importation under section 106 of the Copyright Act (17 U.S.C. 106).

(c) *Result of action or inaction by copyright owner.* After notice to the copyright owner that delivery is being withheld for imported articles suspected to be piratical copies of his recorded copyrighted work, the district director shall porceed in accordance with the applicable procedure set forth below:

(1) *Demand and bond filed.* If the copyright owner files a written demand for exclusion of the suspected piratical copies together with a proper bond, the district director shall promptly notify the importer and the copyright owner that, during a specified time limited to not more than 30 days, they may submit further evidence, legal briefs, or other pertinent material to substantiate the claim or denial of piratical copying. The burden of proof shall be upon the party claiming that any article is in fact a piratical copy. At the close of the period specified for submission of evidence, the district director shall forward the entire file in the case, together with a representative sample of the imported articles and his views or comments, to the Commissioner of Customs or his designee for decision of the disputed claim of piratical copying.

(2) *Piracy disclaimed or unsupported.* If the copyright owner disclaims that the specific imported article is a piratical copy of his recorded copyrighted work, or concedes that he possesses insufficient evidence or proofs to substantiate a claim of piracy, the district director shall release the detained shipment to the importer, and shall release all further importations of the same article, by whomever imported, without further notice to the copyright owner.

(3) *Failure to file demand or bond.* If the copyright owner fails to file a written demand for exclusion and bond as required by paragraph (b) of this section, the district director shall release the detained articles to the importer, and notify the copyright owner of the release. The district director shall withhold delivery of all further importations of the same article by the same importer, and shall notify the copyright owner of each such subsequent shipment as provided in paragraph (b) of this section.

(4) *Withdrawal of bond.* At any time prior to transmittal of the case to the Commissioner of Customs or his designee for decision, the copyright owner may withdraw a bond filed in accordance with paragraph (b) of this section. Prior to returning the bond to the copyright owner and release of the detained articles, the district director shall require the copyright owner and the importer to file written statements agreeing to hold the Bureau of Customs and the district director harmless for any consequence of return of the bond and release of the detained articles. After withdrawal of a bond, the district director shall release importations of the same article by the same importer without further notice to the copyright owner.

§ 133.44 Decision of disputed claim of piratical copying.

(a) *Claim of piracy sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is a piratical copy, the district director shall seize and forfeit the imported articles in accordance with Part 23 of this chapter, and shall return the bond to the copyright owner.

(b) *Denial of piracy sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is not a piratical copy, the district director shall release all such detained merchandise and transmit the copyright owner's bond to the importer.

(Secs. 106, 108, 61 Stat. 663, 664; 17 U.S.C. 106, 108)

§ 133.45 U.S. manufacturing requirements.

(a) *Importation prohibited.* Books and periodicals manufactured abroad contrary to the terms of the "American manufacturing clause" of the Copyright Act

(17 U.S.C. 16) which requires manufacture in the United States may not be imported during the existence of the U.S. copyright unless:

(1) The importation is permitted under one of the limited exceptions in 17 U.S.C. 107;

(2) The importation is entitled to United States copyright protection under the provisions of 17 U.S.C. 9(c) by virtue of the Universal Copyright Convention (see paragraph (c) of this section); or

(3) The importation is permitted by an ad interim copyright (see paragraph (b) of this section).

(b) *Release of books under ad interim copyright.* Upon compliance with the usual Customs requirements, the district director may release up to 1,500 copies of a book or periodical covered by an ad interim copyright when imported pursuant to the quantitative exception in 17 U.S.C. 16 if:

(1) There is presented with the entry an "Import Statement" issued by the Register of Copyrights authorizing the importation of a number of copies not in excess of 1,500 copies; and

(2) The copies are otherwise admissible.

(c) *Release of books under Universal Copyright Convention.* The district director shall release books under the Universal Copyright Convention without an "Import Statement" and in unlimited quantities upon a determination that the country in which the book was first published is a Convention country other than the United States, and the country of which the author was a citizen or domiciliary at the time of first publication is a Convention country other than the United States. Prior to releasing the books, the district director shall require the importer to supply the following information in writing:

(1) The country in which the book was first published;

(2) The country of which the author was a citizen at the time of first publication; and

(3) The country in which the author was domiciled at the time of first publication.

(Secs. 9, 16, 107, 61 Stat. 655, as amended, 657, as amended, 663; 17 U.S.C. 9, 16, 107)

§ 133.46 Demand for redelivery of release articles.

If it is determined that articles which have been released from Customs custody are subject to the prohibitions or restrictions of this subpart, the district director at the port of entry shall promptly make demand for redelivery of the articles under the terms of the entry bond in accordance with § 8.26 of this chapter. If the articles are not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 25.17 of this chapter.

Subpart F—Procedure Following Forfeiture or Assessment of Liquidated Damages

§ 133.51 Relief from forfeiture or liquidated damages.

(a) *Petition for relief.* The importer may petition in accordance with Parts 171 and 172 of this chapter for relief from, or cancellation of, a forfeiture incurred for violation of the trademark or copyright laws, or a claim for liquidated damages for failure to redeliver released merchandise incurred under the provisions of § 133.24 or § 133.46.

(b) *Conditioned relief.* In appropriate cases, relief from a forfeiture may be granted pursuant to a petition for relief upon condition that:

(1) The unlawfully imported or prohibited articles are exported or destroyed under Customs supervision and at no expense to the Government;

(2) All offending trademarks or trade names are removed or obliterated prior to release of the articles;

(3) The notice of copyright is completely obliterated, with the concurrence of the copyright owner, prior to release of the article; or

(4) The importer complies with such other conditions as may be specified by the appropriate Customs authority.

§ 133.52 Disposition of forfeited merchandise.

(a) *Trademark or trade name violation.* Articles forfeited for violation of the trademark laws shall be disposed of in accordance with the procedures applicable to forfeitures for violation of the Customs laws, after the removal or obliteration of the name, mark, or trademark by reason of which the articles were seized.

(b) *Copyright violations.* Articles forfeited for violation of the copyright laws shall be destroyed.

(Sec. 42, 60 Stat. 440, sec. 108, 61 Stat. 664; 15 U.S.C. 1124, 17 U.S.C. 108)

§ 133.53 Refund of duty.

If a violation of the trademark or copyright laws is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation and the duty refunded as an erroneous collection upon exportation or destruction of the prohibited articles in accordance with § 8.49 or § 15.5 of this chapter.

(Sec. 558(a), 46 Stat. 744, as amended; 19 U.S.C. 1558(a))

Prior to the adoption of the revision, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Washington, D.C. 20226, and received not later than 60 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] MYLES J. AMBROSE,
Commissioner of Customs.

Approved: December 4, 1970.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

ANNEX TO NOTICE OF PROPOSED RULE MAKING—PART 133

Parallel Reference Table

(This table shows the relation of sections in proposed Part 133 to 19 CFR Part 11.)

Proposed section	*19 CFR section*
133.0	None.
133.1(a)	11.15(a).
133.1(b)	None.
133.2	11.15(a).
133.3	11.15(a).
133.4	None.
133.5	None.
133.6	None.
133.7	11.15(c).
133.11	None.
133.12	11.16.
133.13	11.16.
133.14	None.
133.15	None.
133.21	11.14.
133.22(a)	11.17(a).
133.22(b)	11.17(b).
133.22(c)	11.17(b).
133.23(a)	None.
133.23(c)	11.17.
133.24	None.
133.31(a)	11.19(a).
133.31(b)	11.19(b).
133.31(c)	None.
133.32	11.19(a).
133.33	11.19(a).
133.34	None.
133.35	None.
133.36	None.
133.37	None.
133.41	11.18.
133.42(a)	11.20(a).
133.42(b)	11.20(b).
133.43(a)	11.20(c).
133.43(b)	11.20(c).
133.43(c)(1)	11.20(d).
133.43(c)(2–4)	None.
133.44	11.20(e).
133.45(a)	11.21(a).
133.45(b)	11.21(c).
133.45(c)	None.
133.46	None.
133.51	None.
133.52(a)	11.17(c).
133.52(b)	None.
133.53	11.17(d).

[F.R. Doc. 70-17145; Filed, Dec. 18, 1970; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

[15 CFR Part 7]

CHILDREN'S SLEEPWEAR

Proposed Flammability Standard; Notice of Extension of Time for Filing Comments

On November 17, 1970, a proposed flammability standard for children's sleepwear was published in the FEDERAL REGISTER (35 F.R. 17670). Interested persons were afforded 30 days from the date of publication within which to submit written comments or suggestions on this proposed standard to the Assistant Secretary for Science and Technology.

Following publication of the above notice, a number of requests for an extension of the time for filing comments have been received. It appears that these requests for an extension of time are justified because of the technical complexity of the standard involved. Accordingly, the period of time for filing comments or

suggestions in the instant proceeding is hereby extended until January 29, 1971.

Issued: December 16, 1970.

RICHARD O. SIMPSON,
Acting Assistant Secretary for Science and Technology.

[F.R. Doc. 70-17180; Filed, Dec. 18, 1970; 8:48 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 191]

BANNED HAZARDOUS SUBSTANCES

Repurchase or Rectification

Section 15 of the Federal Hazardous Substances Act, added thereto by the Child Protection and Toy Safety Act of 1969 (Public Law 91-113), provides that the manufacturer, distributor, or dealer who has sold any article or substance which is a banned hazardous substance (whether or not it was such at the time of sale) shall repurchase it from the person to whom he sold it and refund that person the purchase price paid for such article or substance. This includes refund to customers of the repurchase price paid by retail dealers and distributors for repurchase, and reimbursement for any reasonable and necessary transportation charges incurred in its return by the retail purchaser to the dealer as well as reimbursement for any reasonable and necessary expenses in returning it to the distributor or manufacturer.

For purposes of this section, the term manufacturer includes an importer for resale as well as any person or company that distributes articles or substances made to its specifications by another person or company. A dealer who sells an article or substance at wholesale is deemed to be the distributor of that article or substance.

Section 15 of said Act authorizes the promulgation of regulations regarding the repurchase of banned hazardous substances. Therefore, pursuant to provisions of the Federal Hazardous Substances Act (sec. 15, 83 Stat. 189-90; 15 U.S.C. 1273), and under authority delegated to him (21 CFR 2.120), the Commissioner of Food and Drugs proposes that a new section be added to Part 191, as follows:

§ 191.202 Repurchase or rectification of banned hazardous substances.

(a) A plan for the repurchase or rectification if rectification is proposed by the manufacturer (at the option of the purchaser) of any article or substance which has been declared a banned hazardous substance shall be submitted to the Commissioner in writing by the manufacturer in the shortest possible time, not to exceed 10 days after such article or substance has been declared a banned hazardous substance. In addition to other relevant information which the Commissioner may require, the plan shall include:

(1) Identification of the article or substance involved, including model number or other distinguishing characteristics.

(2) The total number of articles or substances which have been manufactured and distributed and the names and addresses of all persons and firms to which distributed, including dealers or retailers.

(3) The location and total number of articles or substances which have not been distributed.

(4) The manner in which the refund or rectification operation will be conducted, including (i) the procedure for obtaining possession of the article or substance for which the refund or rectification is to be made; (ii) the manner and rate of payment for transportation charges incurred by the purchaser at retail, if any; and (iii) the manner of refund to the retailer or distributor of the refunded purchase price and transportation expenses of the purchaser as well as expenses of return or rectification.

(5) The manner in which the recovered article or substance will be disposed of or rectified.

(6) The manner in which the wholesaler, dealer, retailer, and purchaser at retail will be notified that (i) the article or substance has been declared a banned hazardous substance and (ii) that any purchaser who returns the article or substance to the dealer from whom he purchased it will receive a refund from such dealer of the purchase price paid for it and reimbursement of any reasonable and necessary transportation charges incurred in its return, or at the purchaser's option, rectification of the article or substance if rectification is possible.

(7) A time limit (with detailed explanation) that is reasonable under the circumstances for the repurchase and recovery or rectification of each such article or substance.

(8) The text of the written statement which will be sent to all persons to whom the article or substance has been sold, as required by paragraph (c) of this section.

(9) A time schedule during which the Commissioner will be provided with periodic detailed progress reports on the effectiveness of the execution of the plan, including the number of articles or substances repurchased or rectified pursuant to the approval plan, as well as details on how the entire plan is to be monitored for effectiveness.

(b) If after review of any plan submitted pursuant to paragraph (a) of this section the Commissioner determines that the action to be taken by the manufacturer is appropriate, he shall send written notice of approval of such plan to the manufacturer. Such approval may be conditioned upon such additional terms as the Commissioner deems necessary to protect the public.

(c) After the plan submitted pursuant to paragraph (a) of this section has been approved, the manufacturer of any article or substance that has been declared a banned hazardous substance shall as soon thereafter as possible, but not to exceed 10 days, notify in writing all persons to whom he has sold such article or substance of the following:

(1) The identity of the article or substance involved, including model number or other distinguishing characteristics.

(2) That the article or substance has been declared a banned hazardous substance.

(3) That if the retail purchaser returns the article or substance to the retail dealer, such dealer will refund to the purchaser the purchase price paid for it and reimburse him for any reasonable and necessary transportation charges incurred in its return, or if appropriate and at the option of the purchaser, rectification of the article or substance will be made.

(4) That the manufacturer and/or distributor will refund the purchase price paid for the article or substance to each person to whom the article or substance was sold, less profit if any, including the repurchase amount, less profit if any, paid by retail dealers for the return of the article or substance and any reasonable and necessary expenses incurred by those required to return the article to the manufacturer or distributor.

(5) If the article or substance is required to be returned to the manufacturer, the method by which it should be returned.

(6) The method by which the refund will be made.

(d) Any person or company, except retail dealers, who receives the notice specified in paragraph (c) of this section shall as soon thereafter as possible, but not to exceed 10 days, notify in writing any person or company to whom it has sold such article or substance of the information specified in paragraph (c) of this section.

(e) Any manufacturer, as part of his repurchase and/or rectification plan, may apply to the Commissioner for an exemption, in whole or in part, from any of the foregoing provisions of this section. The petition for waiver shall set forth detailed reasons why any of the foregoing provisions should not apply, in whole or in part. Such reasons may include, but are not limited to, the age, deterioration, or other condition of the particular article or substance.

Interested persons may, within 30 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: December 17, 1970.

JAMES D. GRANT,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 70-17219; Filed, Dec. 18, 1970; 9:49 a.m.]

FEDERAL POWER COMMISSION

[18 CFR Parts 2, 154]

[Docket No. R-181]

FILING DATES AND SUSPENSION PERIODS

Order Terminating Proposed Rule Making Proceeding

DECEMBER 14, 1970.

Proposed amendments to the Commission's regulations under the Natural Gas Act, §§ 154.94(b), 154.98, 154.66(b), and rules of practice and procedure, § 2.52.

The Commission has under consideration in this proceeding proposed amendments relating to the filing dates and suspension periods for independent producer rate changes filed under section 4(d) of the Natural Gas Act and a proposed amendment which would permit a natural gas company to file a change in tariff to recover an increase in the cost of purchased gas during the suspension period of a previously proposed change in tariff.

The notice of proposed rule making was issued on November 21, 1960 and was published in the FEDERAL REGISTER on November 26, 1960 (25 F.R. 11239). In response to such notice, comments were received from a number of interested parties.

In view of the staleness of the record, we would not want to decide the matters involved here without giving interested parties further notice and an opportunity to submit comments. Moreover, a notice of proposed rule making was issued on November 6, 1970, in Docket No. R-407 proposing to establish as a matter of general policy that the Commission will suspend for only 1 day a change in rate filed by an independent producer if suspension is warranted. Adoption of the proposal in Docket No. R-407 would make the proposal in Docket No. R-181 moot for most purposes. We therefore believe it appropriate to terminate Docket No. R-181.

The Commission finds:

(1) The termination of the proposed rule making in Docket No. R-181 is appropriate and necessary for carrying out the provisions of the Natural Gas Act.

(2) Compliance with the effective date provisions of section 553 of title 5 of the United States Code is unnecessary.

The Commission, acting pursuant to authority granted by the Natural Gas Act, as amended, particularly section 16 (52 Stat. 830; 15 U.S.C. 717o), orders:

(A) Effective upon issuance of this order, the proposed rulemaking in Docket No. R-181 is terminated.

(B) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17116; Filed, Dec. 18, 1970; 8:46 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

HOOPA VALLEY RESERVATION, CALIF.

Ordinance Legalizing Introduction, Sale, or Possession of Intoxicants

DECEMBER 17, 1970.

In accordance with authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2, and in accordance with the Act of August 15, 1953, Public Law 277, 83d Congress, 1st Session (67 Stat. 586), I certify that the following ordinance relating to the application of the Federal Indian Liquor Laws on the Hoopa Valley Indian Reservation, Calif., was adopted on October 8, 1970, by the Hoopa Valley Business Council, which has jurisdiction over the area of Indian country included in the ordinance, reading as follows:

Whereas: The Hoopa Valley Tribe did, on May 5, 1950, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on September 4, 1952, and Article VIII, section 1(a) authorizes the Hoopa Valley Business Council to promulgate and enforce ordinances subject to the approval of the Commissioner of Indian Affairs, and

Whereas: Extensive discussions have been held between Council members and members of the General Council, and the issue in question of the sale of alcoholic beverages within the boundaries of the Reservation has been fully discussed with the Council members and said General Council have had opportunity to express their views by vote and otherwise; and

Whereas: It is deemed appropriate and consistent with the needs and wishes of the community; and

Whereas: Public Law 277, 83d Congress, approved August 15, 1953, provides in sections 1154, 1156, 3113, 3488 and 3618 of title 18, United States Code, commonly referred to as the "Federal Indian Liquor Laws", shall not apply to any act or transaction within any area of Indian country, provided such act or transaction is in conformity with both the laws of the State in which such act or transaction occurs with an ordinance duly adopted by the Tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior and published in the FEDERAL REGISTER; therefore

It shall be ordained by Resolution as follows:

Be it resolved that the introduction, sale or possession of intoxicating beverages, both on sale and off sale, shall be lawful on the Hoopa Valley Indian Reservation within the boundaries of said Reservation under the jurisdiction of the Hoopa Valley Tribe, acting by and through its executive body, the Hoopa Valley Business Council; provided, that such introduction, sale or possession is in conformity with the Laws of California; and

Be it further resolved that any Tribal laws, resolutions or ordinances heretofore enacted which prohibit the sale, introduction or possession of intoxicating beverages or any Tribal laws, resolutions or ordinances heretofore enacted which limit the sale, introduction or possession of intoxicating beverages are hereby each and all repealed.

ANTHONY P. LINCOLN,
Acting Associate Commissioner of Indian Affairs.

[F.R. Doc. 70-17210; Filed, Dec. 18, 1970; 9:07 a.m.]

Bureau of Land Management

[Nem Mexico 12780]

NEW MEXICO

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 11, 1970.

The Forest Service, U.S. Department of Agriculture, has filed an application, New Mexico 12780, for the withdrawal of lands described below, from location and entry under the mining laws. The applicant desires the land for recreation purposes, more specifically, as an addition to the Oak Grove Picnic Ground.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Land Office Manager, Post Office Box 1449, Santa Fe, NM 87501.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the land for purposes other than the applicant's, to eliminate land needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the land and its resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The land involved in the application is:

NEW MEXICO PRINCIPAL MERIDIAN

LINCOLN NATIONAL FOREST

Oak Grove Picnic Ground Addition

T. 10 S., R. 12 E., unsurveyed,
Sec. 36, NE¼NE¼SE¼, SE¼NW¼NE¼SE¼, S½NE¼SE¼, SE¼SE¼NW¼SE¼, E½NE¼SW¼SE¼, N½SE¼SE¼, NE¼SW¼SE¼SE¼ and NW¼SE¼SE¼SE¼.

The area described aggregates 65 acres in Lincoln County.

MICHAEL T. SOLAN,
Land Office Manager.

[F.R. Doc. 70-17101; Filed, Dec. 18, 1970; 8:45 a.m.]

Office of the Secretary

WILLIAM R. REMALIA

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of October 26, 1970.

Dated: November 20, 1970.

WILLIAM R. REMALIA.

[F.R. Doc. 70-17099; Filed, Dec. 18, 1970; 8:45 a.m.]

DEPARTMENT OF COMMERCE

Bureau of Domestic Commerce

UNIVERSITY OF NORTH CAROLINA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No.: 70-00832-33-46500. Applicant: The University of North Carolina,

Department of Botany, Chapel Hill, N.C. 27514.

Article: Ultramicrotome, Model OmU2.

Manufacturer: C. Reichert Optische, Werke A.G., Austria.

Intended use of article: The article will be used to prepare extremely thin sections of algal viruses and cellulosic microfibrils. Serial sections of approximately 50 angstroms each will be made through the virus particle in order to determine its three-dimensional configuration in relation to its attachment to the algal cell wall.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness, etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult."

The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of October 23, 1970, that cutting speeds in excess of 4 mm./sec are pertinent to the applicant's study of algal virus and relationship of cisternal membranes to adjacent cellulosic microfibrils which will require long series of very ultrathin and uniform thickness sections of soft specimens. HEW cites as a precedent its prior recommendation relating to Docket No. 70-00482-33-46500 which conforms in many particulars to the captioned application.

We, therefore, find that the Model MT-2B Ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-17096; Filed, Dec. 18, 1970; 8:45 a.m.]

Bureau of International Commerce

[File No. 22(70)-10]

LOGATRONIK G.m.b.H.

Order Temporarily Denying Export Privileges

In the matter of Logatronik G.m.b.H., Andreasgasse 4, Vienna 1070, Austria, respondent.

The Director, Investigations Division, Office of Export Control, Bureau of International Commerce, U.S. Department of Commerce, pursuant to the provisions of § 388.11 of the Export Control Regulations (Title 15, Chapter III, Subchapter B, Code of Federal Regulations), has applied to the Compliance Commissioner for an order temporarily denying all export privileges to the above-named respondent. The Compliance Commissioner has reviewed the application and the evidence presented in support thereof and has submitted his report, together with his recommendation that the application be granted and that a temporary denial order be issued for 60 days.

The evidence and recommendation of the Compliance Commissioner have been considered. On the evidence presented there is reasonable basis to believe the following: The respondent is a recently organized business enterprise with a place of business in Vienna, Austria; it is engaged in the purchase and sale of electronic data processing equipment; it has ordered from a U.S. manufacturer certain strategic computer equipment and it has not satisfactorily explained the intended ultimate disposition of said equipment; the individuals ostensibly in charge of the operations of said firm have refused to disclose the names of the parties responsible for the establishment of the firm; and an individual in Vienna, Austria, who is subject to an order issued by the Director, Office of Export Control, denying all U.S. export privileges, may have a significant interest in said firm or may be in a position to direct or control its operations and policies. The Investigations Division of OEC is now investigating these matters.

It is known to the Office of Export Control that equipment of the type ordered by the firm is eagerly desired in countries for which OEC would grant export authorization only in exceptional cases and that equipment of this type has been reexported to such countries contrary to the provisions of the Export Control Regulations.

Pending further investigation and proceedings, I find that it is reasonably necessary for the protection of the public interest that an order be issued against respondent temporarily denying it all U.S. export privileges for 60 days.

Accordingly, it is hereby ordered:

I. All outstanding validated export licenses in which respondent appears or participates in any manner or capacity are hereby revoked and shall be returned forthwith to the Bureau of International Commerce for cancellation.

II. The respondent, its successors, assigns, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or which are otherwise subject to the Export Control Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any validated export license application; (b) in the preparation or filing of any export license application or reexportation authorization, or any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control document; (d) in the carrying on of negotiations with respect to or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data in whole or in part exported or to be exported from the United States; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent, but also to its agents and employees and to any successor and to any person, firm, corporation, or business organization with which it now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. This order shall take effect forthwith and shall remain in effect for a period of 60 days from the date hereof, unless it is hereafter extended, amended, modified, or vacated in accordance with the provisions of the United States Export Control Regulations.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Bureau of International Commerce, shall do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on

behalf of or in any association with respondent, or whereby the respondent may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for any said respondent; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VI. A copy of this order shall be served upon the respondent.

VII. In accordance with the provisions of § 388.11(c) of the Export Control Regulations, the respondent may move at any time to vacate or modify this temporary denial order by filing an appropriate motion therefor, supported by evidence, with the Compliance Commissioner and may request an oral hearing thereon which, if requested, shall be held before the Compliance Commissioner in Washington, D.C., at the earliest convenient date.

Dated: December 14, 1970.

This order shall become effective forthwith.

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

[F.R. Doc. 70-17094; Filed, Dec. 18, 1970; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-220; NADA 10-700V etc.]

DOW CHEMICAL CO.

Dyclonine Hydrochloride; Notice of Withdrawal of Approval of New Animal Drug Application

An announcement published in the FEDERAL REGISTER of September 19, 1969 (34 F.R. 14614), invited the Dow Chemical Co., Box 1706, Midland, Mich. 48640, holder of NADA (new animal drug application) No. 10-700V for Solution Dyclone 0.5 percent (each milliliter contains 5 milligrams dyclonine hydrochloride (4-*n* - butoxy - *beta* - piperidino - propiophenone hydrochloride)), and NADA No. 10-701V for Creme Dyclone 1 percent (containing 1 percent dyclonine hydrochloride), and any other interested person, to submit pertinent data on the drugs' effectiveness.

The Dow Chemical Co. responded to the announcement by stating that sale of said products has been discontinued and that approval of the new animal drug applications could be withdrawn. No other response to the announcement was received and available information still fails to provide substantial evidence of the drugs' effectiveness when they are used as a topical anesthesia in cattle, cats, and dogs or as an antiseptic and antifungal agent. Documentation is also still lacking to demonstrate that use of the drug in the eye will not impair healing of the cornea.

Also, the Dow Chemical Co., sponsor of NADA No. 10-978V for the drug Dyclonine Injection 0.5 percent, which is similar in composition and labeling to the above-named products, has asked the Commissioner of Food and Drugs to withdraw approval of this application.

Based on the foregoing requests and findings, the Commissioner concludes that approval of said new animal drug applications should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-47; 2. U.S.C. 360b (e)) and under authority delegated to the Commissioner (21 CFR 2.120), approval of new animal drug applications No. 10-700V, No. 10-701V, and No. 10-978V, including all amendments and supplements thereto, is hereby withdrawn effective on the date of signature of this document.

Dated: November 19, 1970.

SAM D. FINE,
Associate Commissioner for Compliance.

[F.R. Doc. 70-17124; Filed, Dec. 18, 1970; 8:46 a.m.]

[Docket No. FDC-D-240; NADA 8-947V, etc.]

WILSON & CO., INC., ET AL.

Certain Additional Veterinary Products Containing Rumen Bacteria; Notice of Opportunity for Hearing

An announcement published in the FEDERAL REGISTER of June 7, 1969 (34 F.R. 9096), proposed the withdrawal of approval of certain new animal drug applications for products containing rumen bacteria since available information fails to provide substantial evidence of effectiveness of the drugs for their recommended use as rumen stimulators.

Efficacy data covering the below-listed products, which are similar in composition and labeling to the products named in said notice, although not furnished for review by the Academy as requested in the notice regarding drug effectiveness which was published in the FEDERAL REGISTER of July 9, 1966 (31 F.R. 9426), and therefore not evaluated by the Academy, have been reviewed by the Administration. The above-cited findings of the Administration regarding drug effectiveness apply equally to the following:

1. Rumex; NADA (new animal drug application) No. 8-999V; by Vitamins Inc., 809 West 58th Street, Chicago, Ill. 60621.

2. Ruf-Stil, NADA 9-952V; by Poul-An Laboratories Inc.

3. Rufis Concentrate Plus, NADA 9-404V; by Poul-An Laboratories Inc., 207 Westport Road, Kansas City, Mo. 64111.

4. Rufis Bio-Concentrate, NADA 9-206V; by Poul-An Laboratories Inc.

5. Bovirum, NADA 9-734V; by The Cudahy Laboratories, Division of Cudahy Packing Co., Omaha, Nebr. 68107.

6. Ruminox, NADA 9-291V; by Pitman-Moore Inc., Camp Hill Road, Fort Washington, Pa. 19034.

7. Rumen Concentrate, NADA 9-128V; by The Ray Ewing Co., 1097 South Morengo Avenue, Pasadena, Calif. 91106.

8. Ru-Zyme Concentrate, NADA 9-106V; by Biochemical Corp. of America, Salem, Va. 24153.

9. Ru-Bac Bolus and Ru-Bac Tablets, NADA 9-084V; by Vet Products Co., 1522-24 Holmes Street, Kansas City, Mo. 64108.

10. Floravite, NADA 8-977V; by Hance Bros. & White Co., 12th and Hamilton Streets, Philadelphia, Pa. 19123.

11. Rufis Calf Inoculum, NADA 8-950V; by Wilson & Co., Inc., 4100 Ashland Avenue, Chicago, Ill. 60609.

12. Rufis Gainer, NADA 8-949V; by Wilson & Co., Inc.

13. Rufis Concentrate, NADA 8-948V; by Wilson & Co., Inc.

14. Live Bovine Rumen Organisms Concentrate, NADA 8-947V; by Wilson & Co., Inc.

Therefore, notice is given to the above-named firms and any interested person who may be adversely affected that the Commissioner of Food and Drugs proposes to issue an order under the provisions of section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of the new animal drug applications listed above, and all amendments and supplements thereto, held by said firms for the listed drug products on the grounds that:

Information before the Commissioner with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, does not provide substantial evidence that the drugs have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

In accordance with the provisions of section 512 of the act (21 U.S.C. 360b), the Commissioner will give the applicants, and any interested person who would be adversely affected by an order withdrawing such approval, an opportunity for a hearing at which time such persons may produce evidence and arguments to show why approval of the listed new animal drug applications should not be withdrawn. Promulgation of the order will cause any drug similar in composition, and recommended for conditions of use similar to those recommended for the above-listed drug products, to be a new animal drug for which an approved new animal drug application is not in effect. Any such drug then on the market would be subject to regulatory proceedings.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Office of the General Counsel, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or

2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing the approval of the new animal drug application.

Failure of such persons to file a written appearance of election within said 30 days will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for a hearing, they must file a written appearance requesting the hearing and giving the reasons why approval of the new animal drug application should not be withdrawn, together with a well-organized and full-factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that no genuine and substantial issue of fact precludes the withdrawal of approval of the applications, the Commissioner will enter an order stating his findings and conclusions on such data. If a hearing is requested and justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence. The time shall be not more than 90 days after the expiration of said 30 days unless the hearing examiner and the applicant otherwise agree.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: November 14, 1970.

SAM D. FINE,
Associate Commissioner for Compliance.

[F.R. Doc. 70–17098; Filed, Dec. 18, 1970; 8:45 a.m.]

Office of Education

EDUCATIONAL TALENT SEARCH PROGRAM

Notice of Establishment of Closing Date for Receipt of Application for Funds

The Higher Education Act of 1965, Title IV, Part A, section 408, as amended, authorizes the Commissioner of Education to conduct an Educational Talent Search Program under which contracts are entered into with institutions of higher education and public and private agencies and organizations for projects which (1) identify qualified youths of financial or cultural need with an exceptional potential for post-secondary educational training and encourage them to complete secondary school and undertake post-secondary educational training; (2) publicize existing forms of student financial aid; and (3) encourage secondary school or college dropouts of demonstrated aptitude to reenter educational programs, including post-secondary programs.

Notice is hereby given that applications to enter into contracts under this program which are to be funded from appropriations for fiscal year 1971 must be received at the address indicated below no later than January 18, 1971.

The application forms are being mailed to all agencies and institutions currently participating in the program and to individuals who represent institutions and agencies that have indicated an intent to apply for participation in the program. Application forms may be obtained from and are to be filed with the Talent Search/Special Services Branch, Division of Student Special Services, Bureau of Higher Education, Office of Education, Washington, D.C. 20202.

Dated: December 3, 1970.

PETER P. MUIRHEAD,
Associate Commissioner for Higher Education.

Approved: December 11, 1970.

T. H. BELL,
Acting Commissioner of Education.

[F.R. Doc. 70–17197; Filed, Dec. 18, 1970; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 22628; Order 70–12–62]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Fare Matters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 11th day of December 1970.

Agreements adopted by the Traffic Conferences of the International Air Transport Association (IATA) relating to fare matters, Docket 22628, Agreement CAB 22036, Agreement CAB 22050, Agreement CAB 22051, Agreement CAB 22068, Agreement CAB 22095.

There have been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, agreements between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA), and adopted at meetings held in Honolulu, Hawaii, in the fall of 1970.

The agreements, among other things, embrace fare resolutions to apply on North/Central Pacific routes effective February 1, 1971, and on Western Hemisphere,[1] South Pacific, and North and Mid Atlantic routes effective April 1, 1971. In addition, certain expedited resolutions have been filed for early effectiveness on January 1, 1971. The attached table sets forth a comparison of selected proposed fares with the current fare structures in the principal areas.

The agreement adopted for early effectiveness on January 1, 1971, proposes generally to increase normal first-class and economy fares applicable between the United States and Colombia/Panama, and excursion fares between points in the United States and Colombia/Panama/Venezuela would be increased for both first-class and economy services, generally by $10 round-trip in the latter case. These changes are exemplified in the attached fare comparison based on the New York/Miami/Bogota. The agreement also provides for a restructuring of minimum-stay requirements upon the use of Western Hemisphere excursion fares, resulting in new or increased requirements in some markets as well as reductions and elimination of a requirement currently imposed. Group inclusive tour (GIT) fares would be added for travel to Colombia (15 or more passengers) and Venezuela (50 or more passengers) from U.S. cities where no GIT fare is currently available.

Based on West Coast-Tokyo, the comparison of present vs. proposed fares presented for Board approval as regards the North/Central Pacific provides for the elimination of the current 5-percent round-trip discount on normal first-class and economy fares. Moreover, the level of economy, excursion, and individual inclusive tour fares would be adjusted so as to apply a single fare throughout the year as compared with the present seasonally differentiated fare structure. Other elements of the agreement would eliminate the contract bulk inclusive tour (CBIT) fare as it applies to United States-originating passengers, reduce certain group inclusive tour fares, and extend the validity of the number of days of travel permitted on the individual and group inclusive tour fares. On fares beyond Tokyo, e.g., West Coast-Bangkok, first-class and economy fares would be increased in addition to the elimination of the round-trip discount, as are all promotional fares except the group inclusive tour fare. CBIT fares would be canceled, and the periods of travel validity would be extended for travel under individual and group inclusive tour fares.

[1] With respect to the Western Hemisphere in general, where agreement is confined to limited areas (including to/from and within the Caribbean) the Board has not yet received fare tables which are adequate to support the resolutions filed for approval. However, certain fares are included in the agreement for early effectiveness Jan. 1, 1971, as indicated herein.

Principal elements of the North Atlantic fare package (based on New York-London and New York-Rome) provide for a general overall increase in fares; and elimination of the CBIT and certain affinity group fares; and increase from 14 to 17 days of the minimum-stay requirements on the existing 14–28-day fare; a restructuring of seasonal periods resulting in a general elimination of shoulder periods and a standardization of the peak season; and the imposition of a $15 one-way weekend surcharge for all promotional fare travel.[2]

Since the agreements may contain controversial elements and are intended to become effective in a relatively short period of time, the Board believes it desirable to establish a schedule for receipt of comments and replies thereto.[3] The Board's intention in doing so is not only to insure a full record, but to expedite its consideration of that record to the end that the Board will be in a position to act on the agreements in advance of the intended effectiveness dates, if possible.[4]

Accordingly, it is ordered, That:

Comments shall be submitted by interested persons in accordance with the following schedule:

For resolutions to be effective on January 1, 1971—December 24, 1970.

For resolutions to be effective on February 1, 1971—January 8, 1971.

For resolutions to be effective on April 1, 1971—January 15, 1971.

Replies to comments shall be submitted as follows:

For resolutions to be effective on February 1, 1971—January 18, 1971.

For resolutions to be effective on April 1, 1971—January 25, 1971.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

PRESENT VS. PROPOSED ROUND-TRIP IATA FARES

	New York-London		New York-Rome	
	Present	Proposed	Present	Proposed
TRANSATLANTIC (Effective April 1, 1971)				
First class	$750	$782	$937	$968
Economy:				
Peak	510	552	663	704
Basic	420	452	573	604
Excursion:				
14/28-Day (17/28-Day):				
Peak	350	382	459	489
Basic	300	32-	409	429
29/45-Day:				
Peak	295	332	345	380
Shoulder	265	Cancel	315	Cancel
Basic	250	272	300	320
Group inclusive tour:				
Peak	288	302	390	402
Basic	238	237	340	337
Affinity group:				
On season:				
25 or more, EB only	300	Cancel	400	Cancel
15 or more, WB only	275	Cancel	384	Cancel
40 or more	250	[1] 277	325	[1] 350
80 or more	235	Cancel	315	Cancel
Shoulder (Basic):				
40 or more	212	[1] 217	270	[1] 290
80 or more	192	Cancel	260	Cancel
Off season (Winter):				
25 EB/15 WB or more	267	Cancel	367	Cancel
40 or more	200	[1] 197	250	[1] 270
80 or more	170	Cancel	240	Cancel
Incentive group:				
Shoulder (Basic)	212	217	270	290
Off Season (Winter)	200	1.7	250	270
Contract bulk inclusive tour:				
Peak	220	Cancel	280	Cancel
Shoulder	190	Cancel	[2] 240	Cancel
Basic	175	Cancel	[2] 220	Cancel

	West Coast-Tokyo		West Coast-Bangkok	
	Present	Proposed	Present	Proposed
TRANSPACIFIC [5] (Effective February 1, 1971)				
First Class	$1,216	$1,280	$1,577	$1,722
Economy:				
Peak	722	740	988	1,074
Basic	684	740	988	1,074
[1]½1-Day excursion:				
Peak	641	630	884	913
Basic	614	630	884	913
Individual inclusive tours:				
Peak	641	600	800	870
Basic	584		800	870
Group inclusive tours:				
Peak:				
Eastbound	560	530	750	730
Westbound	560	530	750	730
Basic:				
Eastbound	530	530	750	730
Westbound	530	500	750	730
Affinity group:				
25 or more, One-Way	305	305	388	Cancel
25 or more	555	555	705	806
70 or more	500	470		

	New York-Bogota		Miami-Bogota	
	Present	Proposed	Present	Proposed
WESTERN HEMISPHERE (Effective January 1, 1971)				
First class	$472	$500	$290	$306
Economy class	366	384	226	240
Excursion:				
First class	410	450	220	265
Economy class	270	290	160	170
Group inclusive tour		[6] 230		[6] 140

[1] 30 or more westbound.
[2] Without stopover.
[3] Contract bulk inclusive tour (CBIT) fares, currently at a West Coast-Tokyo level of $400, were retained only for short-limit travel originating in Japan.
[6] Available only to southbound-originating groups of 15 or more passengers.

[2] The present surcharge, applicable only to the 14–28-day excursion fare, is $30 each way.

[3] In view of the shortness of time, no provision is being made for reply comments in the case of the resolutions scheduled for effectiveness on Jan. 1, 1971.

[4] It has been the Board's policy wherever possible to act on IATA fare agreements submitted for its approval prior to the intended effective dates thereof. The Board's ability to do so, however, is contingent upon the prompt filing by the affected U.S. carriers of the appropriate supporting documentation. As of the present date, this documentation remains incomplete as to the subject agreements.

[F.R. Doc. 70–17069; Filed, Dec. 18, 1970; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19050; FCC 70-1305]

CIGARETTE ADVERTISING AND ANTISMOKING PRESENTATIONS

Report and Order Terminating Proceeding

1. On October 15, 1970, the Commission issued a notice to interested persons that comments may be submitted on appropriate further regulatory policies to be adopted with respect to two issues: (1) The possible fairness doctrine obligations, if any, in the situation where a broadcast licensee, which does not present cigarette commercials, broadcasts announcements to the general effect that cigarette smoking is hazardous to health and persons should therefore not commence or continue smoking (see complaint of Michael Handley, dated August 25, 1970), and (2) the public interest obligations of the broadcast licensee after January 1, 1971, when all cigarette advertising on broadcast media will cease (see petition for rule making filed October 13, 1970, by Action on Smoking and Health (ASH)). Comments were submitted by the Tobacco Institute, the Surgeon General, the American Cancer Society, National Tuberculosis & Respiratory Disease Assoc., Mr. Warren Braren, and several broadcasters or broadcast associations (see Appendix A for a list of these broadcasters[1]). We shall briefly sketch the basic thrust of the comments, and then turn to our treatment of the issues.

2. The main thrust of the broadcasters' comments is that, after termination of the cigarette commercials, the Commission should not, and cannot properly, require licensees to present antismoking presentations, including the prescription of amounts of time to be devoted to such presentations. The comments rely on Commission reports such as the Report on Editorializing by Broadcast Licensees, 13 FCC 1246 (1949) and 1960 Programing Statement, 20 Pike & Fischer, Radio Regulation, 1902, 1915, to the effect that it is up to individual licensees to make judgments as to what issues or programing is to be presented. On the question as to whether, if a licensee did present messages pointing up the health hazard in smoking, it was required under the fairness doctrine to afford time for spokesmen to urge the opposite (i.e., that smoking is not hazardous), the licensees split on their comments. Some, pointing to prior Commission precedents, stated their belief that fairness would require the presentation of prosmoking viewpoints. Several others, however, stated their judgment and belief that in view of developments leading to Public Law 91-222, the general issue of cigarettes being a health hazard can reasonably now be regarded as no longer a controversial one.

3. ASH urges the adoption of a rule providing that "the obligation of a licensee to devote a significant amount of time to the presentation of views and information on the health hazards of cigarette smoking continues notwithstanding that it has discontinued the broadcasting of cigarette commercials sponsored by tobacco companies." It asserts that there is support for such a rule in the legislative history of the 1969 Cigarette Labelling and Advertising Act, and cites three grounds for the rule: (1) The strong public interest, in view of the health hazards involved; (2) the fact that "since the inception of commercial television, the viewing public has been bombarded by cigarette commercials," and the proposed rule is thus necessary to make up for the "decade of one-sided presentations and their lingering remnants * * *" (Pet. p. 7); and (3) that broadcasts presenting smoking in a favorable light (e.g., the hero smoking in some movie) "* * * will continue even after the Congressional ban on sponsored cigarette advertisements, as will so-called 'hidden commercials' now being promoted by the tobacco industry" (Pet. p. 10). ASH avers that smoking is still a controversial issue of the greatest importance.

4. The Tobacco Institute, on the other hand, urges that the present specific obligations of broadcast licensees to devote a significant amount of time each week to materials expressing the view that smoking is hazardous to health will not be applicable after January 1, 1971, because cigarette advertising on broadcast media will cease as a result of the Public Health Cigarette Smoking Act of 1969. It disputes ASH's supporting grounds, pointing out that broadcasters for almost 3 years have been informing the public concerning the health hazards involved. It further states that there is not the slightest basis for the "reckless" charge that the tobacco industry "is now taking steps to get hidden commercials on the air in violation of the spirit of the 1969 cigarette act." (ASH Pet. p. 10.) The Institute argues that it would be wholly improper for the Commission to scrutinize programing content to "* * * search out broadcasts ostensibly presenting smoking in a 'favorable light.'" (p. 20) It argues that after January 1, 1971, the public interest obligations of licensees with respect to the issue of cigarette smoking will be the same as with respect to all other matters of public concern; that licensees have discretion to determine that matters of public interest should be broadcast from among the multitude of such matters competing for broadcast time. Finally, it states that if licensees decide to exercise their discretion to carry antismoking materials, they will have an obligation under the fairness doctrine to provide reasonable opportunity for the presentation of materials expressing the view that smoking may not be hazardous to health. It urges that this is also the case in the period until January 2, 1971, if a licensee does not carry cigarette commercials but does carry antismoking messages.

Discussion. 5. We shall discuss the first question set out in paragraph 1 and then turn to the second question. However, the two questions are closely related, and thus the discussion here is also necessarily pertinent to our disposition of the second issue.

6. The first issue is the possible fairness doctrine obligations, if any, in the situation where a broadcast licensee, which does not present cigarette commercials, broadcasts, announcements to the general effect that cigarette smoking is hazardous to health and persons should therefore not commence or continue smoking. As shown by the complaint of Mr. Michael Handley, that issue is presented today, since several stations have already dropped cigarette commercials but have continued to present general antismoking messages. Clearly, the issue becomes even more important after January 1, 1971, when all stations will cease carrying cigarette commercials.

7. We believe that this issue is to be disposed of under the accepted, long established principle in the general fairness area—namely, that it is up to the licensee to make a reasonable, good faith judgment on the basis of the particular facts before him as to the possible application of the fairness doctrine, and specifically whether he has presented one side of a controversial issue of public importance. Thus, we believe that little is gained here by citation of previous Commission rulings[1a] or by references to past testimony before the Congress. The critical issue here is the licensee's judgment today—directed to the circumstances before him.

8. The Tobacco Institute argues that the licensee's judgment is constrained—that we should hold that if a licensee presents messages going to the general health hazard (e.g., earlier mortality; lung cancer; emphysema), with a call to stop smoking or not to begin, the broadcaster must provide a reasonable opportunity for the view that smoking may not be hazardous to health. Of course, broadcasters may, if they wish, present such a view, in light of their wide discretion.[2] But as stated, a number of broadcasters who filed comments in this proceeding have set forth their judgment that in light of developments, the general issue of smoking being a health hazard is no longer controversial. We decline to upset that judgment as unreasonable.

9. For, clearly, there have been most significant developments since the Surgeon General's 1964 Report which

[1] Appendix A filed as part of the original document.

[1a] E.g., Cigarette Advertising, 9 FCC 2d 921 (1967); Metromedia, Inc., 10 FCC 2d 16 (1967); Letter to Mr. Larry Jones, Nov. 2, 1967, 8330-S; C9-1304; Letter to the Tobacco Institute, Inc., Dec. 21, 1967, Ref. 3300.

[2] Further, as we stated in our notice of proposed rule making in Docket No. 18434, 34 F.R. 1959, 1962, n. 30, the existence of governmental reports does not bar dissent thereto or the presentation of contrary views.

touched off a substantial controversy. Continuing massive studies have been made or completed in the ensuing years. The results of these studies were reported by HEW to the Congress pursuant to its direction in the 1965 Federal Cigarette Labelling and Advertising Act. Senate Report No. 91–566, 91st Cong., first session, p. 3, on the Public Health Cigarette Smoking Act of 1969, sets forth the significant conclusions from the HEW reports ("The Health Consequences of Smoking, 1967, 1968 and 1969"). These reports constitute overwhelming evidence on the general public health aspect of cigarette smoking.[3] We note further, as did the broadcasters referred to above, that Congress has acted on the basis of the reports. It has changed the labelling requirement from the phrasing, "Caution: Cigarette Smoking May Be Hazardous To Your Health" to the much stronger one: "Warning: the Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health." It has barred all cigarette advertising on electronic media. And, both the cigarette industry and the broadcasting industry (the latter with a different phaseout period) agreed to such a bar during the legislative process leading to the 1969 Act. See Senate Report, supra, at pp. 9, 11. It is difficult to reconcile the cigarette industry's acquiesence in the 1969 ban, with its contention here that the broadcaster, who presents a general announcement that smoking constitutes a health hazard and therefore people should not begin smoking or should stop, cannot reasonably reach the judgment that the matter is not controversial—that he need not present offsetting material to the effect that smoking is no health hazard and people should commence or continue to smoke.

10. We wish to make clear that we are not issuing any blanket ruling covering every existing or future antismoking announcement, and could not properly do so, outside the context of a specific complaint. Our holding is directed to only one general aspect, albeit a most important one—that cigarette smoking is a hazard to public health (i.e., the main cause of lung cancer; the most important cause of chronic bronchitis or pulmonary emphysema, etc.). While that facet may now be adjudged by the broadcaster no longer to be a controversial issue, there can clearly be most substantial controversies as to other aspects (e.g., particular studies or statistics; what remedial actions should be taken). As to such aspects, the fairness doctrine would be applicable, and we concur with CBS' comments in this respect (p. 4, CBS Comments):

> The Commission should leave to the judgment of licensees whether announcements dealing with the health hazards of cigarettes, which are broadcast after January 1, 1971, raise obligations under the fairness doctrine such as to require presentation of opposing views. These judgments must rest on the content and frequency of the announcements broadcast as well as the licensee's overall programing. In any event, it should be the licensee's initial responsibility to identify any issues raised and choose the appropriate reply spokesman where necessary. Those opposing any such announcements or seeking opportunities to respond would have available to them the Commission's normal procedures by which to seek redress.

11. The Tobacco Institute argues (p. 31) that refusal by the Commission to require licensees to afford time to spokesmen to present the viewpoint that smoking may not be hazardous would raise grave constitutional questions under Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969), since it would involve "the official government view dominating public broadcasting" and "a discriminatory refusal to require the licensee to broadcast certain views which have been denied access to the airwaves" (Red Lion, at p. 396). The argument is, we believe, specious. If broadcasters presented a Public Health Service bulletin urging that aspirin be kept out of the reach of children and citing statistics as to deaths caused in this way, such broadcasters would not be violating the Constitution if they rejected a request to present the viewpoint that aspirin poses no hazard in this respect. We realize that the example is far-fetched; our point is that the broadcaster can make judgments in this area and that if the judgments are reasonable, they do not constitute a violation of either the Act (section 315(a)) or the Constitution.

12. The Tobacco Institute also cites (p. 34) Banzhaf v. F.C.C., 405 F. 2d 1082 (C.A.D.C., 1968), certiorari denied, 396 U.S. 842 (1969), in support of its argument. But that case holds squarely against the Institute's position. The Court there noted (id. at pp. 1091–93) that the Commission's holding was based really on the public interest standard rather than the fairness doctrine, and that that standard clearly comprehended a public health consideration such as this. See also Retail Store Employees Union v. F.C.C., F. 2d (C.A.D.C., 1970), Sl. Op., p. 18, n. 58. In the latter respect, the court stated (405 F. 2d at p. 1097):

> * * * The danger cigarettes may pose to health is, among others, a danger to life itself. As the Commission emphasized, it is a danger inherent in the normal use of the product, not one merely associated with its abuse or dependent on intervening fortuitous events. It threatens a substantial body of the population, not merely a peculiarly susceptible fringe group. Moreover, the danger, though not established beyond all doubt, is documented by a compelling cumulation of statistical evidence. The only member of the Commission to express doubts about the validity of its ruling had no doubts about the validity of its premise that, in all probability, cigarettes are dangerous to health. [Footnote omitted][4]

The court thus described the Commission's ruling as "* * * a public health measure addressed to a unique danger authenticated by official and congressional action * * *" (id. at p. 1099).

13. Most significantly, the Tobacco Institute argued in that case (Br. pp. 61–63) that the Commission had erred in holding that a licensee who has carried the cigarette commercials has covered one side of the issue on the behalf of the cigarette companies and is thus under no obligation to present further prosmoking materials. It argued that the commercials do not discuss the health hazard and indeed could not in view of FTC policies; that in any event they "certainly do not contain the explicit and detailed discussion of the issue which the FCC contemplates will be presented on behalf of the antismoking point of view"; and that therefore the FCC had no right to weight the scales in this fashion. The Court rejected this argument on the basis of its above-described public health rationale (id. at p. 1103).

> * * * the Commission did not abuse its discretion in refusing to require rebuttal time for the cigarette manufacturers. The public health rationale which supports the principal ruling would hardly justify compelling broadcasters to inform the public that smoking might not be dangerous * * *.

14. We turn now to the second issue in our inquiry—the public interest obligations of the licensee after January 1, 1971. The initial consideration is the request of ASH that broadcasters be required by rule to devote a significant amount of time to the presentation of views and information on the health hazards of cigarette smoking. We find no basis for such a rule in any of the grounds advanced by petitioner. Thus, as to the argument that there have been decades of cigarette commercials, we note that during the last 3 years antismoking material has been presented by licensees on a virtually daily basis, including during periods of maximum listening and

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[3] Thus, in his comment in this proceeding, the Surgeon General stated it "* * * is the view of the Public Health Service that cigarette, smoking beyond controversy, is indeed hazardous to health."

[4] The court then quoted the following statement of this member (id. at p. 1098): Cigarette smoking is a substantial hazard to the health of those who smoke which increases both with the number of cigarettes smoked and with the youthfulness when smoking is started. Cigarette smoking increases both the likelihood of the occurrence and the seriousness of the consequences of various types of cancer, of cardiovascular failures and of numerous other pathologies of smokers. These conclusions are established by overwhelming scientific evidence, by the findings of Government agencies, and by congressional reports and statute * * *. The evidence on this subject is not conclusive, but scientific evidence is never conclusive. All scientific conclusions are probablistic * * *. Furthermore, law does not and cannot demand conclusive proof. Even in a capital case, the law requires only proof beyond a reasonable doubt * * *. The evidence as to the dangers of cigarette smoking to the smoker is clearly beyond a mere preponderance and approaches proof beyond a reasonable doubt.

in reasonable ratio to the commercials (see NBC, Inc., 16 FCC 2d 956 (1969)). There is no showing before us that this has not served to inform the public to a substantial degree of the health hazards of smoking—that prior decades of cigarette advertising call for something beyond this recent, 3-year substantial effort. Similarly, there is no showing or basis before us to act upon the ASH's bare claim that the tobacco industry is planning to present "hidden commercials." [5] Nor do we believe that we should act to require antismoking presentations because the stars on some TV shows or in some movies carried on television smoke cigarettes. This would involve intensive scrutiny by the Commission of entertainment programs to determine whether smoking was presented "in a very favorable light" (ASH Pet., p. 10); in the case of movies particularly, it would involve a balancing of whether the hero or "heavy" is shown smoking, and to what extent. Were we to adopt this approach, we would be examining a multitude of drama and other entertainment programing with respect to a variety of everyday occurrences (e.g., a person taking a drink; driving a high-powered automobile).

15. Finally, ASH urges that the health hazard in smoking is so great that the public interest requires adoption of the rule which it urges. In support, it cites the legislative history of the 1969 Act; we have examined that legislative history and find that it does not support petitioner's position (see, e.g., testimony of Chairman Hyde, Hearings Before the House Committee on Interstate and Foreign Commerce, on H.R. 643, 91st Cong., first session, pp. 209, 226). In any event, the law in this area is well established. There are a number of pressing, important matters to which the licensee as a public trustee could direct its attention—deaths caused by drunken driving; the health consequences of various forms of pollution; the Indo-China War; racial strife, etc. With the cessation of the cigarette commercials, it would be inappropriate to single out this one matter as the basis for a rule such as proposed by ASH.

16. While no rule is thus appropriate, we do not believe that our decision should end without further treatment of the licensee's responsibility in this general area. Indeed, in view of the comments filed by the broadcasters and our prior holdings (e.g., Letter to Mr. Soucie (Friends of the Earth), 24 FCC 2d 743, 750–51 (1970)), further discussion is warranted.

17. As we made clear in Letter to Mr. Soucie (Friends of the Earth), 24 FCC 2d at 751, n. 9, we agree that this is an area committed to the licensee's discretion—that the Commission cannot properly compile any priority list. We have not done so, and have no intention of issuing a list of "must" issues. At the same time, it is simply not correct that the broadcaster has unlimited discretion to use his facilities as he wishes. As the Red Lion case stresses (supra, at p. 394), the licensee is "* * * given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern." See In re Democratic National Committee, 25 FCC 2d 216, 221–223 (1970); Report on Editorializing, 13 FCC 1246, 1249 (1949). The broadcaster is of course confronted with a host of issues; must make judgments as to which to cover and in what way; and clearly has very great discretion in making judgments in this area. But, as a matter of common sense and knowledge, there do emerge issues of overriding public concern. Such issues should become readily apparent to a licensee in the course of his "diligent, positive and continuing effort" to discover and serve the needs and interests of his community. In short, the licensee cannot ignore such matters and claim at renewal time that it is meeting the needs and interests of its area—that it is fulfilling its "crucial" duty spelled out in Red Lion. We have held in the Democratic National Committee ruling, supra, that it is the broadcaster as public trustee—not the affluent or powerful interest—who determines the great issues on which the public must be informed; but that means that Red Lion, with its concept of public trustee, is controlling, and that "matters of great public concern" are given suitable time and attention. See paragraph 18, infra.

18. A few broadcasters and the Tobacco Institute, in effect, urge that cigarette smoking is no longer a matter "of great public concern." See p. 15, Tobacco Institute comments (smoking does not have the "same prominence" as other national problems). We note that this contention runs counter to the reports on which Congress has acted (see para. 9, supra) and indeed the very fact that Congress has acted in the forceful manner of Public Law 91–222. See also the following portion of our notice in Docket No. 18934:

> It is estimated that "* * * within ten years the death toll from these two diseases [emphysema and chronic bronchitis], which doubles every five years, could be well over 80,000." (The Dark Side of the Marketplace, 1968, by Senator Warren G. Magnuson and Jean Carper, p. 187). The annual number of deaths in the United States from cancer of the lung increased from 18,313 deaths in 1950 to 48,483 in 1965. [footnote omitted]. It is stated that "by 1976, unless the epidemic is checked, twice that number or 80,000 yearly, will die of the disease" (ibid). The 1967 Report indicates that cigarette smoking is associated with as much as one-third of all deaths among men between 35 and 60 years of age * * *.

to give but one further example, the comments of the Surgeon General state:

> There is nothing, in our opinion, which offers a greater or more immediate opportunity of reducing illness and premature death in this country than a national effort to reduce cigarette smoking. Radio and television can make an important contribution to this effort through their acceptance of public service announcements from Government and the voluntary agencies. If everyone were to give up cigarettes, be it remembered, early deaths from lung cancer would virtually disappear; there would be a substantial decrease in early deaths from chronic bronchopulmonary disease and a decrease in early deaths of cardiovascular origin * * *.[6]

Further, the question whether the licensee who fails to treat this subject has served the public is one which can be definitively assessed only at renewal time when the licensee's overall public service performance effort is evaluated. We also note our full agreement with the proposition that which public service subjects are to be covered and how is for the licensee's judgment, based on its evaluation in light of the competing public service demands.

Conclusion. 19. We have afforded general guidance to the extent reflected above. We dismiss the ASH petition for rulemaking and deny the relief requested by the Tobacco Institute. The proceeding is herewith terminated with adoption of this report. *It is therefore ordered,* That the petition filed by ASH is dismissed, and the proceeding is terminated.

Adopted: December 15, 1970.

Released: December 16, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[7]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70–17131; Filed, Dec. 18, 1970; 8:47 a.m.]

[Dockets Nos. 18991, 18992; FCC 70R–432]

JOHN HUTTON CORP. AND KIRK MUNROE

Memorandum Opinion and Order Enlarging Issues

In regard applications of John Hutton Corp., Wailuku, Hawaii, Docket No. 18991, File No. BPH–6970; and Kirk Munroe, Wailuku, Hawaii, Docket No. 18992, File No. BPH–7016; for construction permits.

1. The mutually exclusive applications of John Hutton Corp. (Hutton) and Kirk

[5] If such abuses do occur, there will be a clear need for immediate and prompt remedial action. See Letter of Chairman Magnuson to FTC Chairman Kirkpatrick, Broadcasting Magazine, Nov. 23, 1970, p. 46. However, the appropriate action in such an eventuality would be to secure full and effective compliance with the 1969 law, and not to deal with it by offsetting antismoking messages.

[6] The American Cancer Society comment noted that the Clearinghouse on Smoking and Health estimates "that 1,200,000 youngsters will become cigarette smokers in 1970." The comments of the National Tuberculosis and Respiratory Disease Association notes that "* * * a recent study by the PHS indicates that there has been a recent rise in the number of teenagers who smoke."

[7] Concurring statement of Commissioner Bartley filed as part of the original document; concurring statement of Commission H. Rex Lee and concurring and dissenting statement of Commissioner Johnson to be issued at a later date.

Munroe (Munroe) for authority to construct an FM broadcast station in Wailuku, Hawaii, were designated for hearing by Order FCC 70-976, released September 16, 1970. Presently before the Review Board is a motion to enlarge issues, filed October 7, 1970, by Hutton seeking the addition of financial and misrepresentation issues against Munroe.[1]

Financial issue. 2. As the basis for the requested financial issue, Hutton asserts that Munroe has failed to establish the reasonable likelihood of obtaining a proposed $50,000 bank loan. Hutton points out that the loan commitment letter, dated March 31, 1970, from the Bank of America does not mention the rate of interest nor the collateral required, although both had been specified in a December 23, 1969 commitment letter from Bank of America to lend $30,000. Further, petitioner contends there is no certainty that the loan will be given at all because it is conditioned upon Munroe's ability to provide a satisfactory financial statement and satisfactory collateral to the bank "at the time of the loan." Thus, concludes Hutton, unlike the previous $30,000 loan commitment, the recent commitment evidences no present intention to lend Munroe the $50,000 based on his present financial status. Munroe predicates his opposition to the requested financial issue on the earlier commitment letter, stressing that it refers to the proposed station and fully specifies the interest and collateral which will be required. It is "preposterous," asserts respondent, that the Bank, in March, did not have available and did not review the financial statements which were relied on for the $30,000 commitment in December. Further, contends Munroe, the recent Bank letter fully complies with Commission requirements that an applicant have reasonable assurance of securing the proposed loan. Thus, Munroe urges denial of Hutton's request for a financial issue. The Broadcast Bureau supports Hutton's request.

3. The Review Board is of the opinion that a financial issue is warranted to determine the availability of Munroe's proposed $50,000 Bank loan. Munroe's first letter of commitment for $30,000 is adequate to meet Commission requirements: It states the rate of interest, the repayment schedule and the collateral necessary to secure the loan, i.e., Munroe's equity in his real estate holdings. The Bank's insistence upon reviewing Munroe's financial statement and real estate holdings at the time of the loan does not detract from its commitment to lend Munroe $30,000 on the basis of his present financial status. The Bank concludes that on the basis of the respondent's holdings, it "* * * would be willing to extend credit up to the figure ($30,000) mentioned above." (Emphasis added.) However, the Bank's letter for the $50,000 loan simply states that the loan "* * * would be based on a satisfactory current financial statement at the time of the loan and upon collateral satisfactory to the Bank." This, in our view, provides no reasonable assurance of the availability of the loan. Thus, while there is indication that the Bank has specified collateral for a $30,000 loan, and was satisfied Munroe had sufficient assets to provide the collateral, the more recent letter for a $50,000 loan contains no such indication. In light of the substantial difference in the amounts of the two proposed loans, the Board cannot assume that the second letter includes those terms, particularly as to collateral, found in the first one. Therefore, an appropriate issue will be specified.

Misrepresentation issue. 4. Hutton bases its request for a misrepresentation issue on three grounds. First, petitioner points out that although Munroe does not indicate whether his proposed position of general manager will be full or part-time, he does state that he alone will supervise the day-to-day operation of the proposed station. However, Hutton adds, Munroe has an identical commitment to El Camino Broadcasting Corp. (El Camino), permittee of FM broadcast Station KAPX in San Clemente, Calif.;[2] therefore, since management of two stations more than 1,000 miles apart is impossible, Hutton asserts, Munroe has misrepresented his intention to participate as general manager in either or both of the stations. Second, Hutton points out that in the El Camino application Munroe listed two residences, one at 1333 El Vago Drive, La Canada, Calif., and the other at 244 Avenida Aragon, San Clemente, Calif. Yet, on his instant application and on an application for a new television station in Anaheim, Calif., petitioner notes Munroe reported only the former address as his residence. Third, Hutton questions Munroe's valuation of his real estate. Petitioner submits that in the El Camino application, filed May 18, 1967, Munroe's balance sheet listed "residences and real estate" valued at $50,000; on the balance sheet, filed October 20, 1967, connected with the Anaheim, Calif., application, he listed "real estate" valued at $111,000; and on the balance sheet filed with the instant application, "real estate" is listed as $165,000. Thus, concludes Hutton, Munroe has attempted to deceive the Commission in regard to his intention to manage the proposed station, in his reporting two residences in one application while only reporting one in the instant application, and in his valuation and designation of his real estate holdings. In opposing Hutton's request, Munroe first states that all three applications listed his residence as 1333 El Vago Drive, La Canada, CA, but that the El Camino application contained a footnote indicating his part-time vacation residence in San Clemente.[3] This footnote was added, explains Munroe, merely to show familiarity with the community of San Clemente. As to managing two stations at one time, Munroe simply answers that one can serve as a general manager of a broadcast station on less than a full-time basis. In an affidavit attached to the opposition, Munroe states that he intends to manage the San Clemente station, but that if the instant application is granted, he will move to Maui in order to construct and operate that station. Further, argues Munroe, the questions of residence and integration can be explored at hearing under the present issues. Munroe next avers that no misrepresentation was involved in the different valuations of his real estate; these values, as did the amount of the mortgages, varied from time to time. Finally, Munroe states that the discrepancy on the balance sheets in listing real estate is "so specious as to require no further comment." The Broadcast Bureau, in its comments, expresses the view that only the apparent incompatibility of occupying the same positions in two stations more than 1,000 miles away, if not adequately explained, warrants a misrepresentation issue.

5. Hutton's request for a misrepresentation issue will be denied. First, petitioner's bare assertion that Munroe misrepresented his intention of occupying the positions of general manager at the two stations is insufficient to warrant the addition of the requested issue. There is no indication Munroe represented that he would participate full time in the operation of the stations; nor is there any indication these positions were specified in bad faith or in an attempt to mislead the Commission. Munroe's ability to act in both capacities can be explored under the existing comparative issue. Second, the Board does not see how Munroe's listing of his San Clemente vacation residence in only the El Camino application raises a question of misrepresentation. There are no allegations that the house in La Canada is not Munroe's permanent residence, that he does not in fact own a vacation house in San Clemente, or that he attempted to represent in the El Camino application that the San Clemente address was his permanent residence. And, finally, simply pointing out that Munroe has submitted different figures for the value of his real estate in different applications, with the implied assertion that these are not the true figures, cannot support petitioner's request. Absent a showing that the values are something other than listed, and in light of Munroe's sworn statement explaining the variations in value, a misrepresentation issue is not justified.[4] Therefore, in light of the fore-

[1] Also before the Review Board for consideration are: (a) Opposition, filed Nov. 3, 1970, by Munroe; and (b) comment, filed Nov. 3, by the Broadcast Bureau.

[2] Petitioner also notes that on Jan. 20, 1970, counsel for El Camino advised the Commission that Munroe had been elected president of that company.

[3] Respondent notes that the television application was dismissed by the Hearing Examiner by Order, FCC 69M-1676, released Dec. 18, 1969.

[4] Labeling real estate as "residences and real estate" in the El Camino application while employing only the term "real estate" in the other applications is hardly a reasonable basis for the addition of a misrepresentation issue.

going, no further inquiry into these matters is warranted.

6. *Accordingly, it is ordered,* That the petition to enlarge issues, filed October 7, 1970, by John Hutton Corp., is granted to the extent indicated below, and is denied in all other respects; and

7. *It is further ordered,* That the issues in the instant proceeding are enlarged to include the following issue: To determine whether Kirk Munroe will have available a $50,000 loan to finance his construction and first year operating expenses, and, in light thereof, whether Kirk Munroe is financially qualified.

8. *It is further ordered,* That the burdens of proceeding and proof under the issue added herein shall be on Kirk Munroe.

Adopted: December 11, 1970.

Released: December 14, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[5]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70-17132; Filed, Dec. 18, 1970; 8:47 a.m.]

FEDERAL MARITIME COMMISSION

[Docket No. 70-50]

PORT OF SEATTLE

Order of Investigation and Hearing Regarding Marine Terminal Practices

The Commission has become aware that current marine terminal practices, particularly consolidation practices, of the Port of Seattle (Port) may be unlawfully affecting the established cargo patterns at Pacific Coast ports with the Port of Seattle obtaining a disproportionately high share of such cargoes. Information available to the Commission indicates that the port is performing marine terminal services free of charge on inbound OCP traffic. Further, the port is assessing a drayage charge for movement of cargo from piers to warehouses for sorting, segregating, and labeling prior to dispatch that does not appear to be based upon any item in its terminal tariff.

Therefore, it is ordered, That pursuant to sections 17 and 22 of the Shipping Act, 1916, an investigation and hearing is instituted to determine if the Port of Seattle's consolidation service and any other services performed in connection therewith may be prohibited by section 17, Shipping Act, 1916, as being unjust or unreasonable.

The Commission desires the parties to the proceeding to address themselves to at least the following issues and to such others as may arise in the course of the proceeding:

1. Whether the port's practices in providing consolidation services and any other services in connection therewith free of charge and only for inbound OCP shipments is permissible under section 17, Shipping Act, 1916.

2. Whether the assessment by the port of a drayage charge, as an element of its per carton fee for movement of cargo from piers to warehouses for sorting, segregating, and labeling prior to dispatch, should be included in its terminal tariff as a service performed in connection with the receiving, handling, storage, or delivery of property at its terminal facilities.

3. Whether the failure of the port to indicate the availability of its consolidation service in its terminal tariff is contrary to the Commission's General Order 15, 46 CFR Part 533 and section 17, Shipping Act, 1916.

4. Whether the port has failed to bill for, or collect, applicable terminal charges which have occurred on cargo in amounts prescribed by its terminal tariff.

It is further ordered, That should the port's consolidation practices or other services performed in connection therewith be found not just and reasonable under section 17, Shipping Act, 1916, the Commission may determine, prescribe, and order enforced just and reasonable practices.

It is further ordered, That the Port of Seattle, Post Office Box 1209, Seattle, WA 98111, be made the respondent in this proceeding:

It is further ordered, That this matter be assigned for public hearing before an Examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a time and place to be determined and announced by the Presiding Examiner;

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served upon respondent; and

It is further ordered, That any person other than respondent or Hearing Counsel, who wishes to become a party to this proceeding and participate therein should file a petition to intervene with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, promptly with copy to parties.

And it is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, should be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-17149; Filed, Dec. 18, 1970; 8:48 a.m.]

[Docket No. 70-51]

R. J. REYNOLDS TOBACCO CO. ET AL.

Order for Investigation and Hearing

Agreement No. 9827-1 (Merger Agreement), dated November 9, 1970, among R. J. Reynolds Tobacco Co. (Reynolds), RJI Corp. (RJI), Sea-Land Service, Inc. (Sea-Land), Walter Kidde & Co., Inc., (Kidde), and United States Lines, Inc. (USL) is an agreement to merge. The Merger Agreement describes itself as an amendment to Agreement 9827 (Basic Agreement). It provides that RJI, a newly formed corporation entirely owned by Reynolds, shall be merged into USL. In exchange for Reynolds' 8 percent promissory note (note) for $65 million, dated November 9, 1970, Kidde will deliver to Reynolds all of the outstanding USL stock. The surviving company, USL, will be a wholly owned subsidiary of Reynolds.

The Merger Agreement may be terminated prior to effectuation of the merger: (a) By mutual consent of Reynolds and Kidde; and (b) by either Reynolds or Kidde on or after November 9, 1974, if on or after that date there is in effect a decree or order directing the recision of the 1969 merger of USL into Kidde.

The disapproval of the merger or the Merger Agreement, or approval by the FMC, ICC, or Maritime Administration with conditions unacceptable to Reynolds, automatically cancels the Agreement No. 9827-1, and Agreement No. 9827, leaving in effect a Supplemental Agreement entered into by Reynolds and Kidde.

Accompanying the Merger Agreement were various attachments which were not specifically filed. Included among these was a Supplemental Agreement (Exhibit A) between Reynolds & Kidde defining the duties and obligations which Reynolds will owe Kidde in the event the merger is not consummated; and an 8 percent promissory note of Reynolds for $65 million dated and bearing interest from November 9, 1970.

Agreement No. 9827-1 was filed with the Commission for approval on November 9, 1970, and was published in the FEDERAL REGISTER on November 13, 1970. In the notice, the usual 20-day period was allowed for comments, statements, and protests by interested persons. Protests and requests for hearing were submitted by: Department of Justice, American Export Isbrandtsen Lines, Inc., American Mail Line and American President Lines (jointly), Pacific Far East Line and Prudential-Grace Lines (jointly), Seatrain Lines, Inc., and the National Maritime Union. States Steamship Co., while offering no specific objections to Agreement No. 9827-1, submitted a statement that it opposes the "Agreement of Merger" on the same basis as it opposed the Agreement 9827, the charter agreement between Reynolds/Sea-Land and Kidde/USL.

Now therefore, pursuant to sections 15 and 22 of the Shipping Act, 1916: *It is ordered,* That an expedited investigation and hearing be held to determine whether Agreement No. 9827-1 should be approved, disapproved, or modified pursuant to section 15 of the Act, 1916;

It is further ordered, That the parties of interest address themselves to the following matters which the Commission

[5] Review Board Member Nelson absent.

deems particularly relevant to the ultimate issue of the approvability of Agreement 9827–1:

(1) The transportation needs which necessitate the merger and the derivative benefits to the public of any approval;

(2) Whether the Commission has section 15 jurisdiction over the parties and the Merger Agreement;

(3) Whether the Supplemental Agreement and the promissory note are section 15 agreements, and if so, should they be approved;

(4) The nature, scope, and characteristics of the presently competing transportation systems;

(5) The impact of approval upon container, breakbulk, commercial, and military movements;

(6) The impact of approval on proponents' competitors, both United States and foreign;

(7) Reynolds' plans for merging USL into its corporate structure and its plan for the operation and control of USL;

(8) The effect on the current USL and Sea-Land vessel deployments of the merger;

(9) The future service intentions of Reynolds, Sea-Land, and USL assuming approval and disapproval of the merger;

(10) The possible loss of benefits from the maintenance of an independent USL which would have existed under the charter, but would not exist if the merger is effectuated;

(11) The impact of approval upon labor;

(12) The relevant market;

(13) The basis for determining the amount of payment under the merger; and

(14) Alternatives available for satisfying any asserted transportation needs, realizing any asserted public benefits, or facilitating Kidde's disposal of USL.

It is further ordered, That the parties listed in the appendix attached hereto be made respondents, petitioners, or otherwise appropriate parties in this proceeding;

It is further ordered, That this matter be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and place to be determined and announced by the Hearing Examiner;

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served upon respondents and petitioners;

It is further ordered, That any person, other than respondents, petitioners and the Commission's Bureau of Hearing Counsel, who desires to become a party to this proceeding and participate therein, shall file a petition to intervene, in accordance with Rule 5(l), 46 CFR 502.72 of the Commission's rules of practice and procedure, with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, promptly with copies to all parties.

And it is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

APPENDIX

A. RESPONDENTS

1. Walter Kidde & Co., Inc., 675 Main Street, Belleville, NJ 07109.
2. R. J. Reynolds Tobacco Co., Winston-Salem, NC 27101.
3. RJI Corp., c/o R. J. Reynolds Tobacco Co., Winston-Salem, NC 27101.
4. Sea-Land Service, Inc., Post Office Box 1050, Elizabeth, NJ 07207.
5. United States Lines, Inc., 1 Broadway, New York, NY 10004.

B. PETITIONERS

1. Joseph J. Saunders, Esq., U.S. Department of Justice, Washington, DC 20530.
2. Seatrain Lines, Inc., 595 River Road, Edgewater, NJ 07020.
3. Pacific Far East Line, Inc., 141 Battery Street, San Francisco, CA 94111, and Prudential-Grace Lines, Inc., 1 Whitehall Street, New York, NY 10004.
4. American President Lines, Ltd., 601 California Street, San Francisco, CA 94108, and American Mail Line, Ltd., 1010 Washington Building, Seattle, WA 98101.
5. American Export Isbrandtsen Lines, Inc., 26 Broadway, New York, NY 10004.
6. Joseph Curran, President, National Maritime Union, 36 Seventh Avenue, New York, NY 10011.

OTHER PARTIES

Donald J. Brunner, Esq., Director, Bureau of Hearing Counsel, James Albert, Esq., Hearing Counsel, Federal Maritime Commission, 1405 I Street NW., Washington, DC 20573.

[F.R. Doc. 70–17150; Filed, Dec. 18, 1970; 8:48 a.m.]

SEA-LAND SERVICE, INC., ET AL.

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 1202; 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:

Richard J. Gage, Chairman, Puerto Rico Ocean Service Association, 919 18th Street NW., Washington, DC 20006.

Agreement No. DC–38–1 between Sea-Land Service, Inc., Gulf-Puerto Rico Lines, Inc., Seatrain Lines, Inc., and Transamerican Trailer Transport, Inc., modifies the basic agreement under which the parties agree to establish uniform practices, terminal and accessorial charges and regulations in connection with their carriage of cargo between U.S. Atlantic and gulf ports and Puerto Rico. The purpose of the modification is to provide for permanent approval of the agreement pursuant to the Commission's order of April 2, 1969, conditionally approving the basic agreement.

Dated: December 16, 1970.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70–17151; Filed, Dec. 18, 1970; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CS71–60, etc.]

MULL DRILLING CO., INC., ET AL.

Notice of Applications for "Small Producer" Certificates [1]

DECEMBER 7, 1970.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from areas for which just and reasonable rates have been established, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 31, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

Docket No.	Date filed	Name of applicant
CS71-60	11- 2-70	Mull Drilling Co., Inc., (Operator) et al., 1625 Vickers Tower, Wichita, KS 67202.
CS71-61	11- 2-70	Lonita, Inc., 250 Laura, Wichita, KS 67211.
CS71-62	11- 2-70	May Petroleum, Inc., 1435 Republic National Bank Bldg., Dallas, TX 75201.
CS71-63	11- 2-70 amended 11- 9-70	Ozark-Mahoning Co., Suite 203, 415 West Eighth, Amarillo, TX 79101.
CS71-64	11- 2-70	Grady L. Fox, c/o Mr. Richard Herrmann, 301 Amarillo Bldg., Amarillo, TX 79105.
CS71-65	11- 2-70	Riehome Oil & Gas Co., c/o Mr. Richard Herrmann, 301 Amarillo Bldg., Amarillo, TX 79101.
CS71-66	11- 2-70	L. H. Puckett, 801 Amarillo Bldg., Amarillo, TX 79105.
CS71-67	11- 2-70	A. W. Moursund, c/o Gordon L. Llewellyn, Attorney, 1100 Adolphus Tower Bldg., Dallas, TX 75202.
CS71-68	11- 2-70	John H. Hill, c/o Gordon L. Llewellyn, Attorney, 1100 Adolphus Tower Bldg., Dallas, TX 75202.
CS71-69	11- 2-70	Yingling Oil, Inc., 415 West Eighth, Amarillo, TX 79101.
CS71-70	11- 2-70	Bright & Schiff, 2355 Stemmons Bldg., Dallas, TX 75207.
CS71-71	11- 2-70	A. L. Abercrombie (Operator) et al., 801 Union Center Bldg., Wichita, KS 67202.
CS71-72	11- 2-70	J. A. Mull, Jr. (Operator) et al., 1625 Vickers Tower, Wichita, KS 67202.
CS71-73	11- 2-70	Ben F. Brack (Operator) et al., c/o Dale M. Stucky, Attorney, Fleeson, Gooing, Coulson & Kitch, Post Office Box 997, Wichita, KS 67201.
CS71-74	11- 2-70	Foster Petroleum Corp., Box 729, Bartlesville, OK 74003.
CS71-75	11- 2-70	Wessely Petroleum, Ltd., 2002 Republic National Bank Bldg., Dallas, TX 75201.
CS71-76	11- 2-70	J. Lee Youngblood, 1965 First National Bank Bldg., Dallas, TX 75201.
CS71-77	11- 2-70	Hamilton Brothers Petroleum Corp., 1517 Denver Club Bldg., Denver, CO 80202.
CS71-78	11- 2-70	Hughes Seewald, 701 First National Bank Bldg., Amarillo, TX. 79101.
CS71-79	11- 2-70	Alliance Oil & Gas Co., Box 245, Anadarko, OK 73005.
CS71-80	11- 2-70	Sharples and Co., Properties, 1001-1700 Broadway, Denver, CO 80202.
CS71-81	11- 2-70	Bowers Drilling Co., Inc. (Operator), et al., 1434 Vickers Tower, Wichita, KS 67202.
CS71-82	11- 2-70	Global Oils, Inc., 2010 Republic National Bank Bldg., Dallas, TX 75201.
CS71-83	11- 2-70	Arthur J. Wessely, 2002 Republic National Bank Bldg., Dallas, TX 75201.
CS71-84	11- 2-70	Lone Star Explorations, Inc., 2010 Republic National Bank Bldg., Dallas, TX 75201.
CS71-85	11- 2-70	W. J. Fellers, 822 Amarillo Bldg., Amarillo, TX 79101.
CS71-86	11- 2-70	Burnett Corp., 328 First National Bank Bldg., Amarillo, TX 79101.
CS71-87	11- 2-70	H. N. Burnett, 328 First National Bank Bldg., Amarillo, TX 79101.
CS71-88	11- 2-70	R. Stenzel, c/o Barth P. Walker, Attorney, 950 National Foundation Life Bldg., Oklahoma City, OK 73112.
CS71-89	11- 2-70	Vernon Taylor, Jr. (Operator) et al., 1670 Denver Club Bldg., Denver, CO 80202.
CS71-90	11- 2-70	Peerless, Inc., 1670 Denver Club Bldg., Denver, CO 80202.
CS71-91	11- 2-70	Westhoma Oil Co., 1670 Denver Club Bldg., Denver, CO 80202.
CS71-92	11- 2-70	Amarex, Inc., 614 East Bldg., 2000 Classen Center, Oklahoma City, OK 73106.
CS71-93	11- 3-70	H. J. Rucker, 716 First National Bank Bldg., Midland, TX 79701.
CS71-94 [1]	11- 2-70	Thompson Operating Co., 1145 First National-Pioneer, Lubbock, TX 79401.
CS71-100 [2]	11- 2-70	Virginia Sherrill c/o Sanders, Scott, Saunders, Brian & Humphrey, 730 Amarillo Bldg., Amarillo, TX 79101.
CS71-101 [3]	11- 2-70	G. R. Whittington et al., c/o Sanders, Scott, Saunders, Brian & Humphrey, 730 Amarillo Bldg., Amarillo, TX 79101.
CS71-104	11- 2-70	Howard F. Saunders c/o Sanders, Scott, Saunders, Brian & Humphrey, 730 Amarillo Bldg., Amarillo, TX 79101.
CS71-105	11- 3-70	Roland S. Bond, 2600 Republic National Bank Bldg., Dallas, TX 75201.
CS71-106	11- 4-70	A.I.K., Ltd., No. 2, 1009 Midland National Bank Bldg., Midland, TX 79701.
CS71-107	11- 4-70	Aikman Bros. Corp., 1009 Midland National Bank Bldg., Midland, TX 79701.
CS71-108	11- 4-70	A.I.K., Ltd., 1009 Midland National Bank Bldg., Midland, TX 79701.
CS71-109	11- 4-70	Aikman Brothers, 1009 Midland National Bank Bldg., Midland, TX 79701.
CS71-110	11- 4-70	Frank Parkes, Post Office Box 186, Hooker, OK 73945.
CS71-111	11- 4-70	Joe A. Humphrey, 1100 First National Bank Bldg., Dallas, TX 75202.
CS71-112	11- 5-70	R. James Gear (Operator) et al., 211 North Broadway, Wichita, KS 67202.
CS71-113	11- 5-70	Reliance Development Corp., 705 Alamo National Bldg., San Antonio, TX 78205.
CS71-114	11- 6-70	W. V. Harlow et al., Box 448, Amarillo, TX 79105.
CS71-115	11- 6-70	Nabob Production Co., Box 448, Amarillo, TX 79105.
CS71-116	11- 6-70	O'Brien Co., Post Office Box 448, Amarillo, TX 79105.
CS71-117	11- 6-70	W. S. Cline et al., Post Office Box 448, Amarillo, TX 79105.
CS71-118	11- 6-70	Kenneth B. Moore, 634 19th St., Santa Monica, CA 90402.
CS71-119	11- 9-70	Etchieon & Gross Associates, Box 188, Borger, TX 79007.
CS71-120	11- 6-70	A-L, Ltd., 1009 Midland National Bank Bldg., Midland, TX 79701.
CS71-121	11-13-70	Anderson Petroleum, 830 First Wichita National Bldg., Wichita Falls, TX 76301.
CS71-122	11-13-70	Maguire Oil Co., 4200 First National Bank Bldg., Dallas, TX 75202.
CS71-123	11-16-70	W. R. Yinger, 1604 First National Bldg., Oklahoma City, OK 73102.
CS71-124	11-16-70	Sidwell Oil & Gas, Inc., Post Office Box 2475, Pampa, TX 79065.
CS71-125	11-16-70	E. C. Sidwell, Post Office Box 2475, Pampa, TX 79065.
CS71-126	11-16-70	W. B. Osborn, Jr. (Operator) et al., 5168 Broadway, Post Office Box 6767, San Antonio, TX 78209.
CS71-127	11-18-70	Bettis, Boyle & Stovall, Post Office Box 1168, Graham, TX 76046.
CS71-128	11-19-70	Glover Heffner Kennedy Oil Co., 1010 Kermac Bldg., Oklahoma City, OK 73102.
CS71-129	11-19-70	Bobby G. Dawson, 525 North Deahl, Box 191, Borger, TX 79007.
CS71-130	11-20-70	F. M. Buxton, 1008-100 Park Avenue Bldg., Oklahoma City, OK 73102.

See footnotes at end of document.

[1] Dockets Nos. CS71-95, CS71-96, CS71-97, CS71-98 and CS71-99 erroneously assigned to application are canceled.

[2] Docket No. CS71-103 erroneously assigned to application is canceled.

[3] Docket No. CS71-102 erroneously assigned to application is canceled.

[F.R. Doc. 70-16998; Filed, Dec. 18, 1970; 8:45 a.m.]

[Docket No. CP71-157]

CASCADE NATURAL GAS CORP.

Notice of Application

DECEMBER 11, 1970.

Take notice that on December 4, 1970, Cascade Natural Gas Corp. (applicant), 222 Fairview Avenue North, Seattle, WA 98109, filed in Docket No. CP71-157 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7 (b) of the regulations thereunder for a budget-type certificate of public convenience and necessity authorizing the construction and operation of gas-purchase facilities during the calendar year 1971 to enable applicant to take into its certificated system natural gas which will be purchased from producers in the general area of applicant's existing system, all as more fully set forth in the application on file with the Commission and open for public inspection.

Specifically, applicant requests authority to construct and operate during the calendar year 1971 gas-purchase facilities at a total cost not to exceed $500,000, with no single project to exceed $280,000. Applicant requests a waiver of the dollar limitation imposed by § 157.7(b)(1)(i), stating that such a waiver is justified in view of the necessity to construct facilities in order to connect additional gas reserves.

The purpose of this budget-type application is to augment applicant's ability to act with reasonable dispatch in contracting for and connecting new supplies of gas in various producing areas generally coextensive with said system.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 4, 1971, 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 section 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.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17117; Filed, Dec. 18, 1970; 8:46 a.m.]

[Docket No. E-7234]

DETROIT EDISON CO. AND CONSUMERS POWER CO.

Order Terminating Proceedings

DECEMBER 14, 1970.

Upon consideration of the Joint Motion by counsel for all parties of record, the Commission finds and determines that the investigation and hearing in the above-entitled matters shall be deemed closed and Docket No. E-7234 terminated.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17115; Filed, Dec. 18, 1970; 8:46 a.m.]

[Docket No. RP71-15]

EAST TENNESSEE NATURAL GAS CO.

Order Providing for Hearing, Rejecting Proposed Revised Tariff Sheets, and Accepting and Suspending Proposed Alternate Revised Tariff Sheets; Correction

DECEMBER 2, 1970.

In the order providing for hearing, rejecting proposed revised tariff sheets, and accepting and suspending proposed alternate revised tariff sheets, issued November 13, 1970, and published in the FEDERAL REGISTER November 21, 1970 (35 F.R. 17976), in ordering paragraph (B), change "April 15, 1970" to "April 15, 1971".

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17118; Filed, Dec. 18, 1970; 8:46 a.m.]

[Docket No. G-669, etc.]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Petition To Amend; Correction

DECEMBER 1, 1970.

Michigan Wisconsin Pipe Line Co., Dockets Nos. G-669, G-2327, G-13246, G-18316, G-20569, CP62-22, CP63-230, CP64-161, CP65-261, CP68-190.

In the notice of petition to amend, issued November 17, 1970, and published in the FEDERAL REGISTER November 24, 1970 (35 F.R. 18015), in Caption: Change "CP65-216" to "CP65-261".

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17119; Filed, Dec. 18, 1970; 8:46 a.m.]

[Docket No. RP70-5, etc.]

SOUTHERN NATURAL GAS CO.

Notice of Motion Filed for Approval of Stipulation and Settlement

DECEMBER 11, 1970.

Take notice that on December 4, 1970, Southern Natural Gas Co. (Southern Natural) filed with the Commission a motion for approval of a Stipulation and Agreement in Docket Nos. RP70-5, RP70-16, RP70-38, and RP71-4.

The Stipulation and Agreement, among other things, provides for a reduction in rates below those which are presently in effect subject to refund in the above-captioned proceedings and sets forth proposed rates for specified periods of time; requires refunds by Southern Natural for the excess which has been collected above the rates set forth in the Stipulation and Agreement; allows Southern Natural to increase its rates from time to time until June 30, 1972, to reflect rate increases of its suppliers and requires Southern Natural to decrease its rates to reflect supplier rate reductions; requires Southern Natural to flow-through to its customers the appropriate portion of all refunds, together with interest, received from its suppliers which are applicable to purchases by Southern Natural from such suppliers during the term of the Stipulation and Agreement; reflects changes in Southern Natural's existing FPC Gas Tariff, Sixth Revised Volume No. 1, related to, (a) the penalty for unauthorized overrun gas and waiver of such penalty; (b) the temporary transfer of contract demand among delivery points or delivery areas for multiple delivery point customers on a day of limitation to contract demand; (c) the rate to be charged a multiple delivery point customer for authorized overrun gas; (d) the force majeure provisions of Southern Natural's tariff and (e) a provision providing for an order of curtailments should Southern Natural be unable to meet its firm contract delivery obligations. The Stipulation and Agreement reserves for Commission hearing and decision the issue of the increase in book depreciation rates proposed by Southern Natural in Docket No. RP70-38.

Copies of the Stipulation and Agreement, together with a motion of Southern Natural for approval of this Agreement were served upon all parties to the above-captioned proceedings, all of Southern Natural's jurisdictional customers and all interested State commissions.

Answers or comments relating to the Stipulation and Agreement may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before January 8, 1971.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17120; Filed, Dec. 18, 1970; 8:46 a.m.]

[Docket No. RP71-29]

UNITED GAS PIPELINE CO.

Order Providing for Hearing on Petition and Amended Petition and Establishing Procedures and Permitting Intervention

DECEMBER 10, 1970.

On October 26, 1970, United Gas Pipeline Co. (United) filed a petition for a declaratory order stating that because of a temporary shortage of field gas suppliers it will be obliged to curtail deliveries of natural gas on its system. United requests that the Commission issue an order declaring that the curtailment program set out in its petition is in accordance with the terms of its FPC Gas Tariff, section 12 of the General Terms and Conditions, and its direct sales contracts. United states that it placed its curtailment program into effect in November 1970.

The curtailment program which United has presented and states it has placed into effect establishes three basic categories: (1) Gas used for industrial purposes, including gas used to generate electricity which in turn is applied to industrial use, (2) gas used to generate electricity which is consumed by domestic consumers, and (3) gas used by domestic consumers. The program requires that in the event of gas shortage all uses in category (1) will be curtailed first on a ratable basis. Category (2) uses will be curtailed only after total curtailment of category (1), and category (3) uses will be curtailed only after total curtailment of category (1) and (2) uses is accomplished.

United filed an amendment to its petition of October 26, on November 20, 1970. Therein United alleges that Mobile Gas

Service Corp. (Mobile) and five of United's industrial direct sale customers [1] have acted to circumvent United's planned curtailment of volumes to these customers. It is alleged that this has been accomplished by Mobile's entering into interruptible contracts with the five industrial customers under the terms of which Mobile has agreed to provide additional volumes needed by them over and above the volumes they would be entitled to take under United's curtailment program.[2] United states that the result of this alleged circumvention of its curtailment program is that the industrial customers involved receive preferential treatment in violation of United's tariff and its direct sales contracts. United, in addition to the request made in its original petition, requests the Commission to issue an order: (a) Declaring that the conduct of Mobile and United's five industrial customers served by Mobile violates United's tariff and direct sales contracts; (b) directing Mobile and United's five industrial customers served by Mobile to cease and desist from these violations of United's tariff and direct sales contracts; and (c) declaring that United is authorized under its tariff and direct sales contracts to recover any excessive volumes taken prior to the date of the Commission's order by withholding all or part of United's deliveries to customers receiving those volumes for the remainder of the 1970–71 winter season.

Mobile Gas Service Corp. (Mobile) on November 10, 1970, filed a motion and supporting memorandum requesting the Commission to decline to undertake to render a declaratory order on the questions presented by United's petition of October 26. United filed its answer to Mobile's motion on November 20, 1970, in which it prayed that Mobile's motion be denied. On November 25, 1970, Mobile filed a petition for clarification and expedition of procedures; receipt of Movant's reply to the answer to its November 10, 1970, motion; and receipt of answer to amended petition and motion to strike amendment.

Texas Eastern Transmission Corp. (Texas Eastern) filed on November 23, 1970, an answer to United's petition of October 26, 1970, for declaratory order. Texas Eastern through its answer requests the Commission to enter an order denying United's petition and requiring United to observe the order of priorities set forth in section 12 of the general terms and conditions of United's tariff as interpreted by Texas Eastern.

A protest was filed by Stauffer Chemical Co. (Stauffer) on November 25, 1970, in which many of the allegations contained in United's petition are denied and in which it is stated that the implementation of United's plan of curtailment would cause Stauffer to suffer approximately $2.4 million in losses for the period of November 1970, through March, 1971. Stauffer requests that the Commission reallocate gas deliveries under a more constructive and reasonable plan than offered by United, taking into consideration the economic hardship imposed upon each of United's customers and the availability of alternative fuel sources to that customer, and the end use of the fuel, if it should be determined that curtailments are necessary on United's system.

The urgency for resolution of the questions presented by United's original and amended petitions, and the answers and motions in opposition thereto, are clear. The 1970–71 winter heating season has begun and United has stated that it has already put its curtailment program into effect. Under such circumstances it is appropriate that we order the holding of a prompt hearing in this matter in which United will present its evidence orally subject to immediate cross-examination by the participating parties. Any other party wishing to be heard shall present evidence orally immediately upon the conclusion of the cross-examination of United's witnesses in such order as the Presiding Examiner may direct. In addition to the foregoing the Presiding Examiner is directed to take all other procedural steps necessary to ensure a speedy termination of the hearings and an early submission of the matter for decision.

Our ordering of a formal hearing in this docket to resolve the issues presented in United's petitions, and the answers and motions filed in opposition thereto, is not a determination as to whether a declaratory order should be issued by this Commission.

Petitions requesting leave to intervene in this proceeding have been timely filed by the following petitioners:

Algonquin Gas Transmission Co.; Boston Gas Co.; Consolidated Edison Company of New York, Inc.; Consolidated Gas Supply Corp.; Florida Gas Transmission Co.; Gulf States Utilities Co.; Laclede Gas Co.; Louisiana Power and Light Co.; Memphis Light, Gas & Water Division of City of Memphis, Tenn.; Mid Louisiana Gas Co.; Mississippi Power and Light Co.; Mississippi River Transmission Corp.; Mississippi Valley Gas Co.; Monsanto Co.; Natural Gas Pipeline Company of America, Ohio Fuel Gas Co., and The Manufacturers Light and Heat Co. (joint petition); Philadelphia Gas Works Division of UGI Corp., Public Service Electric and Gas Co.; Stauffer Chemical Co.; Tennessee Gas Pipeline Co.; a division of Tenneco, Inc.; Texas Eastern Transmission Corp.; Texas Gas Transmission Corp.; The Peoples Gas Light and Coke Co.; and Willmut Gas & Oil Co.

Petitions requesting leave to intervene were filed by the following petitioners subsequent to the filing date of (Nov. 25, 1970) set in the notice published in the FEDERAL REGISTER:

Southern Natural Gas Co., Philadelphia Electric Co. and Olinkraft Inc.

Notice of intervention was filed by the Public Service Commission of the State of New York.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that:

(1) The Commission enter upon a hearing to resolve the questions presented in United's petition, its amendment thereto and the motions, answers, and protest which those two documents filed by United have engendered, and to determine (a) the proper interpretation of section 12 of the General Terms and Conditions of United's FPC Gas Tariff and whether the curtailment program placed into effect by United on November 1, 1970, is in accordance therewith, (b) whether it would constitute undue discrimination under the provisions of the Natural Gas Act if a curtailment program placed into effect on United's system did not apply equally to the jurisdictional and direct sales customers of United, and (c) whether it would be appropriate for the Commission at this time to consider the question of reallocation of United's total gas supply among all of United's customers, and if so, on what basis should such reallocation be made;

(2) All participants to the proceeding make evidentiary presentations through the giving of oral testimony or, if they so choose, make statements of positions on the record;

(3) United present its evidence first to be followed, at the conclusion of cross-examination thereon, by the oral presentation of evidence of the other parties to the proceeding in the order prescribed by the Presiding Examiner.

(4) The participation in this proceeding of the above-named petitioner's may be in the public interest;

(5) Although some of the petitioners to intervene were not timely filed good cause exists for permitting intervention of the parties whose petitions were filed subsequent to the date set in the Commission's notice.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 15, and 16 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held on December 21, 1970, at 10 a.m., e.d.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426, to resolve the questions presented in paragraph (1) of the Commission's findings above.

(B) The hearing ordered in paragraph (A) above shall be conducted in accordance with paragraphs (2) and (3) of the Commission's findings above.

(C) A Presiding Examiner to be designated by the Chief Examiner for that purpose [See Delegation of Authority, 18 CFR 3.5(d)], shall preside at, and control this proceeding in accordance with the policies expressed in the Commission's rules of practice and procedure and the purposes expressed in this order.

[1] Aluminum Co. of America, National Gypsum Co., Ideal Cement Co., Scott Paper Co., International Paper Co.

[2] United states that it is the sole supplier of natural gas to Mobile.

(D) The above named petitioners are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such interveners 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 by the Commission that they, or any of them, might be aggrieved because of any order or orders issued by the Commission in this proceeding.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 70-17121; Filed, Dec. 18, 1970; 8:46 a.m.]

FEDERAL RESERVE SYSTEM

COMMERCE BANCSHARES, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by Commerce Bancshares, Inc., which is a bank holding company located in Kansas City, Mo., for prior approval by the Board of Governors of the acquisition by Applicant of more than 80 percent of the voting shares of State Bank and Trust Co. of Poplar Bluff, Poplar Bluff, Mo.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Kansas City.

By order of the Board of Governors, December 15, 1970.

[SEAL] KENNETH A. KENYON, *Deputy Secretary.*

[F.R. Doc. 70-17123; Filed, Dec. 18, 1970; 8:46 a.m.]

FIRST BANC GROUP OF OHIO, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by First Banc Group of Ohio, Inc., which is a bank holding company located in Columbus, Ohio, for prior approval by the Board of Governors of the acquisition by Applicant of 100 percent of the voting shares of the successor by merger to The First National Bank of Wapakoneta, Wapakoneta, Ohio.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Cleveland.

By order of the Board of Governors, December 14, 1970.

[SEAL] KENNETH A. KENYON, *Deputy Secretary.*

[F.R. Doc. 70-17097; Filed, Dec. 18, 1970; 8:45 a.m.]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 70-4]

EXTRATERRESTRIAL EXPOSURE

Establishment of Quarantine Period

Pursuant to authority vested in me, and in accordance with 14 CFR 1211.104(a)(1), I hereby determine that with respect to the Apollo 14 space mission:

a. The beginning of the quarantine period for extraterrestrial exposure is February 5, 1971.

b. The termination of the quarantine period for extraterrestrially exposed persons shall be on February 26, 1971, unless modified prior to that date.

c. The duration of the quarantine period for extraterrestrially exposed property, animals, other form of life (other than persons) or matter whatever, shall continue until successful completion of safety tests, decontamination or both.

J. W. HUMPHREYS, Jr., *NASA Director of Life Sciences.*

[F.R. Doc. 70-17130; Filed, Dec. 18, 1970; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[70-4755]

NORTHEAST UTILITIES ET AL.

Notice of Posteffective Amendment Regarding Increase in Authorized Amount of Subordinated Notes

DECEMBER 14, 1970.

Notice is hereby given that Northeast Utilities (Northeast), Hartford, Conn., a registered holding company, and The Connecticut Light & Power Co. (CL&P), The Hartford Electric Light Co. (HEL CO) and Western Massachusetts Electric Co. (WMECO), each an electric-utility subsidiary company of Northeast, and The Millstone Point Co. (Millstone), a subsidiary company of Northeast, have filed with this Commission a fourth posteffective amendment to the application-declaration in this proceeding pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7, 9(a), and 10 thereof as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order dated June 2, 1969 (Holding Company Act Release No. 16389), the Commission, among other things, authorized the transfer and assignment by CL&P, HELCO, and WMECO of their respective interests in a nuclear fuel contract to Millstone Point pursuant to an interim agreement. In their first three

posteffective amendments to the application-declaration the companies proposed to amend their interim agreement so as to extend the period for the completion by Millstone Point of satisfactory permanent financing arrangements to June 2, 1971, and to increase the maximum amount of short-term subordinated notes to Northeast from $2,750,000 to $3,500,000. The application-declaration as so amended was granted by supplemental orders of the Commission dated March 2, 1970, and June 1, 1970 (Holding Company Act Release Nos. 16625 and 16742).

The companies now request that the maximum amount of short-term subordinated notes to be issued and sold to Northeast as previously authorized by the Commission be increased from $3,500,000 to $5 million. In all other repects the transactions remain unchanged.

No State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 28, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said posteffective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-17125; Filed, Dec. 18, 1970; 8:47 a.m.]

TARIFF COMMISSION

[TEA-F-14]

ALBANY BILLIARD BALL CO.

Petition for Determination of Eligibility To Apply for Adjustment Assistance; Discontinuance of Investigation

Notice is hereby given that the Tariff Commission, on December 15, 1970, discontinued investigation No. TEA-F-14, which was instituted for the purpose of determining the eligibility of Albany Billiard Ball Co. to apply for adjustment assistance under the provisions of the Trade Expansion Act of 1962.

The investigation was discontinued at the request of the firm which withdrew its petition.

Issued: December 16, 1970.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[F.D. Doc. 70-17133; Filed, Dec. 18, 1970; 8:47 a.m.]

[TEA-W-37—TEA-W-54]

JODI SHOE CO. ET AL.

Workers' Petitions for Determination of Eligibility To Apply for Adjustment Assistance; Notice of Investigations

On the basis of petitions filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers of—

TEA-W-37	Jodi Shoe Co., Derry, N.H.
TEA-W-38	Maine Shoe Corp., Brunswick, Maine.
TEA-W-39	Footflairs, Inc., Manchester, N.H.
TEA-W-40	Brown Shoe Co., Mattoon, Ill.
TEA-W-41	Goldberg Bros., Inc., Haverhill, Mass.
TEA-W-42	Caswell Shoes, Inc., Lynn, Mass.
TEA-W-43	Dori Shoe Co., Inc., Lynn, Mass.
TEA-W-44	National Ballet Makers, Inc., Medford, Mass.
TEA-W-45	Wolsam Limited, New York, N.Y.
TEA-W-46	L. E. Beaudin, Hanover, Pa.
TEA-W-47	Stage Door, Inc., Raymond, N.H.
TEA-W-48	Selwyn Shoe Manufacturing Corp., Boonville, Mo.
TEA-W-49	Kramer Shoe Co., Inc., Haverhill, Mass.
TEA-W-50	Algy Shoes, Inc., Everett, Mass.
TEA-W-51	Adlib, Inc., Hialeah, Fla.
TEA-W-52	Stylecrest Footwear Inc., Brooklyn, N.Y.
TEA-W-53	Kickerinos, Inc., Newport, Ark.
TEA-W-54	Evangeline Shoe Corp., Manchester, N.H.

the U.S. Tariff Commission, on the 11th day of December 1970, instituted investigations under 301(c)(2) of the said Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with women's and misses' footwear produced by the aforementioned firms are being imported into the United States in such increased quantities as to cause, or to threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of the aforementioned firms.

The petitioners have not requested a public hearing. A hearing will be held on request of any other party showing a proper interest in the subject matter of the investigations, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

The petitions filed in this case are available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

Issued: December 16, 1970.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[F.R. Doc. 70-17114; Filed, Dec. 18, 1970; 8:46 a.m.]

DEPARTMENT OF LABOR

Office of the Secretary

INTERNATIONAL SILVER CO.

Notice of Investigation Regarding Certification of Eligibility of Workers To Apply for Adjustment Assistance

The Department of Labor has received two Tariff Commission reports containing affirmative findings under section 301(c)(2) of the Trade Expansion Act of 1962 with respect to the Commission's investigations of petitions for determination of eligibility to apply for adjustment assistance filed on behalf of workers of Factory E, International Silver Co., Meriden, Conn., and Factories C, H, and L, International Silver Co., in the Meriden-Wallingford area of Connecticut (TEA-W-29 and TEA-W-30). In view of the reports and the responsibilities delegated to the Secretary of Labor under section 8 of Executive Order 11075 (28 F.R. 473), the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted investigations, as provided in 29 CFR 90.5 and this notice. Each investigation relates to the determination of whether any of the groups of workers covered by the Tariff Commission report should be certified as eligible to apply for adjustment assistance, provided for under Title III, Chapter 3, of the Trade Expansion Act of 1962, including the determinations of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and subdivisions of the firm involved to be specified in any certifications to be made, as more specifically provided in Subpart B of 29 CFR Part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C., on or before December 24, 1970.

Signed at Washington, D.C., this 14th day of December 1970.

EDGAR I. EATON,
Director,
Office of Foreign Economic Policy.

[F.R. Doc. 70-17113; Filed, Dec. 18, 1970; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 16, 1970.

Protests to the granting of an application must be prepared in accordance with § 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. 42090—*Return shipments of potassium (potash) to points in N. Mex. and Utah.* Filed by Western Trunk Line Committee, agent (No. A-2635), for interested rail carriers. Rates on potassium (potash), returned to shipping points, as described in the application, from Western, Illinois, Southwestern, Official, and Southern territories to Carlsbad and Loving, N. Mex., Brendel and Potish, Utah.

Grounds for relief—Return movements of commodities.

Tariffs—Supplements 123 to Western Trunk Line Committee, agent, tariff ICC A-4540 and supplement 157 to Atchison, Topeka and Santa Fe Railway tariff ICC 14954.

FSA No. 42091—*Chlorine to Wesvaco, Ky.* Filed by O. W. South, Jr., agent, for and on behalf of Illinois Central Railroad Co. Rates on chlorine, in tank carloads, as described in the application, from Baton Rouge, Geismar, Gramercy, and St. Gabriel, La., to Westvaco, Ky.

Grounds for relief—Market competition.

Tariff—Supplement 158 to Southern Freight Association, agent, tariff ICC S-699.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[F.R. Doc. 70-17143; Filed, Dec. 18, 1970; 8:47 a.m.]

[Notice 629]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 16, 1970.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-72268. By order of December 15, 1970, the Motor Carrier Board approved the transfer to Litten & Litten Motor Lines, Inc., Knoxville, Md., of the operating rights in certificate No. MC-117806 (Sub-No. 6) issued May 7, 1965, to Antietam Transit Co., Inc., Hagerstown, Md., authorizing the transportation of passengers, over regular routes, between Hagerstown, Md., and Greencastle, Pa., serving all intermediate points. Francis J. Ortman 1700 Pennsylvania Avenue NW., Washington, D.C. 20006, attorney for applicants.

No. MC-FC-72212. By order of December 15, 1970, the Motor Carrier Board approved the transfer to Charles J. Everly, Hagerstown, Md., of the operating rights in certificates Nos. MC-117806 (Sub-No. 8), and MC-117806 (Sub-No. 9), issued April 12, 1965, and April 19, 1965, respectively, to Antietam Transit Co., Inc., Hagerstown, Md., authorizing the transportation of passengers, over regular routes, between Hagerstown, Md., and Keedysville, Md., serving all intermediate points; between Kearneysville, W. Va., and Newton D. Baker General Hospital, W. Va.; between Hagerstown, Md., and Smithburg, Md., serving all intermediate points; between Sharpsburg, Md., and Charlestown, W. Va., serving all intermediate points; and between Hagerstown, Md., and Kearneysville, W. Va. Francis J. Ortman, 1700 Pennsylvania Avenue NW., Washington, DC 20006, attorney for applicants.

No. MC-FC-72304. By order of December 15, 1970, the Motor Carrier Board approved the transfer to Eyre's Bus Service, Inc., Woodbine, Md., of the operating rights in certificate No. MC-117806 (Sub-No. 12), issued September 4, 1968, to Antietam Transit Co., Inc., Hagerstown, Md., authorizing the transportation of passengers, over regular routes, between Charlestown, W. Va., and Frederick, Md., serving all intermediate points. Bruce E. Mitchell, Suite 301, Tavern Square, 421 King Street, Alexandria, VA 22314, attorney for applicants.

No. MC-FC-72536. By order of December 11, 1970, the Motor Carrier Board approved the transfer to Colony Tours, Inc., West Hartford, Conn., of broker license No. MC-12856 issued to Margaret Grainger Auclair, doing business as Margaret D. Grainger, West Hartford, Conn., authorizing the holder thereof to engage in operations, as a broker, at West Hartford, Conn., in arranging for the transportation of: Passengers and their baggage, in charter operations, beginning and ending at points in Hartford County, Conn., and extending to points in the United States, including Alaska and Hawaii. John E. Fay, and Thomas W. Murrett, 342 North Main Street, West Hartford, CT 06117, attorneys for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[F.R. Doc. 70-17144; Filed, Dec. 18, 1970; 8:47 a.m.]

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